

Supported Decision-Making in Wisconsin



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Today we will talk about:

- The concept of Supported Decision-Making
- How can people use Supported Decision-Making concepts?
- Wisconsin Law on Supported Decision Making agreements



**Let's create better supports so
people with disabilities can
lead more independent lives!**

Important to Keep in Mind...

- Under the law, all adults have the capacity for decision-making.
- Decision-making is a learned skill.
- Everyone, no matter their limitations, needs opportunity, experience, and support in order to learn how to make well-informed decisions.



The Concept of Supported Decision-Making

What it is and how can it be used as a strategy to help people make decisions about their own lives

Three principles of Supported Decision-Making

1. Everyone has the right to make choices
2. People can get help making choices without giving up that right
3. People will often need help in understanding, making, and communicating their choices



All of us use Supported Decision-Making

- Throughout our lives, all of us consult a trusted, self-selected network of friends, colleagues, family, neighbors, and professionals when making all sorts of life choices.
- These choices could be about where to live, what to do during the day, how to spend money, or when to see a doctor.
- We confer and consult with others, and then we decide on our own.
- Everyone needs support to make decisions.



Questions to ask:

- What types of support do you or does the Person need to exercise the right to make choices?
- Where/with whom can the Person get those supports?



Benefits of using Supported Decision-Making

- Supported Decision-Making is a fundamental part of Self-Determination.
- People with greater self-determination are:
 - Healthier
 - More independent
 - More well adjusted
 - Better able to recognize and resist abuse (safer)

(Wehmeyer, Palmer, Rifenbark, & Little 2014; Powers et al., 2012; Khemka, Hickson & Reynolds 2005; Wehmeyer & Palmer, 2003; Shogren, Wehmeyer & Schwartz, 1997 & 1998; Wehmeyer, Kelchner, & Reynolds 1996)



Using Supported Decision-Making

- For many people Supported Decision-Making may be the only tool they need to have trusted people provide support as they make their life decisions.
- Wisconsin has Supported Decision-Making agreements as a legal option that can be used by eligible individuals to formalize the support they want.



Current formal tools for people who need help with decisions



Release forms

- Person signs release forms authorizing a specific person(s) access to certain kinds of records (health, financial, etc.).
- Some release forms may allow a person to select certain records to be released while retaining privacy over others.
- Some release forms may provide one-time or time-limited access to records, others releases may remain in effect in perpetuity.



Supported Decision Making agreements (Wisconsin)

- Person makes all their own decisions. Person identifies area of the life in which they want support, identifies a Supporter(s) to help them gather information, compare options, and communicate their decisions to others.
- The Supported Decision-Making agreement outlines what types of decisions the Person wants support and the role of the Supporter.
- Agreement can be changed or stopped at any time by the Person or Supporter.



Representative payee

The Social Security Administration (SSA) appoints an individual/organization to receive SSI/SSDI benefits for a person who cannot manage or direct the management of their own benefits.

To change a Representative Payee, the Person must complete an application process with the SSA.



Power of Attorney, medical proxy

- Formal legal arrangements that permit others to act on the Person's behalf.
- Powers of Attorney (POA) designate another (a POA) individual to make certain decisions (generally health care or financial) on the Person's behalf. POAs can be set up in different ways. Some POAs are activated only when a person is incapacitated. Or a POA can be written so an individual other than the Person is always the designated decision maker in certain areas.
- Medical Proxy documents appoint a proxy/agent to express a person's wishes and make health care decisions for the person if the person cannot speak for themselves.



Limited or Full Guardianship

- Transfers some or all decision-making authority from the Person to a court-appointed Guardian.
- Once guardianship is granted by the courts it is difficult (and costly) to modify or reverse the guardianship; any changes must be made through a formal court process.

Less Limiting

More Limiting

- Supported Decision-Making—both the concept and formal SDM agreements--can be used in combination with other legal arrangements (including Power of Attorney, limited or full guardianship).
- These options are not mutually exclusive and can be used to complement each other.



- Supported Decision-Making 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



Wisconsin's Supported Decision-Making law

Using Supported Decision-Making agreements

Today we will talk about...

- What is the law designed/intended to do?
- Who can use Supported Decision-Making agreements?
- What Supported Decision-Making agreements do NOT do
- What is included in a Supported Decision-Making agreement?
- What is the role of a Supporter?
- How are Supported Decision-Making agreements changed or terminated?
- What do I do if I suspect abuse, neglect, or financial exploitation?
- Other features of Wisconsin's law

What is Wisconsin's law designed to do?

- Supported Decision-Making agreements are designed to help the Person interact and communicate their decisions with third parties.
- Supported Decision Making agreements allow a person to formally identify Supporter(s) to help them gather information, understand and evaluate options, and communicate their decisions to others.
- The Supported Decision-Making agreement lets teachers, doctors, bankers, and other professionals know that the Person has given the Supporter consent to hear, receive, and discuss information with them, and/or it is ok to release records to the Supporter (provided applicable releases are signed).



Who in Wisconsin can use Supported Decision-Making agreements?

- While all of us use Supported Decision-Making as strategy in our daily lives, only certain people in Wisconsin can use formal 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:
 - People of any age with degenerative diseases
 - People of any age with conditions that substantially interfere with the ability to provide self care
 - People with physical disabilities or conditions that substantially limits one or more of their major life activities
 - People with Intellectual/Developmental Disabilities
 - People with mental health conditions

Examples: how can a Supported Decision-Making agreement help people?

Ensure friends and other non-family members can act as Supporters.

- Family members are not always geographically close, and some people do not have family.
- Many people with functional impairments do have close relationships and social networks with non-family members who want to help.
- Supported Decision-Making agreements ensure that non-family members are recognized as carrying out roles and responsibilities specified by the Person.



Examples: how can a Supported Decision-Making agreement help people?

Ensures a formal role for help with decisions not typically covered by traditional Powers of Attorney like:

- housing/living arrangements,
- choosing a service provider (Examples - internet, cellphone, cleaning service),
- filing taxes etc.



Examples: how can a Supported Decision-Making agreement help people?

- Can help people experiencing changes in memory and cognition, and other abilities that may decline over a long period of time.
- Many people need a little help for a long time.
- Allows for a transition to more support when needed.



Examples: how can a Supported Decision-Making agreement help people?

- Enables students with disabilities to allow their parents to continue to participate IEP meetings.
- Under Wisconsin law, schools are required to provide students and parents with information on supported decision-making and other alternatives to guardianship.



Examples: how can a Supported Decision-Making agreement help people?

- Can be used to ensure Supporters can attend meetings, gather information, and communicate with state agencies/providers/private entities on behalf of the Person.



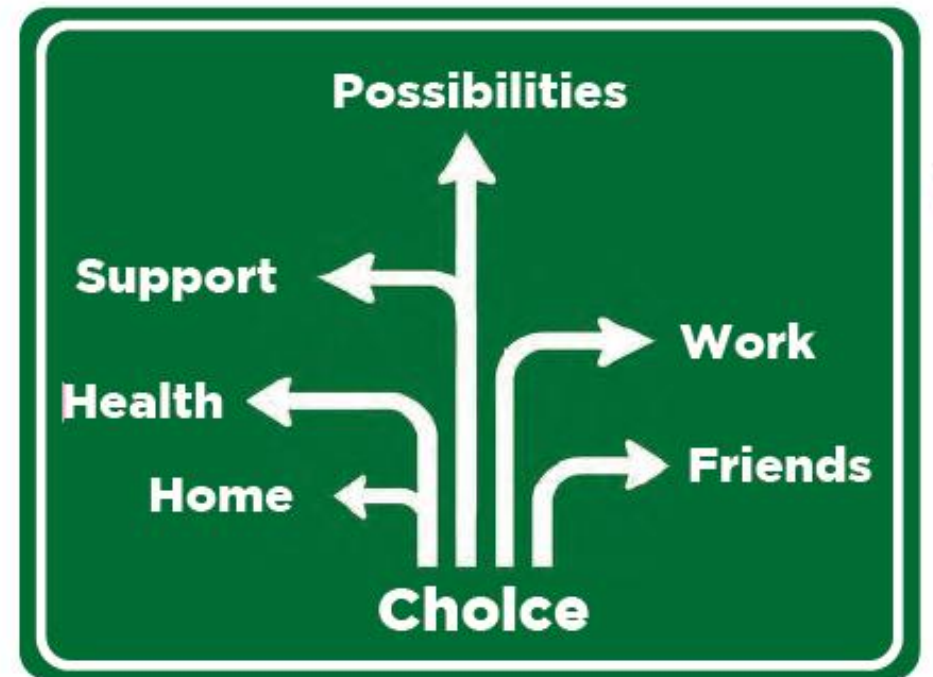
Examples: how can a Supported Decision-Making agreement help people?

- Helps ensure the Person is clearly understood by others.
- People who have challenges with speech, use sign language or communication devices, and/or who are non-verbal communicators might use a Supporter to ensure the other party understands them.



Supported Decision-Making agreements

- Agreements can be used for any decisions the Person feels they need additional support—such as housing, health care, financial affairs, employment, etc.
- Supported Decision-Making agreements are flexible and can be updated easily as the Person's ability and capacity to make decisions changes over time.



What Supported Decision-Making agreements do NOT do.

They do not restrict a Person's rights to make any decisions.

- Having a supported decision-making agreement does not preclude the Person from acting independently of the agreement or making decisions that the Supporter does not agree with.
- The Person is always in control of their own decisions.

It does not give Supporters any new rights

- The Supporter has no authority to make the person's decisions. The Person makes all their own decisions.
- Supporters cannot sign legal documents for the Person or bind a Person to a legal agreement
- Supporters have only the authority/role granted by the Person under the terms of the supported decision-making agreement.

What Supported Decision-Making agreements do NOT do.

A supported decision making agreement may not be used as evidence of incapacity or incompetency of the Person.

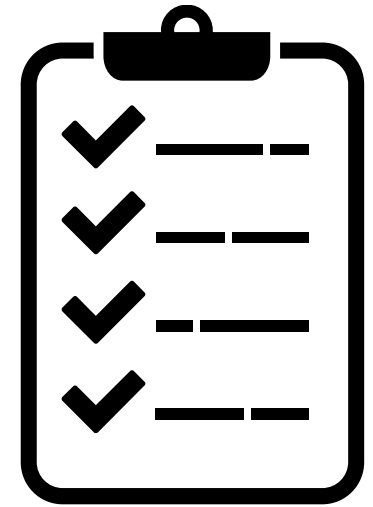
In guardianship proceedings, before ruling on the guardianship, judges are now required to consider

1. Whether any alternatives to guardianship, including Supported Decision -Making, have been tried, and
2. Whether less restrictive means, including Supported Decision-Making, could be used.

What is included in a supported decision-making agreement?

The law includes standard elements that must be included in all Supported Decision-Making agreements.

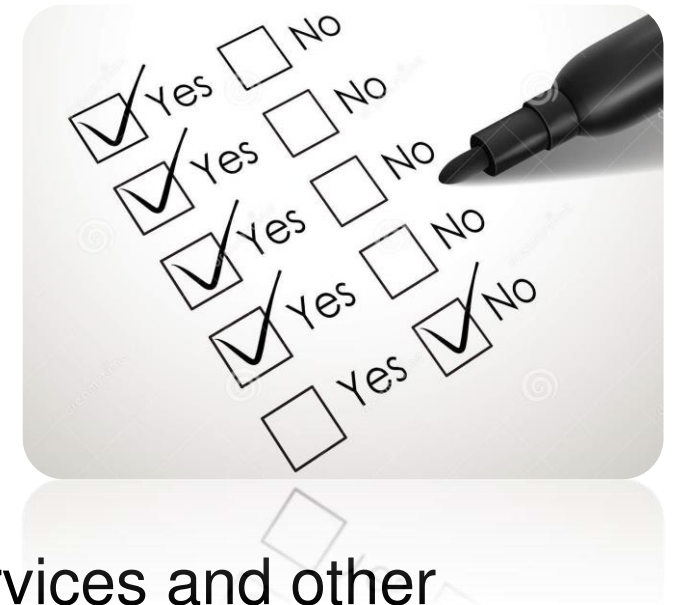
- The name and contact information of the Supporter(s)
- Type(s) of decisions the Person wants Support with;
- The role(s) the Person elects to allow the Supporter to do
- The effective date of the agreement and any end date the Person chooses to specify
- The signatures of the Supporter(s), two witnesses or a notary public



What is included in a supported decision-making agreement?

Types of decisions included on the form:

- Obtaining food, clothing, and shelter
- Taking care of my physical health
- Managing my financial affairs
- Taking care of my mental health
- Applying for public benefits
- Assistance with seeking vocational rehabilitation services and other vocational supports
- other decisions I have specifically identified that I would like assistance with



What is included in a supported decision-making agreement?

- Check either Yes or No to give permission for a Supporter to help
- You can also list other kinds of decisions not on the form that you want a Supporter to help with
- The law presumes if you do not check Yes or No (i.e. leave both options unchecked) that you do not want the Supporter to help with that kind of decision.

What is the role of the Supporter?

The possible roles of the Supporter are limited to:

1. Access, collect, or obtain information relevant to a decision area the Person has chosen
2. Helping the person understand that information;
3. Helping the Person understand their options, responsibilities, and consequences of that person's life decisions, without making those decisions on behalf of that person
4. Assisting with communicating the Person's decision to others



What is the role of the Supporter

- The law limits access to personal information. Only information that is relevant to the decision with which a Supporter has been asked to assist is accessible by the Supporter.
 - *Note: A Supporter is allowed to access records that require a release only if the Person has signed a release allowing the Supporter to see the information*
- Supporters are required to ensure all personal information they access in the course of fulfilling a Supported Decision-Making agreement is kept privileged and confidential and is not subject to unauthorized access, use, or disclosure.



How are Supported Decision-Making agreements changed or terminated?

- The Person is always in control of their own decisions and their Supported Decision-Making agreement.
- The Person can include a specific date when the agreement ends.
- Either the Person or the Supporter can revoke a Supported Decision-Making agreement at any time.
- 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.

What do I do if I suspect abuse, neglect, or financial exploitation?

- Anyone who suspects that a Supporter is abusing, neglecting, or financially exploiting a person with a functional impairment may report their concerns to the elder or adult at risk agency, or appropriate law enforcement agency.
- Those who are required by law to report abuse, neglect, or financial exploitation (i.e. mandated reporters) must still follow those requirements.

Other features of the law

- A Person may have multiple Supported Decision-Making agreements.
- The Person can choose different Supporters for different decision types.
- The Person can identify more than one Supporter in the same Supported Decision-Making agreement.



Other features of the law

- 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



Supported Decision-Making Resources

- Supported Decision Making Agreement form: <https://www.dhs.wisconsin.gov/library/f-02237.htm-0>
- Supported Decision Making statute (Wis. Stats. Ch 52, <http://docs.legis.wisconsin.gov/statutes/statutes/52>)



Questions?