

## Questions from May 21, 2018 Supported Decision-Making Webinar

### Supported Decision-Making Basics

#### Who is eligible?

Under Wisconsin law, only certain people can use Supported Decision-Making agreements. People who can use Supported Decision-Making agreements are defined within Wisconsin's law as people with "functional impairments" and include (which means any of the following):

- People with physical, developmental, or mental conditions that substantially limits one or more of an individual's major life activities 1) Capacity for independent living, 2) Self direction, 3) Self-care, 4) Mobility, 5) Communication, 6) Learning.
- People experiencing degenerative diseases or other like incapacities.
- Conditions incurred at any age that substantially interfere with the Person's ability to provide self-care.

#### Do you need a Dr. report to demonstrate "impairment"?

No.

The statute does not require the existence of a Functional impairment to be determined or "certified" by health care professionals.

#### What are the main differences between this form and if a person simply states that they want a family member or friend to be a part of their care team?

An individual always has the right to ask people for support and can try to make others (businesses, health care providers, educators, etc.) respect that informal role. People with disabilities and families tell us that many entities do not recognize an informal role; an SDM agreement ensures third parties should recognize the supporter relationship.

Supported Decision-Making agreements outline a formal role that the Person wants for a Supporter—who may be a friend or family member—and clearly communicates what types of decisions the Person wants their Supporter to be involved in and how the Supporter may assist them with their decisions in that area.

A person can state they want a family member or friend to be a part of their care team without a Supported Decision-Making agreement. A SDM agreement provides additional structure for what the role of the individual's Supporter is on that care team.

Supported Decision-Making Agreements can be used to provide clear direction to Supporters and to the organizations/businesses they interact with as to what the role of the Supporter is and is not.

**Can a family use this process before the individual is 18? For example, as a stepping stone in transition planning?**

Formal Supported Decision-Making agreements can only be used by adults (over the age of 18), however Supported Decision Making as a concept and process can be used at any time, and may be useful to help individuals practice and grow more skilled in their decision making.

For those using Supported Decision-Making informally prior to age 18 here are some steps to get started:

- **START THE CONVERSATION** Talk about goals and needed supports to achieve them. Think about an individual's current abilities and areas where growth can occur.
- **IDENTIFY PEOPLE WHO ARE WILLING AND ABLE TO ASSIST** A support person should know the individual well and be able to understand and communicate with her or him.
- **PLAN AND COMMUNICATE** Bring the support team together to determine how team members will communicate.

**What other 3 states also have supported decision making laws?**

Texas, Delaware, Tennessee, Wisconsin, Alaska (just passed after webinar), (Missouri pending)

**Did WI get any resistance from educators about the law's requirement to provide information to students?**

No.

**Did you get push back from legislators when pushing for this? We in MN would like to see this-Go WI!**

Legislators were universally supportive of this legislation.

## The Supported Decision-Making Agreement

### Who would a family go to if they want to implement such an agreement?

Families and individuals may implement Supported Decision-Making agreements by filling out the form (independently or with legal assistance-see below) and providing it to any third parties (with whom he/she wishes the supporter(s) to be assisting) that may rely on that agreement.

The statute includes the Supported Decision-Making agreement form; the exact language from the statute has been transferred to a downloadable form available here: [http://wi-bpdd.org/wp-content/uploads/2018/05/Sample\\_SDMForm\\_-\\_5212018.pdf](http://wi-bpdd.org/wp-content/uploads/2018/05/Sample_SDMForm_-_5212018.pdf)

While the statute does not require families to consult an attorney, some families may find value in doing so especially if they are using a SDM agreement in conjunction with other legal arrangements (like a POA).

Just like release forms, POAs, letters of guardianship and other arrangements, we recommend that individuals keep a list of the places they have a SDM agreement on file so that if changes to the agreement are made they will be able to easily update those third parties with the most current version.

### Is there a standard agreement, or is it person-centered, individualized?

There is a form, but it can be customized to meet the person's needs.

The statute includes the Supported Decision-Making agreement form; these elements must be present in any SDM agreement. The form includes fields where the individual may choose to customize the form to indicate types of decisions or information they wish the Supporter to assist with.

The exact language from the statute has been transferred to a downloadable form available here: [http://wi-bpdd.org/wp-content/uploads/2018/05/Sample\\_SDMForm\\_-\\_5212018.pdf](http://wi-bpdd.org/wp-content/uploads/2018/05/Sample_SDMForm_-_5212018.pdf)

### Does agreement paperwork need to be filled out with all parties (supporters, witnesses and individual) present or can the individual begin this process on his or her own and then pass the paperwork along?

Only the person's signature needs to be witnessed or notarized. The document can be prepared ahead of time.

The statute requires the document be signed within the presence of 2 witnesses or a notary public.

### **Does the notary have to use their stamp?**

A public notary must comply with all requirements associated with official notarization.

### **You speak of changing the SDM agreement easily. Explain the process for change.**

The Person is always in control of their own decisions and their Supported Decision-Making agreement. They can modify it or end it at any time.

The Person can include a specific date when the agreement is modified or ends.

Either the Person or the Supporter can revoke a Supported Decision-Making agreement at any time.

Supported decision-making agreements are automatically revoked if the Supporter has a substantiated allegation of neglect or abuse of the person, the Supporter has been found criminally liable for abuse or neglect, or there is a restraining order against the Supporter.

It will be important to communicate changes in SDM agreements or revocations to the various business, organizations, providers with which the Supporter has been providing assistance.

An agreement can be terminated and changed simply by tearing up the old one and preparing a new one

### **Roles of Supporters**

#### **Does a Supporter need to go through a background check?**

No.

#### **Do you have multiple people on this team; each person being an expert in certain areas?**

It can be done that way, but does not have to be. It's up to the individual how many supporters they want and what they want support with.

An individual may have more than one SDM agreement and may designate a different Supporter for different decision types based on whom they feel has the best expertise to assist in any given decision type.

**How does a business confirm that the SDM supporter is truly communicating the individual's decision vs. transacting of their own accord?**

Professionals should confirm via the Supported Decision-Making agreement the identity of the Supporter and the Supporter's role under the agreement. (Note: They should do this when an individual identifies themselves as a POA or Guardian too).

Professionals who receive a Supported Decision-Making agreement are required to rely on that agreement as a legal expression of the Person's wishes.

Liability protections for professionals and Supporters are included for actions done in the context of a valid Supported Decision-Making agreement.

**Can a person have more than one supporter for the same area of decision making, e.g. housing?**

Yes. The person can have more than one Supporter for the same area of decision-making.

**Working with Guardianship & Power of Attorney**

**If an individual wants to gain decision-making agreements for himself and has a guardian, what steps would he take to help him achieve that goal**

Under Wisconsin law, "a ward retains all his or her rights that are not assigned to the guardian or otherwise limited by statute."

In areas where the person under guardianship (ward) has retained their rights to make decisions, the person can use Supported Decision-Making agreements.

In Wisconsin, guardians are charged with placing the least possible restrictions on the person's ability to make choices, be part of the community, and identify and honor the individual's preferences. Guardians can use supported decision making as a strategy to help understand their ward's wishes.

Wisconsin law includes a process to restore rights to the ward that have been transferred to a guardian and a process to remove a guardianship.

**What rights cannot be transferred to a guardian, if any?**

Certain rights are never surrendered by the ward regardless of the breadth of the guardianship order. They are: The right to complain to government agencies; the right to legal counsel; the right to contact Disability Rights Wisconsin (as the protection and Advocacy System for people with disabilities); the right to contact the Board on Aging and Long Term Care (in its role as long term care ombudsman for older people; to protest a residential placement; to petition the right to review a guardianship, protective placement or mental commitment; to give or withhold consent under

Chapter 51 of the statutes; and to exercise any statutory and constitutional rights guaranteed to the a person, i.e. freedom of religion, expression and association. Other rights may be taken away by the court but cannot be exercised by the guardian. They are: the right to marry; the right to make a will; the right serve on a jury; the right to apply for a license; the right to consent to sterilization; the right to consent to organ donation; or the right to vote. See Wis. Stats. sec. 54.25(2).

**If someone already has a General Durable Power of Attorney and the supportive decision maker would be the same person is there any reason to have both documents?**

Possibly.

Supported Decision Making agreements can cover many decision types not typically covered by traditional Powers of Attorney like housing/living arrangements, choosing a service provider (Examples -internet, cellphone, cleaning service), filing taxes etc.

POAs can be written in different ways, but POAs designate another individual (a POA) to make certain kinds of decisions on the Person's behalf. What decision-making authority is granted and when can be customized in the POA agreement.

SDM agreements do not grant authority to another individual to make decisions. The person always remains in control of their own decisions.

**Can the document be used as a legal document within guardianship if using the methods together? i.e.: medical decisions**

If the decision-making authority has been transferred to the guardian then the guardian has the decision-making authority, regardless of what the supporter or ward may say.

Supported Decision-Making agreements can be used in combination with other legal arrangements, including Power of Attorney and limited guardianship. These options are not mutually exclusive and can be used to complement each other.

Supported Decision-Making as a concept is a valuable tool even when the legal right to make some or all decisions has been transferred to a guardian. Wisconsin has a limited guardianship system. Guardians are charged with placing the least possible restrictions on the person's ability to make choices, be part of the community, and identify and honor the individual's preferences. Using Supported Decision-Making can help guardians understand their ward's wishes

**For help with SSI would this give me permission to communicate with the SSA or would a power of financial attorney be required?**

SSA may require additional documents to be signed. But SSA cannot require someone to execute a power of attorney for finances.

**Some of the attorneys who have been looking at the new form have ideas about specific things that could be added or modified. It's not wrong to consult an attorney to be able to compare the use of power of attorney forms to this new tool, so that the tools can work well together.**

Agree.

**Is there training for guardians related to the expectations set forth in law? (i.e., maximize decision making)**

Nothing formal is required in the law. There are currently no training requirements for guardians.

### **Assurances**

**How does a business confirm that the SDM supporter is truly communicating the individual's decision vs. transacting of their own accord?**

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Professionals who receive a Supported Decision-Making agreement are required to rely on that agreement as a legal expression of the Person's wishes.

Liability protections for professionals and Supporters are included for actions done in the context of a valid Supported Decision-Making agreement.

**Is there recourse for the parents of the Person to oppose a Supporter choice when that Supporter is known to be unsafe (an abuser, criminal background, etc.)?**

No, but if someone believes the individual is being abused or exploited they should contact protective services or the police.

The person chooses their own Supporter. Supporters can be friends, family members, co-workers, colleagues, people with professional expertise, or others within the person's trusted network of support.

Supported decision-making agreements are automatically revoked if the Supporter has a substantiated allegation of neglect or abuse of the person, the Supporter has been found criminally liable for abuse or neglect, or there is a restraining order against the Supporter.

**If there is an identified supporter/agreement, APS substantiated for abuse, and the SDM agreement is revoked.... Can the person still do an SDM agreement specifically identifying a role (probably a different one since they have been substantiated) because they are still a family member and that person wants to ensure they are still in their life.**

If a Supported Decision-Making agreement is revoked by operation of law (for example, the Supporter identified in the agreement has had a substantiated case of abuse against the person) the substantiated case of abuse would revoke other SDM agreements that identify the abuser as a Supporter.