

Supported Decision Making with Guardianship

What is Supported Decision Making?

Supported Decision Making (SDM) is getting the help you need, from the people you trust, to make your own decisions. Isn't that how we *all* make decisions? We *all* need help when we're faced with tough choices, or don't understand our options, or just want some advice. It's simple: they give you information and advice to help you make the best decision for you. They support you so you can decide what's best for you.

SDM is very important for people with developmental disabilities who can make their own decisions when they get the support they need. For them, SDM can be used instead of more restrictive options, like guardianship. For individuals with a guardian, SDM can be used to maximize their control over their own lives. The goal of SDM is making sure that the person with a disability is the boss of their own life as much as possible. Studies have shown that when people with disabilities have more control over their lives – more *self determination* or *empowerment* – they have better lives including increased employment, independence, and safety.

How Supported Decision Making and Guardianship Work Together

Supported Decision Making and guardianship can be a natural partnership. Supported Decision Making is all about giving a person with a disability as much information as possible about their choices and helping them to reach the best decision. Best practices in guardianship say that guardians should be doing everything they can to make decisions *with* the person they're supporting and not just on their behalf. Decisions made by guardians should reflect the culture, needs, and preferences of the person they're serving, not simply the decision they think is "the best."¹ This is how decisions are made with Supported Decision Making—looking at all the options through the lens of what is important to the person

When a guardian is in place, the guardian is the official legal signatory on any decisions. The guardian can, if necessary for health and safety, overrule the wishes of the person with a disability. Of course, guardians should keep "dignity of risk" in mind by allowing individuals to make decisions the guardian may think are questionable, this is how all people learn and grow. One of the drawbacks of guardianship is that it can restrict independence and self-determination, as well as eliminate some civil rights, such as the right to vote, so it is a decision that should be undertaken thoughtfully and carefully.

Moving Between Guardianship and Supported Decision Making

The National Guardianship Association and Virginia law both say that the "least restrictive alternatives" should be tried before anyone pursues legal guardianship. That means trying options like supported decision making on their own, or with less restrictive tools, like Powers of Attorney, ABLÉ Accounts, Representative Payees, or Special Needs Trusts. If someone really needs more support, then guardianship may be appropriate, but you can still preserve rights under guardianship based upon the person's abilities and wishes.

¹ Code of Virginia § 64.2-2019

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Virginia law actually says that the job of a guardian is, to the greatest possible degree, to help the individual they're serving gain capacity for independent decisions. If you are currently a guardian, you can work to phase out guardianship by moving toward a model more like Supported Decision Making. In that case, the person wouldn't have a guardian, but may rely on designated supporters, a Power of Attorney, ABLE Account or Special Needs Trust, etc. to access additional help. You can then petition the court to remove the guardianship order in favor of the new agreement. This has been done successfully in Virginia and other states. The person with a disability gains greater autonomy and self-determination, there no longer needs to be someone as the single formal guardian, and you can build a sustainable support team for the future. Helpful resources to further understand SDM and how it can be customized to meet peoples' needs are listed below.

The Bottom Line

The most important thing to understand is that everyone has the right to have their voice and preference respected and heard. If someone needs support to understand options and make choices, Supported Decision Making is an ideal way to take that on. It involves understanding the person, explaining things in a way they best understand, and helping to process outcomes. If the person can do this with a team and other layers of support, you've done all the work there is to maintain rights and capacity while growing independence and self-determination.

If you determine guardianship is needed, then SDM should still be used as the individual's needs, strengths, and preferences should always be the driver of decisions in their life. The guardian will retain the authority to make final decisions and provide legal consent.

Supported Decision Making Resources	Where to Find It
The Arc of Northern Virginia's Toolkit with SDM handouts, webinars, examples of 100 ways to use SDM, SDM videos and webinars, and more	https://thearcofnova.org/sdm/
Asking any SDM questions	https://thearcofnova.org/answers/
"Supported Decision Making" book by Jonathan Martinis and Peter Blanck	https://tinyurl.com/SDM-book
"Setting the Wheels in Motion" article by Suzanne Francisco	https://tinyurl.com/SDM-Wheels
Jenny Hatch Justice Project info on start of SDM in VA, SDM data	http://www.jennyhatchjusticeproject.org
National Resource Center for SDM's stories, videos, agreements, and research	http://www.supporteddecisionmaking.org/
"When Do I Want Support" SDM tool	https://tinyurl.com/SDM-ACLU
Center for Public Representation's SDM forms and stories	https://supporteddecisions.org/

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