

Keeping People With Disabilities in Charge of Their Lives



Supported Decision-Making Alternatives to Guardianship in Colorado



Colorado Developmental
Disabilities Council

About This Guide

This guide is for people living with disabilities (you!), family members, friends, legal and educational professionals, service providers, guardians, and other supporters.

It provides important information about empowering you to be in control of your life, make your own choices, and have better life outcomes including safety and privacy.

In the following pages you will learn:

- What supported decision-making agreements are
- Who benefits from a supported decision-making agreement
- How supported decision-making agreements are created and used
- How supported decision-making agreements are different from guardianship

In Plain Words:

This guide explains how to support people with disabilities, like you, so you can control your own life.

Throughout this guide, you will see text boxes like this one that explain in plain words what the text on the page means.

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Terms to Know

Supported decision-making is a process that helps people with disabilities like you make important decisions about your life, with the help of trusted friends and family members. Supported decision-making can be used instead of, or alongside, guardianship.

Supported decision-making agreements are not legally binding documents. They are person-centered plans that can be written down to help supporters and care teams know what choices should be made and when. They include a list of decisions you want assistance in making and outline the supporters you trust to help you.

Guardianship, or conservatorship, is when a judge appoints one person in charge of another person's personal activities and resources. Guardianship is a legal agreement.

Supporters are people who agree to help you understand, consider, and communicate decisions about your life.

Self-determination is the right that someone has to make their own choices and decisions about their own life.



What is Supported Decision-Making?

Supported decision-making is a way people with disabilities get help making decisions about your life. You choose the people you trust to help you understand complex information and make informed decisions about your medical, legal, financial, and other life matters.

Supported decision-making is a process to help you ask for support where and when you need it from your supporters. Supporters can be family members, friends, or trusted professionals.

Supported decision-making can include release of information forms, powers of attorney, special needs trusts, and representative payees. These options can help families, friends, and professionals provide the needed supports and safeguards without imposing guardianship restrictions.

Supporters play a big role in creating and using a supported decision-making agreement. Supporters agree to help explain information, answer questions, weigh options, and let others know about decisions that are made. They do not make the decisions.



In Plain Words:

With supported decision-making, you make choices about your life. You can ask for help from people you trust when you need to.

Why Supported Decision-Making is Important

Everyone has the right to make decisions about their own lives.

Being able to make choices about our own lives is crucial for the independence and happiness of all people, including those living with disabilities. Decision-making is a skill that everyone needs to practice, so you can continue to grow and gain experience throughout your life.

You do not need a guardian just because:

- You are a certain age
- You have left school
- You have a certain IQ
- You need support

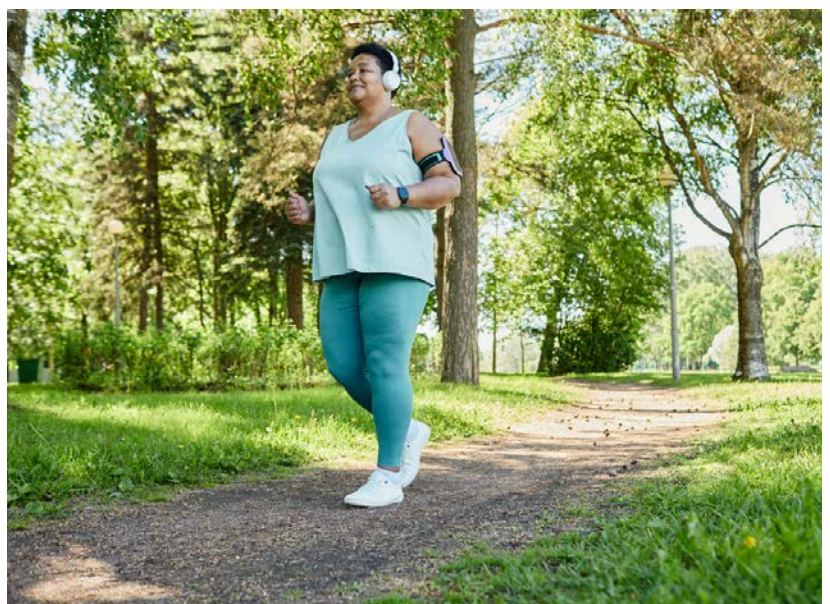
Studies show that people living with disabilities who have more control of their lives and are more self-determined are:

- Healthier
- More independent
- More likely to be employed at a higher-paying job
- Better able to avoid and resist abuse

When people with disabilities are less able to make their own choices, they are more likely to feel helpless, hopeless, passive, and are at greater risk of abuse.

In Plain Words:

It's good to make our own choices. When you have more control of your life, you have a more meaningful life.



What Choices Can Supporters Help You With?

Supported decision-making is a useful tool in making big choices in life. The supporters that you choose to help you are people that you trust to guide you through difficult decisions.

Supporters in your life can help you with things like:

- Acting as Power of Attorney
- Making healthcare decisions
- Creating a legal Will
- Managing financial decisions and accounts, including an ABLÉ savings account

Whatever big decisions come your way, having a supported decision-making team can help you navigate them.



Advantages to the Supported Decision-Making Process

- Puts the needs and wants of the person with a disability first
- Encourages supporters to help you learn to make decisions
- Eliminates the need to go to court
- Allows for growth and maturity as you experience and practices new skills
- Provides the least restrictive form of support
- Plans can be easily changed at any time, without a judge's approval

In Plain Words:

You choose people your trust to help you with big, hard choices. As you learn to make choices, you grow. Plans can be changed without needing to go to court.

Remember: We all make mistakes! Mistakes help people learn.

Supported Decision-Making versus Guardianship

Supported Decision-Making	Guardianship
You have the legal right to make your own decisions.	You lose your legal right to make certain decisions for yourself.
You make decisions with the help of people (known as supporters) that you trust and choose.	The guardian makes decisions for you. You are legally identified as their 'ward'.
You choose your supporter or supporters.	The court chooses your guardian for you.
If you disagree with the advice of your supporter, you don't have to follow it. You make your own decision.	You must do what your guardian decides even if you disagree with their decision. Only the court can change a guardian's decision.
You can change or end your supported decision-making agreement at any time.	Only the court can change a guardianship order.
With the help of your supporters, you develop the skills to more easily make your own decisions.	Your guardian is not required to help you gain skills to make decisions yourself.



Starting the Supported Decision-Making Process

Supported decision-making means that people with disabilities like you have control of your own life choices. You decide the amount and type of support you want and need from people you trust to support you in reaching your goals.

You may use a pre-made form or create your own form to show people that you have a supported decision-making agreement with a supporter that you trust. This form does not replace a court ordered arrangement, but can be used in addition to such an arrangement if appropriate. Having your decisions written down can be useful when working with people like doctors, bankers, landlords and case managers.

1

START THE CONVERSATION

Talk about goals and needed supports to achieve them. Think about your current abilities and areas of your life where you want to learn.

2

IDENTIFY PEOPLE WHO ARE WILLING AND ABLE TO ASSIST

A supporter should know you well. They should be able to understand and communicate with you, and advocate for you.

3

COMMUNICATE AND PLAN

Bring all your supporters together to determine how you will communicate with one another.

4

SET UP AN AGREEMENT

Remember, supported decision-making agreements are as individual as the people using them. They are not legally binding documents, and do not have to follow a specific format.

5

LET EVERYONE KNOW

Once the supported decision-making agreement is signed, share copies with doctors, bankers, schools, landlords, and other people who are in your life.

In Plain Words

You choose the type and amount of support you want. You work with supporters to agree on a plan. The plan is written down and shared with people in your life.



What Your Supported Decision-Making Agreement Needs To Include

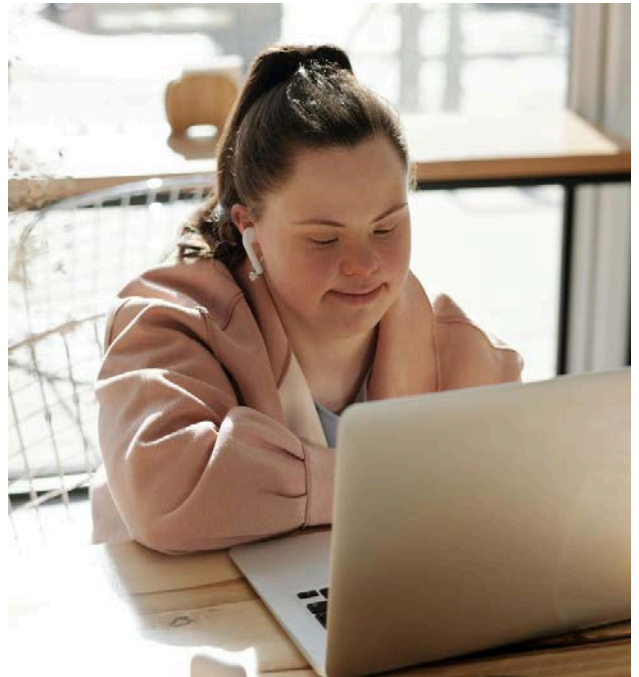
Written supported decision-making agreements may be in any form, and do not need to be in a particular format.

To follow Colorado State law, all supported decision-making agreements must include the following items. You can use this checklist to make sure you have everything you are required to include”

- ☒ The full name of the adult with a disability creating the agreement (your name)
- ☒ The full name, address, phone number, and email address of the supporter(s) in the agreement
- ☒ If possible, a list of the areas that that you request assistance with your life (for example, power of attorney, financial assistance, etc.)
- ☒ A description of the terms of agreement, including, at a minimum, that supporters will:
 - Provide information as requested by you
 - Respect that the final and ultimate decision is yours, not any supporter’s
 - Not coerce or manipulate you into making any decision
 - Provide the most up-to-date and relevant information to you based on all the available and known information the supporters have

The Arc of Colorado has created a sample form that you can use to create a supported decision-making agreement.

You can find this form on their website at bit.ly/ColoradoArcSDMGuide



In Plain Words

The written agreement needs to include your name and the names of your supporters. It needs to say that your supporters will share all that they know. It needs to say that they will respect that you will make your own choices, without any pressure.

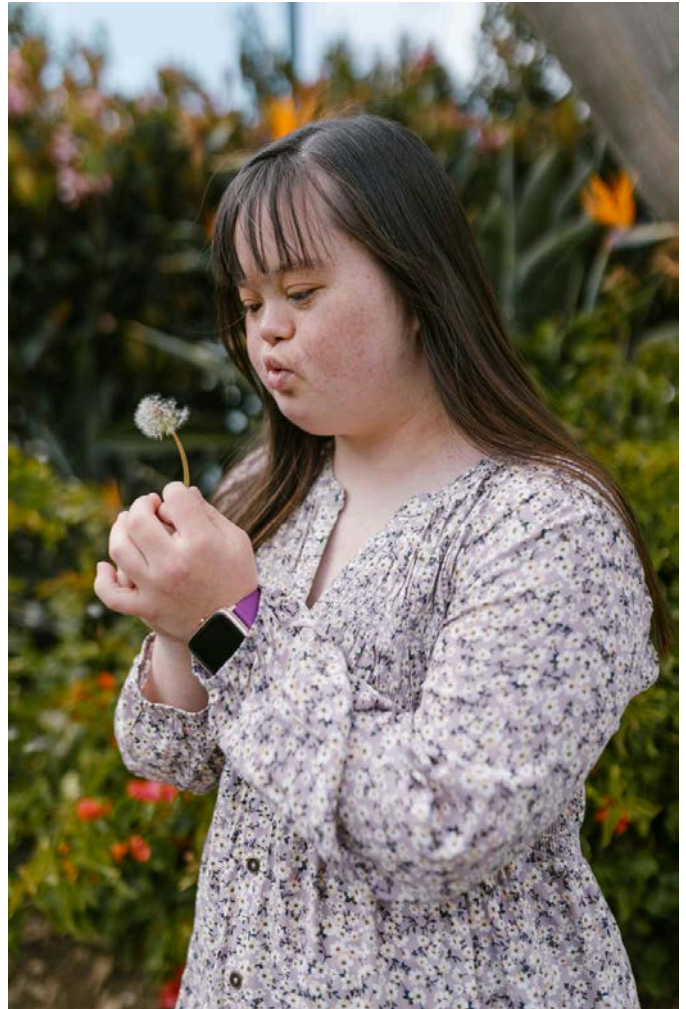
Terminating a Supported Decision-Making Agreement

The supported decision-making agreement is effective until terminated by either the adult with a disability, or a supporter, or as specified in the agreement.

Any person may choose to terminate the agreement at any point. This can be done by providing written or verbal notice of the termination to all people on the supported decision-making agreement.

The supported decision-making agreement is automatically terminated if either of these happens:

- After investigating a supporter for mistreatment, as defined in section 18-6.5-102 (10.5), adult protective services finds that the adult with a disability has been mistreated by a supporter; or
- A supporter is:
 - Substantiated in a case of mistreatment of the adult with a disability, any other person with a disability, or any at-risk person;
 - Convicted of a crime against an at-risk person, or otherwise intentionally caused physical harm to another;
 - Convicted of a financial crime; or
 - Found to have committed theft pursuant to section 18-4-405.



In Plain Words

The agreement ends if you or your supporters want it to. It will end if the supporter is found to have harmed someone or broken a law.

For Supporters

Supported decision-making agreements have been legally protected in Colorado state law since 2019 (Colo. Rev. Stat. § 15-14-805). This law outlines key components of supported decision-making agreements that are important to know before you create an agreement.

- A supported decision-making agreement cannot be used as evidence of incapacity of the adult with a disability, by a supporter or any other person.
- A supporter may only assist the adult with a disability in accessing, collecting, or obtaining information that is relevant to the supported decision-making agreement.
- Supporters can provide assistance only when specifically requested by the adult with a disability.
- The supporter must keep all information about the person with a disability confidential.
- A supporter may only use personal information for the specific purposes requested by the adult with a disability and any misuse of the information may be subject to criminal and civil liability.
- The existence of a supported decision-making agreement does not stop an adult with a disability from seeking personal information on their own without the assistance of a supporter.



In Plain Words

Supporters may only help when you ask them to. They must keep information about you private. Agreements cannot be used against you.

About Guardianship

Supported decision-making is a person-centered alternative to guardianship. In Colorado, the law separates a guardianship and a conservatorship.

According to the National Guardianship Association: “Guardianship is a legal process, utilized when a person can no longer make or communicate safe or sound decisions about his/her person and/or property or has become susceptible to fraud or undue influence. Because establishing a guardianship may remove considerable rights from an individual, it should only be considered after alternatives to guardianship have proven ineffective or are unavailable.”

The decision to seek guardianship is an intensely personal one that only the people involved can make, after carefully reviewing all of the facts and alternatives.

Guardianship can be a necessary support for some people under some circumstances; however, it can strip away most or all civil rights and has not been proven to make people safer.

Guardianship can take away the ultimate decision-making rights from both the person with disabilities and their family members. Most courts follow the wishes of the person petitioning for guardianship, but the judge presiding over the hearing makes the final decisions.

“Alternatives to guardianship, including supported decision-making, should always be identified and considered whenever possible prior to the commencement of guardianship proceedings.”

– National Guardianship Association

Full guardianships restrict or remove entirely the person’s right to make decisions and give the guardian responsibility for making decisions on the person’s behalf. Overly restrictive limited or full guardianships can limit the person’s independence, are difficult to change, can result in over-reliance on paid supports, and can be time-consuming and costly for families.

Guardianships and other forms of substitute decision-making tend to be overused because it can be more complicated and time-consuming to help a person who needs decision-making support to understand and make a decision for themselves, than it is to simply have someone else make the decision for the person.

About Guardianship (Continued)

Guardianship is determined through a court process. Guardians are appointed and overseen by a court. Guardians are responsible for protecting the person and a Conservator is responsible for protecting money and property of the protected person.

For a court to appoint a guardian, it must first determine that the person for whom a guardianship is sought, is incapacitated and unable to make decisions necessary to protect the person from harm.

Once a person is appointed a guardian, they are referred to as a “ward.” A court gives a guardian the authority to make decisions for the ward. This means that the ward may no longer be able to make decisions to:

- Choose their own home
- Consent to medical treatment
- Make end-of-life decisions
- Contract or file lawsuits

In Plain Words

Guardianship is an option for people who may not be able to make or communicate their own choices. A judge chooses a guardian to make all choices. This can take away your rights, so supported decision-making should always be thought about first.

In Colorado a guardian, except as otherwise limited by the court:

- Makes decisions regarding the ward’s support, care, education, health, and welfare
- Exercises their authority only as necessitated by the ward’s limitations and, to the extent possible, encourages the ward to participate in decisions, acts on the ward’s own behalf, and develops or regains the capacity to manage the ward’s personal affairs
- In making decisions, considers the expressed desires and personal values of the ward to the extent known to the guardian.
- At all times, acts in the ward’s best interest and exercise reasonable care, diligence, and prudence
- Is a “fiduciary,” or a person having a duty to act primarily for the benefit of another person in matters related to that which gives rise to the duty
- Should be the last resort, therefore a limited guardianship or alternatives to guardianship such as supported decision-making should always be considered before seeking a full, or unlimited, guardianship

In Your Words



“I think getting out of guardianship has changed me in many ways. Now I’m able to pay my own bills (with no assistance). I’m able to live in my apartment and as well cook my own meals. And also hold down a job. When I was under guardianship of the state they wouldn’t have let me do any of that. But when I got out of the guardianship and Trudi started helping me, she taught me to cook and manage my money. I now need minimum to no help/ assistance, but when I need help I can get it from Trudi and my friends.” – Caroline Glenn, a person with a disability

“Instead of guardianship of our mother, we chose Powers of Attorney in the areas of medical and financial. These were much easier to obtain and didn’t require going to court and having a judge tell her she would no longer make her own decisions.”
- Supporter of a person with a disability



“As parents, we strive to nurture, guide, and protect our children, especially those with intellectual or developmental disabilities. When considering their future, the supported decision-making concept can feel daunting. While research shows it fosters independence, confidence, and a better quality of life, embracing it can stir fears, including concerns about safety, societal judgment, and the unknown. . . Lilly has been using supported decision-making for over four years, adapting as her needs evolve. Initially, I was her primary supporter, and her older sister was her co-supporter. Over time, her support team expanded to include an Adult Advocate from The Arc, a host home provider, residential support staff, case manager, and employment specialist. We developed a ‘Memorandum of Understanding’ to outline roles, responsibilities, expectations, and a decision-making template to guide important decisions. This collaborative approach has allowed us to address challenges and prepare for the future, ensuring Lilly and her sister develop the skills to support each other when I’m no longer here.” - Parent of a person with a disability



Colorado Developmental Disabilities Council



The mission of the Colorado Developmental Disabilities Council is to advocate for systems change by promoting meaningful person-centered participation, self-determination and inclusion for all individuals with developmental disabilities.

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The Colorado Developmental Disabilities Council is supported by the Administration for Community Living (ACL), U.S. Department of Health and Human Services (HHS) Grant No. 2401COSDCCDD totaling \$1,178,610.00, 100% from federal funding. The contents are those of the author(s) and do not necessarily represent the official views of, nor an endorsement by, ACL/HHS, or the U.S. Government.