

# Alternatives to Guardianship: Supported Decision Making Agreements (SDM)

## Should I read this?

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- ❖ Read this only if you live in the state of Washington.
  - ❖ You can find all the fact sheets we link to here at [WashingtonLawHelp.org](http://WashingtonLawHelp.org).

Family members and other caregivers may seek a guardian for people with disabilities. However, guardianship has many downsides.

- Once a guardianship is in place, it is hard to remove.
- Guardianship can have negative consequences for people with disabilities and their families and caregivers.
- Guardianships often wrongly assume people with disabilities cannot make decisions for themselves.

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- ❖ Read our other [resources about guardianship](#) to learn more.

Before asking for guardianship, you should look into the alternatives. You should try to use an alternative to guardianship if you can.

A **Supported Decision Making (SDM) Agreement** is one such alternative. It helps people with disabilities without limiting their rights.

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- ❖ Other alternatives include [power of attorney](#), representative payee or agent, living trusts, joint property arrangements, joint banking, advanced directives, technological assistance, and community-based support programs. Learn more at [WashingtonLawHelp.org](http://WashingtonLawHelp.org).

## What will I learn by reading this?

- What SDM is
- How it works
- What is good and bad about SDM
- How to create, change, or end an SDM agreement

## What is SDM?

It lets people with disabilities choose supports to make decisions and exercise their legal rights. With an SDM agreement, the person chooses a trusted friend, relative and/or other to help them understand and make decisions, and to communicate decisions to, for example, doctors and the bank.

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- ❖ People who use SDM do not need someone to make decisions for them. They just need help working through the decision-making process to make decisions for themselves.
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Some examples of supports you can choose include extra time to discuss choices, role playing with alternative outcomes, use of assistive technology, and having a support person to take notes and help the person discuss their options.

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- ❖ There is no one-size-fits-all for SDM. Agreements will look different based on your needs and abilities.
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## When can someone with a disability enter into an SDM agreement?

They only need to understand what the agreement covers.

## What does an SDM agreement look like?

It must be in writing and list:

- areas in which the person wants support with decision-making
- names of supporters and their relationship to the person
- how the supporter will support the person in their decision-making

## **Do supporters decide what goes into the written agreement?**

No. The person with the disability decides everything.

## **How can supporters provide support?**

Here are some examples.

- Understanding how the person makes decisions - for example, allow extra time for a person's response.
- Understanding how the person wants to get information to help support them in decision-making.
- Helping to figure out what the person wants, not what the supporter believes is best.
- Making the decision-making process accessible to the person with the disability based on their wants and needs. This can include, for example, engaging in demonstration, role-playing, and/or one-on-one conversation.
- Respecting the person's values, preferences, and decisions.

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❖ The person with the disability determines the supporters' roles.

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## **Does the state of Washington recognize SDM?**

**Yes.** Starting January 1, 2022, state law will formally provide a process for the use of SDM instead of guardianship. See [Senate Bill 6287](#). But you do not need to wait until January 1, 2022 to use SDM.

## Why SDM?

- It promotes independence for people with disabilities.
- It respects the wishes of the person with a disability.
- It does not take rights away from the person with a disability.
- Creating, executing, and changing a SDM agreement is easier and faster than getting or changing a guardianship. You do not need to use the court system.
- It does not cost anything. You do not need a lawyer.
- It is a formal document. Professionals, providers, and others are much more likely to cooperate with you if you use an SDM.

## Who can help with SDM?

A person with disabilities should choose a trusted friend, relative and/or other person to provide SDM.

## Who cannot help with SDM?

These people **cannot** be supporters:

- Paid employees of the person with a disability. There is an exception to this for immediate family members.
- Immediate family members or other persons against whom the person with a disability has gotten a court order of protection.
- Anyone subject to a civil or criminal no contact order keeping them from contacting the adult with a disability.

## Can SDM be helpful when someone turns 18?

**Yes.** SDM is a flexible, less restrictive alternative to guardianship for someone with a disability who is turning 18. Read [Your Child with Disabilities is Turning 18](#).

As the young person ages, their needs change. You can easily change the SDM agreement to keep up. It does not cost anything.

For students under age 22 and eligible for special education, you can combine an SDM Agreement with an agreement between student and parent to share education decision-making. [WAC 392-172A-05135](#).

## **You can often combine SDM with other guardianship alternatives.**

This is a good idea. Combining an SDM agreement with these other alternatives will give the person with a disability support and more self-determination:

- Durable power of attorney - read [Durable Power of Attorney Documents](#)
- Health care directives (or living will) - read [Health Care Directive \(or Living Will\)](#)
- Representative payee agreements, for people who get Social Security or SSI benefits - read [www.ssa.gov/payee](http://www.ssa.gov/payee)

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❖ Washington also has a Consent to Health Care law. It says who can make health care decisions for someone who cannot do it for themselves. [RCW 7.70.065\(1\)](#).

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## **SDM is not for everyone.**

The person who creates an SDM agreement must understand what they are doing. The person and their supporters must discuss the agreement's terms. They must make sure it is clear and understood.

Someone who often changes their mind about what support they want, how they want it and from whom, may not benefit from an SDM agreement. There may be ways to change the SDM agreement to provide for such situations.

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❖ Whether SDM would be helpful depends on the person.

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People with limited capacity to make decisions, or who need help to make decisions, can be abused and exploited. An abuser or exploitative person might take advantage of an SDM agreement. **Use caution** when the person selects supporters for an SDM.

## What are some examples of situations where SDM worked well?

- A person with a disability must decide if they should have elective surgery. The supporter takes the time to explain the surgery carefully to the person. Then they understand it well enough to give informed consent.
- Someone is having a hard time deciding if they should enter into an intimate or sexual relationship, and with whom. The supporter explains the consequences of a sexual relationship. This should include the risks, benefits, and options.
- Someone is deciding if they should move out of a nursing facility to the community. The supporter helps the person understand their options. They also advocate for the person's choice.

You can find other examples at the [National Resource Center for Supported Decision-Making's website](#). See "where can I learn more," below.

## What does an SDM agreement need to say?

It must state all of these:

- The person with a disability is making the agreement of their own free will.
- The name, address, phone number and email address of each supporter chosen by the person with the disability.
- What the supporters may do to help with everyday life decisions such as getting food, clothing & shelter, getting medical care, managing financial affairs, and other decisions.
- The supporter may not make decisions for the person with the disability.
- How the supporter can help the person with a disability make their decisions.
- The start and end date of the SMD agreement.

- The person with the disability can end the agreement at any time before the ending date.

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❖ See the sample SDM agreement below.

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## **How do you execute an SDM agreement?**

The person with the disability and each supporter must sign the SDM agreement. A notary public must also witness and sign it.

## **Does the person with a disability need to sign anything else?**

Yes. They must sign releases of information for each supporter so they can communicate with, for example, the person's doctor. This will let the supporter receive confidential information to better help support the person.

## **How does the person with a disability change or end their SDM Agreement?**

They can change or end any part of your SDM agreement any time and any way they want. It is not the decision of the supporters or anyone else.

They can make the changes on your current agreement and have each of their supporters sign it. Or they can write up a new SDM agreement that says all previous agreements are revoked (canceled) and the new agreement is the only agreement. The person with a disability and their supporters should sign the new agreement.

## **Where can I learn more?**

- National Resource Center for Supported Decision-Making - [www.supporteddecisionmaking.org](http://www.supporteddecisionmaking.org)
- Center for Public Representation - [supporteddecisions.org](http://supporteddecisions.org)



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- “Supported Decision-Making: Frequently Asked Questions,” ACLU - [www.aclu.org/sites/default/files/field\\_document/faq\\_about\\_supported\\_decision\\_making.pdf](http://www.aclu.org/sites/default/files/field_document/faq_about_supported_decision_making.pdf)
- Watch this short video about SDM: [www.youtube.com/watch?v=O-cvB2FmCnY](http://www.youtube.com/watch?v=O-cvB2FmCnY)

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# SUPPORTED DECISION-MAKING AGREEMENT

## Appointment of Supporter

I, \_\_\_\_\_ (*name of supported adult*), make this agreement of my own free will.

I agree and designate that:

Name: \_\_\_\_\_ (*name of supporter*)

Address: \_\_\_\_\_ (*address of supporter*)

Phone number: \_\_\_\_\_ (*phone number of supporter*)

Email address: \_\_\_\_\_ (*email address of supporter*)

is my supporter.

My supporter may help me with making everyday life decisions relating to the following:

(Y/N) Obtaining food, clothing, and shelter.

(Y/N) Taking care of my health.

(Y/N) Managing my financial affairs.

(Y/N) Other matters: (*specify*).

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My supporter is not allowed to make decisions for me. To help me with my decisions, my supporter may:

1. Help me access, collect, or obtain information that is relevant to a decision, including medical, psychological, financial, educational, or treatment records;
2. Help me understand my options so I can make an informed decision; and
3. Help me communicate my decision to appropriate persons.

(Y/N) A release allowing my supporter to see protected health information under the Health Insurance Portability and Accountability Act of 1996, P.L. 104-191, is attached.

(Y/N) A release allowing my supporter to see educational records under the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. Sec. 1232g, is attached.

Effective Date of Supported Decision-Making Agreement: This supported decision-making agreement is effective immediately and will continue until \_\_\_\_\_ (*insert date*) or until the agreement is terminated by my supporter or me or by operation of law.

Signed this \_\_\_\_ (*day*) day of \_\_\_\_\_ (*month*), \_\_\_\_\_ (*year*)

**Consent of Supporter**

I, \_\_\_\_\_ (*name of supporter*), acknowledge my responsibilities and consent to act as a supporter under this agreement.

\_\_\_\_\_  
(*Signature of supporter*)

\_\_\_\_\_  
(*Printed name of supporter*)

Supporter

\_\_\_\_\_  
(*Signature of supported adult*)

\_\_\_\_\_  
(*Printed name of supported adult*)

Supported adult

\_\_\_\_\_  
(*Signature of witness #1*)

\_\_\_\_\_  
(*Printed name of witness #1*)

Witness

\_\_\_\_\_  
(*Signature of witness #2*)

\_\_\_\_\_  
(*Printed name of witness #2*)

Witness

**Notarization**

State of Washington

County of \_\_\_\_\_

I certify that I know or have satisfactory evidence that \_\_\_\_\_, is the person who appeared before me, signed above, and acknowledged that the signing was done freely and voluntarily for the purposes mentioned in this instrument.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Notary

NOTARY PUBLIC for the State of Washington.

My commission expires \_\_\_\_\_.