



# Thinking about Supported Decision-Making

Fall 2021

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





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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.

# Making a Decision is a Learned Skill

- Families do the best they can to raise & support their children
- 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 who have children with disabilities may need help teaching decision-making skills
- Families and youth need information and experiential opportunities develop these skills
- Families and youth vary in their tolerance for risk



# What Happens at Age 18?

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



# Families 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
- Ask about:
  - Access to typical experiences
  - Impact of growth & development
  - Self-advocacy skills

# Why Are We Talking about Supported Decision Making?

- The number of adults under **guardianship** has **tripled since 1995** with ~ 90% being full guardianship
- Our constitution protects the rights to liberty, to the pursuit of happiness, and to control our own property for all adult citizen of the United States
- Concern that guardianship restricts those rights and labels the person as someone who does not have the full rights of other adults

# What is Supported Decision-Making (SDM)?

- **Supported Decision-Making**, 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, finances or education
- Representative Payee Trustee
- Restricted Bank Accounts
- Supported Decision-Making Agreements
- Limited or Full Guardianship of the person and/or estate



# SDM Agreements

- Wisconsin formalized the concept of Supported Decision-Making into law
- Individual with functional impairment completes
- Names a Supporter
- Supporter can assist with obtaining information, communicating their decisions, and in understanding the information and options
- 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 full or limited guardianship and/or POAs

Can be revoked 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:

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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.

# 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

# 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

*The rights to liberty, to the pursuit of happiness, and to control our own property are central to our idea of what it means to be an adult citizen of the United States*

# 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.”

“We have to reject the very idea of incompetence. We need to replace it with the idea of ‘assisted competence’. This will include a **range of supports** that will enable individuals with cognitive disabilities to receive assistance in decision-making that will preserve their rights...” —Thomas Nerney



# Consequences 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
- The right to take risks is an opportunity to learn
- 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

**Thank You!**

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