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Supported Decision-Making

What is supported decision-making?

Supported decision-making (SDM) is an alternative to guardianship. SDM is rooted in the belief that all people have the right to make choices and decisions about their own lives. Although SDM may involve different forms and processes, the key is that the individual who will be directly impacted is supported to make a decision based on their needs, wants and preferences. With SDM, we may use different formats to fit the individual and the situation. The individual chooses who to involve (such as friends, a family member or professional) to help them understand information, including the impact of different choices and what options should be considered before making a decision. Does this sound familiar? It is the same process many of us use regularly to make a decision or choice if we do not have the information we need to move forward.

Supported decision-making is voluntary for the individual. How the process looks or is used will vary based on the person and the decision to be made. SDM could mean one-to-one assistance or it could involve bringing together a group of people chosen by the individual based on the specific information they bring to the table. For example, a person may not need a mechanic to help with meal planning but if their car breaks down, someone they trust who knows more about cars will be the first person they contact for support. If they need help figuring out how to pay for the vehicle repairs and arranging other transportation while their car is in the shop, people with information to share in these areas might participate as well.

SDM can look like person-centered planning, and the person-centered planning format can be used if it will benefit the individual making the decision. What is most important is that the person is given the opportunity to understand information they need in order to make their decision, and that the information is communicated in a way that supports their understanding. They may also choose to have help in communicating their choices. The goal is for the individual to retain control of their life and choices to the maximum extent.

How does supported decision-making work?

First, talk with the individual about who they would like to have support them in making decisions. Work together to answer the questions below:

- What skills do the support people have?
- How can these support people assist in making decisions?
- Will it be a group or one person? (What is the preference of the individual?)
- Will selected people help with specific types of decisions?

Next, think about the current choice or decision the individual being supported needs to make.

- Does the individual need help understanding information?

the amount to pay. If cash is a challenge, the individual might use a debit card with set amounts available. These cards can be linked to bank accounts for online/app monitoring. Prepaid gift cards, either for specific stores or for general use (such as pre-paid credit cards) can also be useful tools, though it is important to note that not all businesses accept card payments.

More Support through Restrictions

Additional supports can be used if the young person wants and needs more assistance with their bank accounts. For example, the individual might use a joint account. This is where the individual and the person who assists them are both listed on the account. Both parties have equal access to information and funds, so it is important that the young adult trusts the support person and that they both understand their responsibilities. Another option is to open a dual signature account for all checks or for those over a specific dollar amount.

Monitoring the amount of money available in an account or linked to a card is another way to ensure deposits are enough to meet the expectations and budget of the individual. Or the young person might open separate accounts for deposits and bill paying, daily purchases, and saving for larger purchases.

Lastly, the young person can pay a money management service to assist with bill paying, tracking how money is spent, and building financial literacy skills.

Important note: Please consider asset limitations if the individual receives government assistance such as Supplemental Security Income (SSI). Later in this toolkit, we will share ideas for saving larger amounts of money in order to support greater independence.

Representative Payee

If an individual receives Social Security and/or SSI and wants help learning to manage their money, a representative payee can be appointed to assist. The Social Security Administration will require paperwork to be completed first. The representative payee can be someone supporting the individual, such as a family member or friend. If that is not possible, an organization may provide this service. The representative payee is responsible for completing an annual report to show how the monthly income was used to meet the basic needs of the Social Security/SSI recipient.

Financial Power of Attorney

If the young person needs more support or has multiple financial resources, a next step to consider is a **Financial Power of Attorney**. A Power of Attorney (POA) allows the young adult to appoint someone to make decision for them concerning their finances, rather than with them. Please see our section on *Power of Attorney* later in this toolkit.

Trusts

Special Needs Trusts can be used to help an individual manage larger amounts of money that could otherwise impact their eligibility for means-tested programs. There are different types of trusts. Considerations when choosing which trust is best for an individual may include: Who is contributing the money to the trust; whether or not the individual with a disability will have direct access to the funds; and what the funds will be used to purchase. We strongly recommend finding an experienced professional to assist in the language and establishment of any trusts.

Conservatorship

Conservatorship is a court-ordered process in which one person (the conservator) is appointed to manage another person's finances and property. A conservatorship is similar to a limited guardianship in that it limits what the conservator manages. The court assigns the responsibilities and duties of the conservator; these are intended to be in the best interest of the person being supported.

ABLE Accounts

ABLE (Achieving a Better Life Experience) accounts were created through Federal legislation in 2014. In Montana, the 2015 State Legislature authorized the Montana ABLE program, which officially became available in September 2017. An ABLE account allows a qualifying individual with a disability to have savings set aside up to allowable amounts, without impacting Social Security and Medicaid. Savings can then be used for qualifying disability-related expenses. An individual can only have one ABLE account and the person who benefits from the account is considered the owner of the account. Montanans who need support in managing their ABLE account can complete the **Montana ABLE Agent Authorization/Power of Attorney** form, available at <https://cdn.unite529.com/jcdn/files/UABLE/pdfs/mt-poa.pdf>.

To learn more about Montana ABLE or to open an account, visit the official website:
<https://savewithable.com/mt/home.html>

For Montana-specific information about ABLE accounts, visit the Montana Department of Public Health and Human Services website at:
<http://dphhs.mt.gov/dsd/developmentaldisabilities/ABLE>

For national information about ABLE accounts, visit The ABLE National Resource Center website at: <http://www.ablenrc.org/>

Additional Resources

Montana State University Extension

Estate Planning for Families with Minor and/or Special Needs Children

<http://msuextension.org/publications/FamilyFinancialManagement/MT199117HR.pdf>

Power of Attorney

<http://www.msuextension.org/publications/FamilyFinancialManagement/MT199001HR.pdf>

Center for Parent Information and Resources

Getting Ready for Managing Finances at the Age of Majority

<http://www.parentcenterhub.org/repository/aom-series-finance/>

Social Security

Representative Payee

<https://www.ssa.gov/payee/>

Pennsylvania Assistive Technology Foundation

Cents and Sensibility: A Guide to Money Management for People with Disabilities

<http://www.fliconline.org/documents/patffinancialeducationbooklet-final.pdf>

Life After IEPs: It's Your Child's Future

Tools for Teaching Financial Literacy Skills

<http://lifeafterieps.com/tools-for-teaching-financial-literacy-skills/>

ABLE National Resource Center

ABLE Accounts: 10 Things You Should Know

<http://www.ablenrc.org/about/what-are-able-accounts>

Power of Attorney

Formal Supports

Power of Attorney (POA) is a more restrictive tool and involves a legal process. A POA can be limited to one area or cover several, depending on the needs of the individual. Because the POA is a legal document, the language that must be used can be difficult for the individual being supported to understand. We recommend that you have an attorney, at minimum, review the draft document to ensure the proper use of terms based on the purpose of the POA.

As we mentioned earlier in this toolkit, a Power of Attorney appoints a person or agent to act for the individual, rather than with the individual. One way to bring the individual back into the role of a participant, is to consider adding a supported decision-making component to the POA. Here is sample language for including supported decision-making:

It is my and my agent's intent that we will work together to implement this Power of Attorney. That means that I should retain as much control over my life and make my own decisions, with my agent's support, to the maximum of my abilities. **I am giving my agent the power to make certain decisions on my behalf, but my agent agrees to give primary consideration to my express wishes in the way she makes those decisions.** (Martinis, 2016)

The Power of Attorney in Montana statute under the Uniform Power of Attorney Act was passed, in part, to allow for more consistency across states that had a uniform code for Power of Attorney, as well as to make the tool easier to use. The Montana Act deals with the financial support needs of an individual. This support may be for personal finances, property, or overseeing benefits the individual may be eligible to receive. More information, including the requirements for all parties, is written out in the law and available here:

http://leg.mt.gov/bills/mca/title_0720/chapter_0310/part_0030/section_0530/0720-0310-0030-0530.html

Another section of Montana law deals with the Health Care Power of Attorney. This type of POA requires language that the individual needing support show intent to give medical decision making authority that will still be in place even if/after the principle is incapacitated. For example, the POA might include: "This durable health care power of attorney is not affected by subsequent disability or incapacity of the principal or lapse of time. I _____ hereby designate _____ to act as my durable power of attorney for medical decisions."

Additional language and legal references are available at:

http://leg.mt.gov/bills/mca/title_0720/chapter_0050/part_0050/section_0010/0720-0050-0050-0010.html

Montana did not address the need for an Educational Power of Attorney, but that does not mean these documents have not been written or could not be developed. Currently, there is

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just no uniform language in law to reference. Several states have samples that can be shared with an attorney if an individual chooses to use an Educational POA for support. An example from Wisconsin and the Special Needs Alliance is available in Appendix D (The Education Power of Attorney, 2016). Here are links to a couple of others:

How and Why the Educational Power of Attorney Was Created

http://www.waisman.wisc.edu/cedd/Connections/pdfs/Description_EPOA_and_sample.pdf

Mississippi Bend Area Education Agency

https://www.mbaea.org/media/cms/IEP_English_Power_of_Attorney_for_EDM.PDF

Additional Montana-Specific Resources

Montana State University Extension

Power of Attorney

<http://www.msuextension.org/publications/FamilyFinancialManagement/MT199001HR.pdf>

Montana Department of Public Health and Human Services

Powers of Attorney

<http://www.dphhs.mt.gov/Portals/85/sltc/documents/legaldeveloper/1PowerofAttorney.pdf>

Other Important Items

Accessing Services through Providers

As the new young adult transitions to adult service providers, they may want support in understanding the paperwork and processes required to access services. The supported decision-making model can be used, where the individual has a chance to prepare for and practice the conversation so they can actively participate. The person needing support may also want someone to either attend meetings with them or be able to ask for clarifying information on their behalf. In this scenario, an advocacy tool can be used to designate who will assist the individual, what the advocate has access to, and how they will support the individual. A sample form with language that can be adjusted to reflect the intent of the individual being supported is available in Appendix C. This form could be used with agencies such as Vocational Rehabilitation or Mental Health. If medical information will be accessed, the service provider may require a HIPAA release. Please see the *Medical* section of this toolkit for guidance on how to modify the HIPAA release for supported decision-making.

Notarizing Forms

A Power of Attorney, as established by the state of Montana, has a place for the notarizing of signatures. This component could be added to an advocacy form if those creating it felt the notarization added meaning to the tool for all parties. Finding a notary public to assist does not need to be a barrier. Think about the resources in your community. Oftentimes, your local bank will have a notary and offer this as a service to customers. Another option would be to check with local government offices to see if they have someone available to notarize documents for the public. Who are you connected with? Local businesses, secondary education settings or services such as AAA may have someone who can assist you with a notarized signature.

Respect

Sometimes when we are supporting an individual, whether it be as a professional, friend or family member, we can get caught up in what needs to be done and not allow the individual with a disability the opportunity to lead or grow. Consider who is most actively participating, and then consider how to ensure the individual with a disability has the opportunity to provide information and communicate their thoughts. For insight into this topic, please visit the following link for the video *When Listening Is Complicated: Skills for Honoring the Individual Perspectives of Every Person with Disabilities* by Ruti Regan: <http://www.ucsd.tv/search-details.aspx?showID=32191>

End-of-Life Decisions

While end-of-life conversations can be extremely difficult and painful, they are an important consideration. A resource that may be helpful in guiding these conversations is available at: Coalition of Compassionate Care of California

Thinking Ahead: My Life at the End

<http://coalitionccc.org/tools-resources/people-with-developmental-disabilities/>

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Final Thoughts

Next Steps

After reading through this toolkit, you may have determined that a guardianship is not necessary or the best course of action to support the individual with a disability in decision-making. Hopefully you have identified alternative tools to fit your situation. Once you have chosen which tools to use, decide who needs to have a copy (for example, the family lawyer and an adult sibling who lives outside the home). Be sure to keep a copy for yourself. Make a list of who has copies so that if changes are made, the updated version(s) can easily be shared. You may want to develop a cover letter stating what is being provided and who to contact if there are questions. If the tool is to be for educational purposes, ask that the records and/or IEP meeting minutes show you have provided the tool. For agencies, ask to have the tool added to the supported individual's file.

If you begin this process early, there is time for exploration, learning, and growth to occur. This gives young adults and their family members the opportunity to develop their capacity and become proficient in using a team approach to decision-making, and gives everyone time to adjust to new roles.

Undoing Guardianship

Guardianship is a legal process in which the court determines an individual does not have the capacity to make decisions either generally or in specific areas. What happens if their capacity changes? Perhaps when the guardianship was established, it was considered the best way to support the individual. Maybe with training and time to develop decision-making skills, their abilities have grown. In Montana, the law allows for removing a guardianship of an adult no longer believed to be incapacitated. This is referred to as "termination of incapacity" and is addressed in the Montana Code Annotated 72-5-325 (2017a). A request must first be made to the court, and then the individual under the guardianship or someone who knows them well can request a petition for an order to establish if the individual is no longer incapacitated and for the termination of the guardianship. The same process is used for establishing and terminating a guardianship. Just as documentation was needed to show the individual did not have the capacity to make decisions, now documentation will be needed to show that they have the capacity to do so. The court can then modify or terminate the guardianship.

Additional Resources

American Bar Association

Restoration in Adult Guardianships (statutes)

https://www.americanbar.org/content/dam/aba/administrative/law_aging/2013_CassidyRestorationofRightsChart7-13.authcheckdam.pdf

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General Resources

ASAN, Autistic Self Advocacy Network

The Right to Make Choices: New Resource on Supported Decision-Making

<http://autisticadvocacy.org/2016/02/the-right-to-make-choices-new-resource-on-supported-decision-making/>

The Right to Make Choices: International Laws and Decision-Making by People with Disabilities

<http://autisticadvocacy.org/wp-content/uploads/2016/02/Easy-Read-OSF-For-Families-v3.pdf>

The Arc

The Arc's Self-Determination Scale, Adolescent Version

<http://www.thearc.org/document.doc?id=3670>

Center for Parent Information and Resources

Getting Ready for When Your Teen Reaches the Age of Majority: A Parent's Guide

<http://www.parentcenterhub.org/repository/age-of-majority-parentguide/#who>

Getting Ready for Healthcare at the Age of Majority

<http://www.parentcenterhub.org/repository/aom-series-healthcare/>

Getting Ready for Managing Finances at the Age of Majority

<http://www.parentcenterhub.org/repository/aom-series-finance/>

Statewide Parent Advocacy Network, Inc.

Supported Decision Making and Alternatives to Guardianship

<http://www.spanadvocacy.org/content/supported-decision-making-and-alternatives-guardianship>

Office of Developmental Primary Care

What's Next?: A Self Advocate's Guided Tour through Transition for Parents and Other Supporters

http://odpc.ucsf.edu/sites/odpc.ucsf.edu/files/pdf_docs/FINAL%20Trans%20Guide%2011.18.16%20ALL_0.pdf

Appendices

Appendix A: Consent to Authorize Advocacy and Release of Information

Appendix B: Designation for Patient Advocate for Care, Custody, and Medical Treatment Decisions

Appendix C: Consent to Authorize Advocacy and Release of Information

Appendix D: Special Durable Power of Attorney for Matters Concerning Education

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Appendix A - Sample Language

CONSENT TO AUTHORIZE ADVOCACY AND RELEASE OF INFORMATION

I, (full name), hereby authorize (X) School District to release and exchange information with my advocate, (full name), which pertains to my school program and placement. I am also requesting that my advocate be invited to any and all meetings about me, and I do not want any decisions made without (his/her) input. I do not wish to discuss issues or concerns about my school day or program without my advocate present. If the school or district has any documents I need to sign, my advocate must sign first with me present, before I will sign. This authorization, unless otherwise revoked by me, will remain in effect for the durations of the time I receive special education services and until my twenty-fifth birthday. My advocate read through this paper with me prior to my signing to make sure I understood and wanted this agreement.

(Full Legal Name)

(Date)

Appendix B - Sample Language

DESIGNATION FOR PATIENT ADVOCATE FOR CARE, CUSTODY, AND MEDICAL TREATMENT DECISIONS

I am (full name) and I live at (street address) in (city), (state). I want (full name of advocate), my advocate, to help me if I am sick and if I need to go to the doctor.

My advocate read this paper to me before I signed the paper and I understood what they told me about this paper.

If I am sick, my advocate should take me to the doctor. If (he/she) is not at my house when I become sick, please call (her/him) at (contact #) to go the doctor's office. I would like the doctor to talk to (her/him) about what is the matter with me.

I would like the doctor to ask my advocate what we have decided the doctor should do. I would like the doctor to do what the advocate tells the doctor to do in regards to my treatment.

Sometimes a doctor says that I need to have a shot or some other care. Sometime the doctor says I need to take pills or medicine. My advocate and I will talk about it and decide if I should have the shot, or take a pill, or some other medicine. My advocate will also help me decide what other care I should have, but (she/he) will talk to me about what care I need.

If I am very sick, I might need to go to a hospital. My advocate will help me decide if I need to go to the hospital. I would like all the people at the hospital to speak with my advocate and myself about what the people at the hospital should do for me. I would like my advocate to assist me to decide about my care at the hospital even if I am unable to understand what the doctor says about me. This is very important since I want the people at the hospital to try very hard to care for me if I am sick. If I need to have an operation because I am very sick, I would like to have the people at the hospital talk to my advocate. My advocate will say "yes" or "no" and that is what the people at the hospital are to do.

I would like my advocate to be considered my designated lay caregiver in agreement with Title 50, Chapter 5.

I understand that I want my advocate to help decide what care I need, and I want people to listen to (her/him) about my care.

If my advocate is not happy with my doctor, then (she/he) is able to get another doctor to take care of me.

(Full Legal Name)

(Date)

Appendix C - Sample Language

CONSENT TO AUTHORIZE ADVOCACY AND RELEASE OF INFORMATION

I, _____

authorize (name of agency or organization) to release/exchange information with (my friend/advocate, or could list specific person) which pertains to my (services, programs and living situation). I also wish that (my friend/advocate, same as above) be invited to any and all meetings about me, and I do not want any decisions made without his/her input. If (agency or organization) has any documents I need to sign, (my friend/advocate, same as above) should receive copies and have time to go over them with me before I am asked to sign. This authorization, unless otherwise revoked by me, is intended to remain in effect for the duration of time I receive services, etc., or until I revoke this authorization, whichever comes first.

(Name)

(Date)

Appendix D - Sample Language

SPECIAL DURABLE POWER OF ATTORNEY FOR MATTERS CONCERNING EDUCATION

[The following document is substantially similar to one prepared by Attorney Barbara S. Hughes of Hill, Glowacki, Jaeger & Hughes, LLP, Madison, Wisconsin, with input from school district legal counsel for use in several specific cases for clients in the Madison Metropolitan School District. The original instrument has been accepted by the local vocational/technical school and the University of Wisconsin in at least one case. This document is shared subject to the express understanding that it must be reviewed by legal counsel and adapted as appropriate in other cases. This document is intended for informational purposes only, and does not constitute legal advice. Barbara S. Hughes and the Hill, Glowacki, Jaeger & Hughes, LLP law firm expressly disclaim all responsibility for all consequences of use of this material.]

I, _____, hereby designate my _____ **relationship** _____, _____ **name** _____, as my Agent to handle the control and management of my education on my behalf.

I designate my _____ **relationship** _____, _____ **name** _____, as my alternate Agent to handle the control and management of my education on my behalf if my Agent is ever unable or unwilling to serve. An alternate Agent shall have the same powers under this instrument as the initial Agent.

My Agent is authorized in my Agent's sole and absolute discretion, with respect to the control and management of my education, to do every act and thing whatsoever necessary, proper or convenient to be done as fully as I might or could do for myself. By the granting of this Special Durable Power of Attorney for Matters Concerning Education, I intend to give my Agent the broadest possible powers to represent my interests in all aspects of any dealings or decisions involving my education.

The following powers are specifically included, but the listing of such specific powers shall not restrict the exercise of the broad and general powers granted:

1. To provide opportunities for me to engage in any public and/or private educational programs.
2. To make decisions for me concerning my education.
3. To provide opportunities for me to engage in any recreational activities having an educational purpose.

4. To investigate and arrange for opportunities for me to engage in educational activities that provide occupational training.
5. To enroll me in any educational programs.
6. To authorize any services for me that are designed to provide me with educational benefit and/or access to a free, appropriate public education in public school as provided for in the Individuals with Disabilities Education Act.
7. To negotiate and approve on my behalf reasonable accommodations in education services as required under Section 504 of the Rehabilitation Act of 1973.
8. To have access to my school records and other personal education information. The scope of this power shall also extend to confidential records and information, whether prepared by school personnel or by third parties, including but not limited to medical services providers, psychological services providers, assistive technology providers, speech, physical and occupational services providers, social work providers, and any provider of durable medical equipment. ***[Attorney Hughes recommends having the client execute an attorney-drafted HIPAA release to facilitate coping with stringent health care records privacy requirements, potentially allowing re-release of health care records to carefully circumscribed recipients, including the client's attorney. This must coordinate with the client's health care power of attorney document, since the health care agent is usually the "personal representative" for HIPAA purposes.]***
9. To attend and participate in all school meetings and conferences pertaining to me.

REVOCATION OF POWER OF ATTORNEY

I may revoke this Special Durable Power of Attorney for Matters Concerning Education by a writing signed and dated by me.

RELEASE OF THIRD PARTIES

In the absence of actual notice that I have revoked this instrument, no person, school district or its personnel, organization, corporation, or other entity who deals with my Agent shall incur any liability to me, my estate, my heirs, or my assigns for permitting or facilitating my Agent in the exercise of the authority granted under this instrument. I hereby release all such persons, organizations, corporations or other entities from any liability arising from their reliance on this instrument.

PHOTOCOPIES

I authorize that photocopies of this instrument may be made, and that these photocopies shall have the same force and effect as the original.

EFFECTIVE DATE

This instrument shall become effective immediately, and it shall not be affected by my subsequent disability or incapacity.

Signed on _____, 20__.

[TYPED NAME OF CLIENT]

STATE OF WISCONSIN)
 : ss.
COUNTY OF _____)

Personally came before me this ___ day of _____, 20__ the above named _____, to me known to be the person who signed the foregoing instrument and acknowledged the same.

_ Notary Public, State of Wisconsin
My Commission is permanent.

We certify that the foregoing instrument was on the date set forth above signed by _____ in the presence of us; and that at [his/her] request and in [his/her] presence, and in the presence of each other, we subscribed our names as attesting witnesses thereto.

_____ of _____

_____ of _____

ATTORNEY'S CERTIFICATION

I am a lawyer authorized to practice law in Wisconsin. I have advised my client concerning his or her rights in connection with this Special Durable Power of Attorney for Matters Concerning Education.

[ATTORNEY'S TYPED NAME]

This document was drafted by:

Attorney name
Bar number
Firm name
Firm address

Firm phone

References

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