

Chapter 16

Supported Decision-Making

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SYNOPSIS

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16-1. What is Supported Decision-Making?

Supported decision-making is a voluntary process that promotes self-determination and retains individual autonomy by enabling seniors and adults with disabilities to make decisions with the help of selected members of their supportive community. The individual identifies who they want to assist them with determining the issue that needs to be decided, the choices or options available, and weighing the pros and cons of the possible outcomes when making the decision.

Supported decision-making can be adapted to many different situations to allow individuals to have more control over their lives and their futures. Supported decision-making can be used either:

- 1) As an alternative to guardianship; or
- 2) As a supplement to an existing guardianship, conservatorship, or power of attorney.

16-2. Advantages of Supported Decision-Making

Supported decision-making is an effective way for individuals to choose the people they trust to help them understand complex information and make informed medical, financial, or legal decisions. Providing this type of support increases the person's knowledge of the risks and benefits and enables them to make informed decisions consistent with their own personal values.

Supported decision-making relationships are based on the concept that being able to make decisions about your life choices is critically important for a person's well-being. One advantage is that the process can adapt and change over the course of a person's life depending on their abilities and their support networks.

A recent study found that seniors and individuals with intellectual and developmental disabilities who used supported decision-making demonstrated increased independence, improved decision-making skills, and enhanced quality of life.¹

The following is an example of how supported decision-making could be used: Susan is an older adult with cognitive impairment and physical disabilities that cause her speech to be difficult to understand. She has a team of supportive community members that provide communication and decision-making supports for her daily living needs. Her team includes a relative, a close friend, and a volunteer who works at her community disability advocacy organization.

Susan has fallen behind on her credit card payments and the creditor has filed a lawsuit to collect. She was served with notice of the lawsuit, but because Susan had difficulty understanding the paperwork, she didn't fully appreciate what might happen until she was able to work with her supported decision-making team. Her supportive community team members were familiar with her communication style, her abilities, and understood the questions Susan asked. They used simplified language to help her review and understand the documents to enable Susan to make decisions about appropriate next steps to address the overdue payments and avoid further litigation.

It is important to note that the supportive community team members are not authorized to make decisions *for* Susan, and they cannot substitute their judgment instead of hers for the decision.

Using the supported decision-making process can increase an individual's self-confidence and provide an opportunity to practice skills in problem-solving and setting goals. In addition, supported decision-making encourages the creation and maintenance of supportive communities that assist seniors and adults with disabilities in maintaining decision-making authority over their own lives.

16-3. Who Is Considered a Member of the Supportive Community?

A member of the supportive community is someone that the senior or adult with disability has identified that they trust to assist them with decisions; who understands the individual's desires and personal values; and who will communicate the decision to others if asked by the individual.

Members of the supportive community can include family members, friends, case managers, direct support professionals, or others chosen by the individual. Supportive community members may be asked to gather information, present information in a manner that the individual understands, help to evaluate the pros and cons of specific choices, provide communication assistance if necessary, and assist the individual in implementing the decision.

Becoming a member of the supportive community does not create a fiduciary or contractual relationship with the individual. Members of the supportive community are not authorized to obtain or use personal, financial, or confidential information of the individual for the supportive community's purpose or benefit, or for the purpose or benefit of a third-party.

¹Jonathan Martinis & Lucy Beadnell. "I Learned that I Have a Voice in My Future." Summary, Findings, and Recommendations of the Virginia Supported Decision-Making Pilot Project (2021). Available at: <https://supporteddecisionmaking.org/news/i-learned-that-i-have-a-voice-in-my-future/>.

16-4. Supported Decision-Making Agreements

Supportive arrangements can be formalized into supported decision-making agreements. Seniors and adults with disabilities who are not already protected under an established guardianship or conservatorship may voluntarily enter into a supported decision-making agreement with one or more members of their supportive community. Under the agreement, the individual may request that the member of the supportive community do any or all of the following:

- ✦ Provide assistance with understanding the options, responsibilities, and consequences of the individual's life decisions, without making those decisions on behalf of the individual;
- ✦ Assist the individual in accessing, collecting, obtaining, and understanding information regarding a decision, including medical, psychological, financial, educational, occupational, and social decisions; and
- ✦ Assist the individual in communicating the decision to appropriate persons when expressly requested by the individual.

The supported decision-making agreement is in effect until terminated by either the individual or the member of the supportive community, or by the terms of the agreement. Any party may terminate the agreement by providing written or verbal notice of the termination to all parties to the agreement.

A supported decision-making agreement in Colorado is valid only if it contains the following information:

- ✦ The name of the senior or adult with a disability;
- ✦ The name, address, phone number, and email address (if applicable) of the member of the supportive community;
- ✦ A list of decisions that the individual requests the member of the supportive community to advise the individual on;
- ✦ The day, month, and year the agreement was entered into; and
- ✦ A description of the member of the supportive community's agreement terms, including an agreement to:
 - ✧ Provide information as requested by the individual;
 - ✧ Respect that the final and ultimate decision is the individual's;
 - ✧ Not coerce or manipulate the individual into making any decision; and
 - ✧ Provide updated and relevant information to the individual based on all the available and known information the member of the supportive community has.

A valid supported decision-making agreement must be signed voluntarily, without coercion or undue influence, by the individual and the member of the supportive community in the presence of two or more attesting and disinterested witnesses who are 18 years of age or older, *or* with a notary public.

In addition, a valid supported decision-making agreement must include a notice that any mandatory reporter who has cause to believe that the individual is being mistreated, as defined in C.R.S. § 18-6.5-102(10.5), by a member of the supportive community shall report the alleged mistreatment to Adult Protective Services.

In Colorado, seniors and adults with disabilities are presumed to be able to make decisions regarding their day-to-day health, safety, welfare, and financial affairs, unless they are already protected

by a guardianship or conservatorship. This includes the ability to enter into a supported decision-making agreement. If a guardianship or conservatorship has already been established, the individual will need to contact their legal representative to discuss adding supported decision-making to the current arrangements.

A supported decision-making agreement cannot be used as evidence of the incapacity of the senior or adult with disability.

I 6-5. Conclusion

Supported decision-making is a voluntary process for seniors and adults with intellectual and developmental disabilities to allow family members, friends, professionals, and others they know and trust to help them understand the situations and choices they face, with the understanding that the final decision is left to the individual.

The supported decision-making process helps families, friends, and professionals provide safeguards without the need for court intervention and supports the individual's right to make their own life choices.

I 6-6. Resources

The National Resource Center for Supported Decision-Making

Resources, publications, and additional information on supported decision-making including example agreements.

www.supporteddecisionmaking.org

The National Council on Disability

An independent federal agency committed to disability policy leadership.

www.ncd.gov/report/beyond-guardianship-toward-alternatives-that-promote-greater-self-determination-for-people-with-disabilities/

The Colorado Developmental Disabilities Council

Information on self-determination, and inclusion for all individuals with developmental disabilities.

www.coddc.org

Disability Law Colorado: *See* section 7-5, “Resources”

American Bar Association, The Practical Tool

To help attorneys identify and implement decision-making options for persons with disabilities.

www.americanbar.org/content/dam/aba/administrative/law_aging/PRACTICALGuide.authcheckdam.pdf

Area Agency on Aging: *See* section 22-6, “Resources”