

# SUPPORTED DECISION-MAKING: THE TOP TEN QUESTIONS

- 1. What is supported decision-making?** Supported decision-making is a way to support and accommodate the decision-making process. Just as there are supports like wheelchairs to help someone get around, people who might need help in making choices on their own can get support to make decisions. With supported decision-making, the person (called the decision-maker) chooses supporters to help with the decision-making process and to help communicate the decision, but the decision-maker makes the final decision. The arrangements are often captured in a simple written agreement that describes the supporters and the type of support they will provide.
- 2. Who can use supported decision-making?** Supported decision-making can be used by anyone, in any area of life, whenever someone needs help making decisions. In fact, the concept feels familiar because everyone uses a form of supported decision-making when they get help from people they trust to decide something, whether it is a choice like what model car to buy, where to live, or whether to accept a job offer. Supported decision-making in the more formal or informal sense can be used by anyone, with any disability or condition, including persons with a mental health diagnosis, persons labeled with a mental health diagnosis, chronic illness, or conditions of aging. Supported decision-making is also an alternative to guardianship and can be used to avoid unnecessary guardianship. A person with a guardian can also use supported decision-making as a way to learn decision-making skills, which could lead to greater self-determination.
- 3. What are the benefits of supported decision-making?** Many people with disabilities need and want assistance making decisions about health care, life choices, and financial matters, but they do not necessarily need a guardian to make those decisions on their behalf. When individuals with disabilities direct their own decision-making process, they gain confidence and become better self-advocates. By expressing their preferences and exercising their right to decide, individuals with disabilities get the chance to interact with people in their community — shopkeepers, landlords, bankers, and health care providers. This allows people with disabilities to make the social connections that define community life. With support, an individual with a disability can open his own bank account, decide how to spend her money, and make health care decisions.

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Our society often makes assumes disabled people or older adults will not make good decision. Instead, people should be given opportunities to build decision-making skills in a meaningful way with the support they want and need so they can have the opportunity to learn and grow.

- 4. Who are the supporters?** Supporters can include family members, friends, caregivers, mentors, and other community members. They are chosen by the decision-maker. Supporters know the decision-maker's goals, preferences, and values, and respect his or her autonomy. Supporters also understand how to communicate best with the decision-maker. A decision-maker can have as many supporters as is right for them and can designate specific supporters for specific issues. For instance, one supporter may only help with financial decisions, while another could help with relationship decisions. Different supporters can have different strengths and roles.
- 5. What do the supporters do?** Supporters assist the decision-maker so they can make their *own* decisions. Supporters help the decision-maker understand the choices at hand, and review options — the pros and the cons — of the pending choice. The supporters may also assist the person in communicating their intention to others. Supporters may attend appointments or other meetings with the decision-maker if the decision-maker wants the supporter there.
- 6. How is supported decision-making different from other legal documents like Powers of Attorney?** In supported decision-making, the decision-maker makes the final decision. A Power of Attorney generally means that an individual is giving decision-making authority to someone else in certain situations or at certain times. In supported decision-making, the person keeps decision-making authority. In this way, supported decision-making, in contrast to a Power of Attorney, is an entirely different type of assistance. It does not grant anyone else decision-making authority, but rather structures the decision-making supports a person needs in order to make their own decisions. The Massachusetts proposed legislation S. 124/H.272 explicitly provides that people using supported decision-making can use also have a power of attorney, which many decision-makers choose to do.
- 7. How is supported decision-making different from a health care proxy?** A health care proxy is a person someone selects to make decisions for them if they become unable to make a decision for themselves. There is no conflict between using Supported decision-making and choosing a health care proxy: supported decision-making is a system people can use to help make decisions in everyday life, while a

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health care proxy is something that only gets used if there is an emergency that caused the person to be unable to make decisions for themselves. Designating a health care proxy is recommended for all adults. It is typically recommended that decision-makers using supported decision-making also designate a health care proxy. Many people using supported decision-making do have a health care proxy and typically choose one of their supporters as their health care proxy. The Massachusetts proposed legislation S. 124/H.272 explicitly says that people using supported decision-making can use also designate a health care proxy.

- 8. What protections are there to make sure people are safe from abuse, neglect, or exploitation?** The presence of multiple supporters is an important protection against abuse and neglect itself. Unlike guardianship where there is typically only one person appointed guardian, with supported decision-making there are almost always multiple supporters. Passage of the Massachusetts proposal S. 124/H. 124 would create additional safeguards and protections against abuse, neglect, and exploitation.

Most importantly, supporting independence and self-determination can help decrease the likelihood of experiencing abuse, neglect, or exploitation. Studies have shown people are less likely to experience abuse, neglect or exploitation when they have their voices heard. The consequences of not being allowed to make decisions, or of having one's decisions ignored, has been associated with increased likelihood of depression, anxiety, loneliness, and may worsen psychological symptoms. It is better to teach someone how to identify toxic, abusive, or exploitive behavior than to rely on someone always being available to do that for them. There is no guarantee of safety under any arrangement, *including guardianship*. But that is not a reason to limit the options available for people to live their best lives. Protection from future uncertain harm must be carefully balanced so as not to unnecessarily infringe on someone's civil rights.

- 9. Do Supported Decision-Making Agreements need to be on a special form?** No, supported decision-making agreements do not need to be on a special form. Supported decision-making agreements put the decision-making supports in writing so that the decision-maker and their chosen supporters understand how the relationship will work. Supported decision-making agreements can also be used to show third parties like doctors or service providers, who may be questioning the person's ability to make decisions, that they are able to make their own decisions, even if they are using accommodations in the decision-making process.

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Like other state supported decision-making laws, the proposed law in Massachusetts S. 124/H.272 would require certain elements be included in a supported decision-making agreement (analogous to the health care proxy statute in Massachusetts), but there would not be one standard form. This would continue to give different community groups and individuals the option to customize the form for their community members.

**10. Does a Court need to approve a supported decision-making agreement?** No, a court does not have to approve or oversee a supported decision-making agreement. Supported decision-making is a voluntary arrangement that happens outside of court. In general, only guardianships need to be approved by a court.

The proposed Massachusetts law S. 124/H.272 would require courts consider whether supported decision-making could be a less-restrictive alternative. Even under current law, judges in Massachusetts are required to consider if there are less restrictive alternatives to guardianship, and supported decision-making could be one such alternative. This has already happened in one case in Massachusetts where the guardianship was terminated because the person was successfully using supported decision-making and demonstrated he could make his own decisions with support.

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*Prepared by Massachusetts Advocates for Supported Decision-Making Coalition member Massachusetts Developmental Disabilities Council with credit and thanks for content to fellow MASDM Coalition members and partners Center for Public Representation, <https://supporteddecisions.org/about-supported-decision-making/frequently-asked-questions/> and our colleagues at Indiana Disability Rights, <https://www.in.gov/idr/sdm/files/7-Things-to-Know-about-SDM.pdf>.*