

Supported Decision-Making Agreements

Credit: Jonathan Steen at Redding, Steen, and Stanton

New legislation that went into effect on April 2, 2018, adds to existing guardianship and conservatorship law by creating the definition of “least restrictive alternatives” in the Tennessee code:

“Least restrictive alternatives” means techniques and processes that preserve as many decision-making rights as practical under the particular circumstances for the person with a disability. Tenn. Code Ann. § 34-1-101(11).

Supported Decision-Making is one such technique available to provide support and assistance to a person with a disability while preserving as many decision-making rights as practical under the particular circumstances. The following information and instructions are intended to help you in understanding and making the best use of your Supported Decision-Making Agreement.

What is “Supported Decision-Making”?

Supported Decision-Making (also called “SDM”) is a way you can make your own decisions with help you need and want. To use SDM, you pick friends, family members, and other people you trust to be your “supporters.”

Supporters do not make decisions for you. They help you make or communicate your own decisions, such as where or with whom you want to live; what services, supports, or medical care you want to get; where you want to work; and how you want to save or spend your money.

If you want them to, supporters may explain what choices you have in ways you understand, ask other people questions for you, help you gather information, or let others know what you decide. SDM is one alternative to a guardianship or conservatorship. It does not take away your legal rights or give your supporters the

right to overrule your own decisions.

What is a “Supported Decision-Making Agreement”?

A Supported Decision-Making Agreement is the way to put a SDM relationship in writing. That way other people and organizations – like doctors, hospitals, banks, schools, service providers, and governmental agencies – know who your supporters are, what decisions you want them to help you with, how you want them to help you, and for how long you want their help. Supported Decision-Making Agreements do not allow a formal supporter to make decisions for you or act in your place. YOU are the decision-maker.

Who Can Make a Supported Decision-Making Agreement (“SDMA”)?

If you are an adult (18 years old or older) and have a disability, you may be able to enter into a SDMA.

However, if you have a guardian or conservator (a person who a court has named to make some or all decisions for you), you cannot use a SDMA for the decisions that the court has said you cannot make yourself. For example, if you have a limited medical guardian, you cannot use a SDMA to name supporters to help you with medical decisions without court approval. However, if you have a limited medical guardian, you may be able to use a SDMA to name supporters to help you with financial and other non-medical decisions.

Using a SDMA does not stop you from using other decision-making tools, such as a Power of Attorney (a legal document that identifies someone you trust to make decisions for you in certain situations).

Using a SDMA is a choice. Nobody can make you sign a SDMA. You should not feel pressured or forced to use it. It is your right not to sign a SDMA if you do not want to.

Who Can Be Your Formal Supporter under a SDMA?

When you use SDM, you should pick supporters who you know and trust, and who are good at helping you get the information you need to think through choices and make your own decisions.

A person who knows you well, listens to you, and wants YOU to make YOUR OWN decisions – and will not try to make those decisions for you – would be a good choice. On the other hand, a person who has hurt or taken advantage of you in the past, or who might do that in the future, would not be a good choice.

You may have several people – such as family members, friends, staff, professionals, and other people you trust – who help you use SDM in your life. These people would be good choices to be a formal supporter under a SDMA.

Once You Want to Make a SDMA and Know You Can, What Is Next?

Before you make a SDMA, talk to the person you trust to see if they will agree to be your formal supporter. It is a serious responsibility to be a formal supporter, and you want to make sure they understand their role by reviewing these instructions and information with them.

Once the person you trust has agreed to be your supporter, you should think about the kinds of decisions you want the Supported Decision-Making Agreement to cover. If you decide you want to complete a SDMA, you are not required to have an attorney help you do so, but an attorney may be helpful in preparing an agreement.

In a SDMA, you will identify your formal supporter with their name, address, phone number, and email address (if any). You then pick which kinds of choices you want your supporter's help with, by circling Y (for "Yes") or N (for "No") for each of the options listed. You may also list other duties for your supporter if you wish. Then, you fill in whether you want your supporter to help you get information about the choices you are making, be present with you when you make decisions, help you understand your options, and/or help you communicate your decisions to others.

You then pick whether or not you have signed release forms to make sure that your supporter can access private information about you, by circling Y (for “Yes”) or N (for “No”) for each the options listed.

If the SDMA covers health care decisions, you should sign a Health Insurance Portability and Accountability Act (“HIPAA”) release of information form, which allows doctors and other health care providers to share private medical information about you with your supporter, and then attach the signed HIPAA form to the SDMA. You can obtain a HIPAA form from your healthcare provider.

If the SDMA covers educational decisions, you should sign a Family Educational Rights and Privacy Act (“FERPA”) release of information form, which allows schools to share private educational information about you with your supporter, and then attach that signed FERPA form to the SDMA. You can obtain a FERPA form from your school.

When you fill out and sign release-of-information forms, be specific about who can share private information about you, what kind of information they can share, and who can get the information.

Next, you list when the SDMA is “effective,” which means the dates the SDMA starts and ends. The SDMA usually starts the date that you sign it, unless you say differently within the agreement. You can also pick a date that the SDMA will end or just state that it ends when you or your supporter cancels it.

Finally, your supporter and you sign the SDMA form in front of 2 adult witnesses (people other than you and the supporter) or a notary public. When your supporter signs, he or she is saying “yes” to being your formal supporter. If you do not have 2 adult witnesses to sign the form with you and your supporter, you must have a notary public sign and put their notary seal on the document.

You may have more than one formal supporter in your life by signing more than one SDMA – one SDMA for each supporter.

You should keep the original SDMA in a safe place and give a copy of it to your formal supporter. You should share copies of the SDMA with other people and organizations that need to know about it. For example, if your supporter helps you make your own medical decisions, you should give a copy of the agreement to your doctors, nearby hospitals, and other health care providers to let them know that you

have a SDMA with a named supporter who helps you with medical decisions. If you have an attorney or advocate, you might want them to have a copy too. You do not need to submit your SDMA to a court for approval.

How Do You Change or Cancel an SDMA?

You or your formal supporter may cancel your SDMA at any time. It is a good idea to put your cancellation in writing, so that you and other people have proof that the SDMA really is cancelled. You or your formal supporter should share the cancellation with each other and with anybody else who knew about the SDMA or had a copy of the SDMA. That way, other people and organizations will know to stop following the SDMA and sharing private information about you with people who are no longer your supporters.

You may change the SDMA by cancelling it and then making a new one that lets others know that your wishes have changed. You may also sign new release-of-information forms to let other supporters get information about you to help you make your own decisions.

What if You are Having Problems Using a SDMA?

The law says other people – like those at medical offices, hospitals, banks, and other businesses – who receive a SDMA must usually respect it. However, there are some exceptions to this rule. For example, if people have a good reason to believe that you are being abused, neglected, or exploited, they may not honor your SDMA, and they may be required to report the situation to the police or Department of Human Services.

The law creating the SDMA is new, and you may want help in making or cancelling an SDMA. You may also need help to make sure other people know about the new law and respect your SDMA. If you want to ask for this help, you can contact your attorney or West Tennessee Legal Services at (731) 423-0616.

To learn more about SDM, visit the National Resource Center for Supported Decision-Making at www.SupportedDecisionMaking.org.

Acknowledgements & Disclaimer: This Fact Sheet was prepared by West Tennessee Legal Services (WTLS) Tennessee Senior Law Alliance. This project is funded through a grant awarded by the Davidson County Chancery Court, Part III, from the Senior Trust/Elder Trust settlement (Case No. 11-1548-III) and through a contract administered by the Tennessee Commission on Aging and Disability. Fact Sheets are for information only and not intended to replace legal advice. If you are in need of legal help, call WTLS at (800) 372-8346, or seek the help of a private attorney. (Revised 2/2019)

Last updated on January 04, 2021.

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