

# Supported Decision Making

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# Supported Decision Making

- **Guardianship** is a legal relationship established by the court in which a person is given legal authority over another person when he or she is unable to make safe and sound decisions regarding his or her person, or property. [LegalDictionary.Net](http://LegalDictionary.Net)
- Supported Decision-Making (SDM) is 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. ([Supportmydecision.org](http://Supportmydecision.org))
- In Supported Decision Making, the individual retains all rights and makes their own decisions, but they have some supports to help make those decisions.

# Trends in Supported Decision Making

From the National Resource Center on Supported Decision Making

May 2019:

- 9 States have enacted supported decision-making agreements by statutes, codes, or practice
- 6 states have pending statutes, codes or practices of supported decision-making agreement

**Across the US, more states are recognizing that Supported Decision Making is the least restrictive way to support individuals with disabilities or the elderly with diminished decision making capacity.**

# National Organizations Perspectives

- National Guardianship Association Position Paper - States that SDM should be considered before guardianship and incorporated as part of the guardianship, if guardianship is necessary.
- Social Security Advisory Board - States SSA should consider SDM as an alternative to appointing a representative payee.
- American Bar Association Practical Tool and Resource Guide - Helps lawyers identify and implement decision-making options that are less restrictive than guardianship, including SDM.

# Questions about The Best Approach to SDM

- When does Supported Decision Making Need to be formal instead of informal?
- In what cases is it better to have paid vs unpaid supporters and what mechanisms should be set up , if any, to pay for "corporate" supporters?
- Background requirements for supported decision helpers?
- How do we safeguard against abuse, exploitation or undue influencers?
- Should there be court oversight of SDM - especially when offered as alternatives to guardians?
- Are Supported Decision-Making agreements enforceable? Should they be?

# Examples of Agreements

- Texas is a simple formal agreement where the individual determines who helps with what decisions.
- The New York formal agreement is far more complex and includes a monitor, who cannot be part of the supported decision-making team, to monitor for financial abuse.

# Where does New Mexico Stand?

- IN 2018, S.B. 19 was passed which modifies the guardianship act and formalizes the requirement that courts consider alternatives to guardianship. Reference to Supported Decision Making was removed from the final bill.
- There are no actual, established practices or guidelines for how New Mexico provides Supported Decision Making.
- In other words, there is no formalized Supported Decision Making in the state of New Mexico at this time.

# Ladder of Decision Making Assistance

- Power of Attorney\*
- Healthcare Surrogate\*
- Representative Payee\*
- Supported Decision Making\*\*\*
- Protective Arrangements\*\*\*
- Limited Guardianship\*\*
- Conservatorship\*\*
- Plenary Guardianship\*\*

\* Individual may choose

\*\* Court decides

\*\*\* No option in New Mexico



# Why New Mexico Needs SDM

- **The right to make decisions is an internationally recognized human right.** Significant gap in decision making assistance endangers a person's rights.
- New Mexicans living with developmental disabilities, aging issues, and mental health challenges are disproportionately affected.
- **Limited Resources**
  - DDPC Office of Guardianship's **wait list is growing** exponentially as state funding is slashed.
  - At the current level of guardianship in NM, courts only have capacity to review guardianships once every ten years, as required by statute. Individuals may be stuck in guardianship far longer than necessary—unnecessarily **wasting their own estates or the State's resources.**
  - **Major down-stream costs can be avoided** if individuals who require support and assistance do not end up in catastrophic situations due to abuse, neglect, or exploitation.

# Supported Decision Making Task Force

- In the 2020 Regular Session, HM 23 and HB 67 was passed and would form a task force to study and report on SDM and make an appropriation to DDPC. They never made it to the floor.
- DDPC is moving forward with the planning process and gathering a broad range of stakeholders to work on the task force—including the courts, self-advocates living with disabilities and their families, professional guardians, legislators, and experts on aging, mental health, and developmental disabilities.

**A House Memorial for this task force during the 2021 Regular Session is crucial to prioritize the work of the task force and demonstrate the Legislature's commitment to establishing SDM in New Mexico.**

# Contact Information

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**Questions?**