

Supportive Decision Making

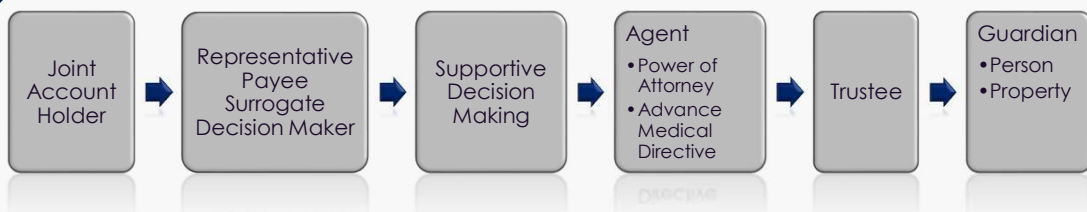
Empowering Adults to Make Their Own Decisions

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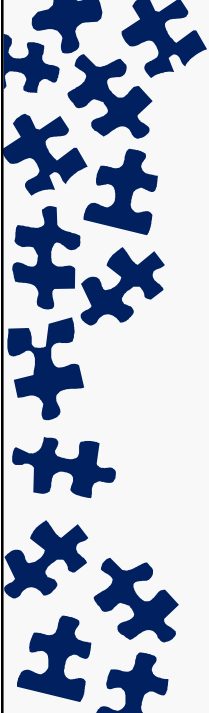


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Alternatives to Guardianship



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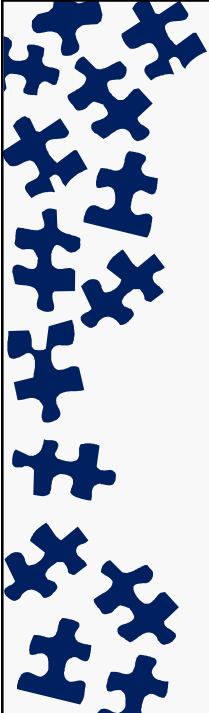


Capacity

Adults are presumed to be competent to make their own decisions about their personal well-being and their money unless a court determines they are not.

What does “lacks the physical or mental capacity to provide for daily needs” mean?

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When is Guardianship Necessary

A guardianship proceeding is necessary when:

- (i) two physicians, psychologist, or certified clinical social worker determine that an adult is unable to make responsible decisions concerning their medical care or financial matters, usually because of a physical or mental disability; **AND**,
- (ii) there are no alternatives available to a guardianship, such as a general financial power of attorney, a healthcare agent, or supportive decision-making agreement.

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Other Legal Considerations

Courts must consider a Supportive Decision-Making Agreement (SDMA) as a less restrictive alternative before appointing a guardian.

Adults under existing guardianship can still utilize a SDMA to regain some decision-making abilities.

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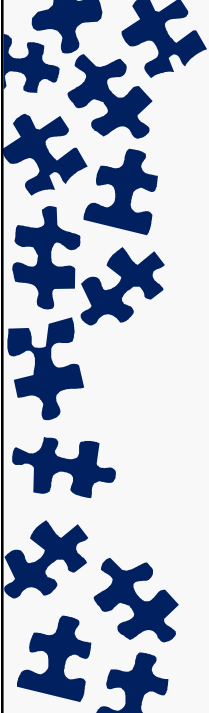


What is Supportive Decision Making

A process where adults receive support to make, communicate, and effectuate their own life decisions without transferring decision-making authority. It is an alternative to guardianship, that allows an individual with a disability to keep their autonomy and self-determination.

- Instead of having choices made *for* them, individuals with disabilities have supporters who *help* them make *their own* choices.
- A person using supportive decision making appoints trusted advisors, such as friends, family, or professionals, to serve as supporters.

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Supportive Decision-Making

Decision making is a skill that requires practice and a variety of experiences.

- How does the adult manage their money;
- How does the adult make healthcare decisions;
- How does the adult decide where they will live and who they will live with;
- What information does an adult need to make an informed decision;
- What help might an adult need to communicate a decision for themselves to the people who need to know?

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Capacity to Execute a Supportive Decision-Making Agreement

All adults are presumed capable of making a supportive decision-making agreement.

The manner in which an adult communicates with others is not grounds for determining that the adult is incapable of making, changing, or revoking a supportive decision-making agreement.

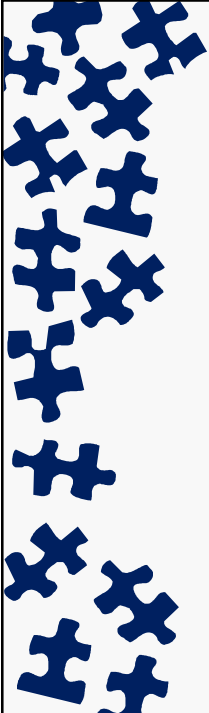
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States with SDM Laws

- Alabama
- Alaska
- Arizona
- California
- Colorado
- Delaware
- District of Columbia
- Florida
- Illinois
- Indiana
- Louisiana
- Nevada
- New Hampshire
- New York
- North Dakota
- Rhode Island
- Texas
- Virginia
- Washington
- Wisconsin

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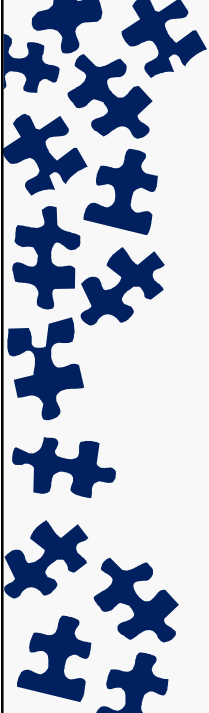
Maryland's SDM Law Overview

[MD Code §18-101 to §18-109](#) became effective October 1, 2022.

A Supportive Decision-Making Agreement (SDMA) Does NOT:

- Supplant the authority of a guardian of the adult, unless the court authorizes the limitation or removal of guardianship due to the existence of the SDMA
- Supplant the authority of an agent under a Power of Attorney or Advanced Directive
- Give authority or agency powers contemplated by a Power of Attorney or Advanced Directive

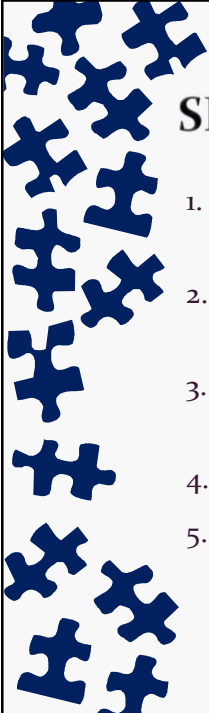
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SDMA Areas of Support

1. Gathering information
2. Understanding and interpreting information
3. Weighing options and alternatives to a decision
4. Understanding the consequences of making or not making a decision
5. Participating in conversations with third-parties with the adult's explicit authorization
6. Provide the adult with support and advocacy in implementing the decision

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SDMA Supporter's Duties

1. Support the will & preference of the adult;
2. Act honestly, diligently, and in good faith;
3. Act within the authority given in the SDMA;
4. Avoid conflicts of interest;
5. Maintain records concerning the supporter's actions and how the adult communicates;
6. Keep records & information obtained under the SDMA;
7. Deliver a copy of the SDMA to any duly appointed guardian of the adult; unless the adult objects, deliver a copy of the SDMA to any agent of a duly executed POA or AMD, or trustee of a Revocable Trust.

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A Supporter May Not

1. Make decisions on behalf of the adult
2. Exert undue influence on the adult
3. Coerce the adult
4. Obtain information about the adult without the adult's consent
5. Enforce decisions made by the adult
6. Act outside of the authority granted in the SDMA

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Who Can/Cannot be a Supporter

A supporter may be any person chosen by the adult except:

1. A minor
2. An individual against who the adult has obtained a peace order or protective order
3. An individual convicted of financial exploitation
4. An individual who is subject to a civil or criminal order prohibiting contact with the adult

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Creating a SDMA

Step 1: Identify the areas where support is needed

Step 2: Choose trusted supporters willing to assist

Step 3: Draft a Supported Decision-Making Agreement

Step 4: Sign and date the agreement

Disability Rights Maryland provides a [sample SDMA template](#)

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SDMA Requirements in MD

1. Be documented in writing;
2. Be dated;
3. Name at least one supporter;
4. Describe the decision-making assistance each supporter may provide the adult;
5. Describe how the supporters may work together if there is more than one supporter;
6. Describe how any conflict of interest between the supporter and adult shall be mitigated;
7. Document how the adult selected the supporter(s);
8. Be approved by the court if the SDMA affects the authority of a court appointed guardian;

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SDMA Requirements in MD

9. State that the supporter may not make decisions or effectuate transactions on behalf of the adult AND the SDMA cannot authorize a supporter to act on behalf of the adult or supplant the authority of an agent under a POA or AD;
10. Contains an attestation that the supporter agrees to honor the rights of the adult to make decisions;
11. Be signed by the adult and the supporter with each signature witnessed by two adults who are not
 - A supporter or
 - Employee or agent of supporter named in the SDMA

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Revoking a SDMA

The adult may revoke the SDMA at anytime.

A supporter may resign by giving notice to the adult, remaining supporters, and any third-party who has the agreement on file.

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Capacity to Execute a Power of Attorney

The law provides no specific guidance.

Does the client understand what property he/she has?

Is the client clearly able to communicate who he/she wants to handle his/her financial affairs?

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Power of Attorney

- › Legal Document that allows the principal to designate an agent to make financial decisions on their behalf (Statutory Form)
- › Agent acts as their attorney-in-fact
- › Two types: general (broad powers) and limited (only express powers granted by the principal)
- › Terminates at death
- › Effective date: durable (immediately) vs. springing (triggering event)
- › Advantages – quicker, cost effective, eliminates the need for a guardian, and broader than representative payee
- › Disadvantages – potential for abuse

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Capacity for Health Care Decisions

General Health Article §§ 5-601 and 602 you are competent to consent to your own medical treatment (or execute an advanced medical directive) if you:

- Are at least 18, and
- Have not been determined incapable of making an informed medical decision

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Advanced Medical Directive

- › Legal document that allows the declarant to appoint an agent to make healthcare decisions on their behalf if they are unable to do so (Maryland Attorney General's form)
- › This document also allows the declarant to make their wishes known about life-sustaining procedures
- › Agent – Name one or more individuals who may serve jointly or severally as well as a backup
- › Life-sustaining procedures
 - When death is imminent
 - Withholding or withdrawing of life-sustaining treatments or medicines
 - Nutrition and hydration
 - Pregnancy
 - Organ donation



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What are the Duties of a Trustee?

A trustee is a *fiduciary*. As fiduciary, the trustee has a legal responsibility to manage the trust property for the benefit of the trust beneficiaries. A trustee has four basic duties to keep in mind:

1. Read the trust document and do what it says.
2. Manage the money and property in the trust carefully.
3. Protect the trust property.
4. Keep the trust property separate from their own property.

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Resources and Support

- Maryland Judiciary Video Series: [Alternatives to Guardianship](#)
- Maryland Developmental Disabilities Council Fact Sheet: [Supported Decision-Making Facts Sheet](#)
- Parents' Place of Maryland: [SDM Resources](#)
- National Resource Center for Supported Decision-Making: [Supported Decision-Making](#)

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