



Thinking about Supported Decision-Making

Winter 2022

Each family has a voice
Together, our voices will be heard

Family  **Voices**
of Wisconsin₁



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Family Voices helps families navigate health care and community supports and services by providing training, in-person and online, information and education.

As a family-run organization, we support families in their own leadership and advocacy journey, and we promote family-centered care and family/professional partnerships.

Visit our website to view our fact sheets, newsletters and online trainings.

What Happens at Age 18?

- Any person in Wisconsin over the age of 18 is legally an adult:
 - Is presumed to be competent to be able to manage his or her own affairs and exercise all legal rights
 - Choose where to live, consent to medical treatment, vote, make contracts, marry and manage finances
 - Sometimes this is called “age of majority” or “transfer of rights”
- This presumption does not change because a person has a disability
- When a person is unable to do some or all of these on their own, some form of supported decision making is needed

Making a Decision is a Learned Skill

- Typical families and children have access to everyday experiences that prepare them for self-determined lives
- Families and children with disabilities have fewer opportunities to have self-advocacy experiences
- Families and youth need information and experiential opportunities to develop these skills
- Families who have children with disabilities may need help teaching decision-making skills
- Families and youth vary in their tolerance for risk

How to Support Children in Decision Making

- Include decision making skill development in child's IEP
- Seek opportunities for children to make choices and practice their decision-making skills across environments – at home, in school, in the community
- As parents, consider...
 - How do I influence my children's decisions?
 - Do my children speak for themselves if they are able or do I often speak for my children?
 - Can I separate my desires from my child's wishes?

Families and Youth Need Information



- Start a conversation well in advance of 18
- Talk together about the need for decision making supports
- Seek information
- Connect to learning opportunities
- Explore decision-making skills and skill-building opportunities

What is Supported Decision-Making (SDM)?

- **Supported Decision-Making** is a series of relationships, practices, arrangements and agreements designed to assist an individual with a disability to make and communicate to others' decisions about their life
- “An alternative to guardianship through which people use friends, family members and professionals to help them understand situations and choices they face, so they may make their own decisions without the “need” for guardianship”

—Blanck & Martinis, 2015



Tools for Decision- Making Support

- Release of information/consent
- Power of Attorney for healthcare or finances
dhs.wisconsin.gov/forms/advdirectives/index.htm
- Representative Payee Trustee
- Supported Decision-Making Agreements
dhs.wisconsin.gov/forms/f02377.pdf
- Limited or Full Guardianship of the person and/or estate

SDM and Other Legal Arrangements

- Supported Decision-Making—both the concept and formal SDM agreements—can be used in combination with other legal arrangements such as a powers of attorney for health care or finances or limited or full guardianships
- These options are **not** mutually exclusive and can be used to complement each other

SDM Agreements

- Wisconsin formalized the concept of Supported Decision-Making into law with Supported Decision-Making agreements
- Individual with disability completes agreement
- Names a Supporter
- Supporter can assist with obtaining information, communicating individual's decisions/preferences, and making information and options understandable to the person with a disability
- Agreements are flexible and can be updated easily

SDM Agreement

Supporter cannot make decisions, sign legal documents or bind the adult to legal agreements.

Supporter's authority is limited to what is given to them

Not evidence of incompetency or incapacity

Must be in writing, voluntary, signed and dated

Witnessed by two adult witnesses or a notary

Can be used in conjunction with other tools, such as releases of information and powers of attorney

Can be revoked or changed at any time

What's Included in SDM Agreements?



For the following everyday life decisions, if I have checked “Yes,” my supporter may help me with that type of decision, but if I have checked “No,” my supporter may not help me with that type of decision:

- Obtaining food, clothing, and shelter — Yes No
- Taking care of my physical health — Yes No
- Managing my financial affairs — Yes No
- Taking care of my mental health — Yes No
- Applying for public benefits — Yes No
- Assistance with seeking vocational rehabilitation services and other vocational supports — Yes No

The following are other decisions I have specifically identified that I would like assistance with:

If I have not checked either “Yes” or “No” or specifically identified and listed a decision immediately above, my supporter may not help me with that type of decision.

Guardianship

Guardianship is a legal process where a court decides if:

- A person lacks “capacity” to make decisions for themselves **and**
- There are no less-restrictive alternatives than guardianship
- It may be temporary or permanent
- Guardian of the person: when the guardian has custody and control of decisions made for the “ward”
- Guardian of the estate: when the guardian is responsible for managing the “wards” money and property

Guardianship and Incompetence

A central issue for the court is the impact of the impairment on the person's **functional ability** to make decisions that are important to his or her health and safety.

Guardianship is based not on the quality of the decisions the person makes, but on the process by which he or she makes and communicates the decision.

Responsibilities of Guardianship

- Making decisions the person is unable to make for himself or herself, and giving consent the person is not able to give
- Exercising rights on behalf of the adult that the adult is unable to exercise for himself or herself
- Acting as an advocate for the adult's best interests
- Taking action to protect the adult from abuse, neglect, self-neglect, financial exploitation and violation of rights

Consequences of Guardianship

- Determination of **incompetent** can be a painful process
- The person may feel labeled as a second-class citizen
- Other people may assume that the person is incapable or incapacitated
- A person who is unaware of his or her basic rights and of how to assert them, is at greater risk of abuse and exploitation by others
- If we want the person to be able to say **no** to others, we must accept the inconvenient fact that they will sometimes say **no** to us
- A person who is used to having decisions made by someone else can lose self-confidence and see themselves as incapable

How Do I Know What Solution is the Best One?

- Talk with your youth to see what preferences they have for assistance with decision making
- Talk with other families to see what choices they made
- Continue to learn about different tools for assistance with decision making
- At the very least, have your youth sign releases of information at the bank, school, doctor's offices so that information can be shared after they turn 18
- Most importantly...
TAKE YOUR TIME so that an informed choice can be made

Thank You!

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