

**Commonwealth of Virginia:
Supported Decision-Making Agreement**

Frequently Asked Questions

1. What is Supported Decision- Making?

Supported decision-making is defined by the American Bar Association as a “decision-making model in which an individual makes decisions with the support of trusted individuals.” Everyone receives supports with making decisions, not just individuals with disabilities. You might consult with your primary care physician when you are ill or before taking a new prescription. When looking into purchasing a new car, you might talk to your mechanic or friends of yours that have the car you are interested in to obtain their opinions. When looking into places to move to, you might look up statistics online or talk to people who live in that area to get information about the cost of living and the pros and cons of living in certain neighborhoods. Many individuals with disabilities are able to live independent lives and make important decisions through the use of supported decision-making. Supported decision-making allows individuals with disabilities to maximize their self-determination by making the ultimate decision regarding their own lives, including supports and services, while receiving assistance of those they trust to ensure they receive all of the information needed to make an informed decision. It is important to practice supported decision-making starting at a young age, not just as an adult, in order for individuals to build their confidence with making decisions on their own.

2. What is the difference between a Supporter and Substitute Decision-Maker?

A Supporter is someone, or multiple people, selected by the Decision Maker (i.e. the person with a developmental disability) to help them with making decisions. The Supporter helps ensure that the Decision Maker understands the decision that needs to be made, their choices, and the potential short- and long-term implications of each choice. Supporters can help explain forms or processes in words that the Decision Maker understands, and they can even help the Decision Maker communicate to others, if the Decision Maker wants them to do so. The Supporter does not have any decision-making authority over the Decision Maker and is only there to assist. The Decision Maker retains all of their legal rights and makes all final decisions for themselves.

A Substitute Decision-Maker is someone, or multiple people, who makes decisions for another person, typically after the individual is found to be legally incompetent or lack capacity. Examples of a substitute decision-maker are a legal guardian, who is appointed by the court, or a DBHDS authorized representative, who is appointed by a specific agency or provider. Substitute Decision-Makers can have the authority to make decisions on behalf of, or for, the individual, as well consent to services/treatment, and sign forms for the individual. The details of their authority are stated in official forms, such as ones provided by the court or an authorized representative agreement form.

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Both a Supporter and a Substitute Decision-Maker should always keep in mind the individual's preferences, desires for their life, and values when a decision needs to be made.

3. What is a Supported Decision-Making Agreement?

Supported Decision-Making Agreements are the formal process of documenting who an individual wants to support them, in what areas of life, and how they want to be supported. Both the individual and the supporters consent to entering into this agreement.

- *Decision Maker*- Individuals with disabilities entering into a Supported Decision- Making Agreement.
- *Supporters*- Those selected by the Decision Maker to help understand and make choices.
- *Supported Decision-Making Facilitator*- The person selected by the Decision Maker to help oversee the agreement. This is optional and the person can be both a Supporter and the Supported Decision-Making Facilitator.

Supported Decision-Making Agreements can be updated and amended at any time. Supported Decision-Making Agreements are formally recognized in Virginia, as noted in [Virginia Code 37.2-314.3](#). A Supported Decision-Making Agreement is not a legal document a judge would order in court, but people should follow any choices the Decision Maker makes, as they have the right to make all final decisions.

4. What does a Supported Decision-Making Agreement NOT do?

Supported Decision-Making Agreements are not a backdoor to guardianship. They do not permit the Supporter to make decisions for the Decision Maker and are not a way to take away an adult child's rights when a parent disagrees with their decisions. Supported Decision-Making Agreements do not take the place of an Advanced Medical Directive or Power of Attorney should a medical or crisis situation arise. It is recommended that Decision Makers consider and complete these processes as part of a complete supported decision-making process and to minimize the possible issues of not having a representative should the Decision Maker become incapacitated.

5. Who can have a Supported Decision-Making Agreement?

[Any individual 18 and older with a developmental disability \(including intellectual disabilities\)](#). In [Virginia](#) all individuals are presumed to have legal competence unless a court has determined otherwise. A capacity evaluation is not a legal determination of competency and is not required to enter into a Supported Decision-Making Agreements.

6. How is a Supported Decision-Making Agreement created?

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Supported Decision-Making Agreements can be created by an individual (Decision Maker) and trusted Supporters. Open and thoughtful discussions occur prior to creating a Supported Decision-Making Agreement in order to assist Decision Makers in identifying the areas of life where they need assistance, who they want to support them, and how they want to receive support. Tools to help with this discovery process can be found attached to this document and in the resource links below. Virginia's Supported Decision-Making Agreement template is available for individuals to use, however it is not the only template available. All Supported Decision-Making Agreements should include these key elements, at a minimum:

- Who the Decision Maker wants as their Supporter(s)
- When the Decision Maker wants help
- How the Decision Maker wants to receive help
- Indication that the Decision Maker and Supporter(s) agree to the information documented

7. Is a formal Supported Decision-Making Agreement required?

No, Supported Decision-Making Agreements are not always required. People have the right to and option to ask for help when they want to. For example, you can bring anyone you want to your doctor's appointment, even without a Supported Decision-Making Agreement. You can request that specific people attend important meetings in your life and help you make decisions without a Supported Decision-Making Agreement. There are also other formal processes to identify who you want to help you make decisions, when needed, such as a Power of Attorney or an Advanced Medical Directive.

8. I received a copy of someone's Supported Decision-Making Agreement. What does this mean?

We all use supported decision-making in various aspects of our lives. A Supported Decision-Making Agreement is a formal way of documenting this. The Decision Maker provided you with a copy so that you are informed of who they trust for support and advice in different areas of life. You might interact with the designated people, called Supporters, as identified in the Supported Decision-Making Agreement; however the Decision Maker makes the ultimate decision. This means that even when a Supporter is tasked with helping communicate on behalf of the Decision Maker, they are not the one making the decision.

9. What are the rights, role, and responsibilities of a Decision Maker?

In Virginia all individuals are presumed to have legal competence unless a court has determined otherwise. Therefore, individuals entering into Supported Decision-Making Agreements, also known as Decision Makers, have:

- The right to make their own decisions.
- The right to self-determination and to take risks when making decisions about their lives (also known as dignity of risk).
- The right to select who they want as Supporters, what areas of life they receive support in, and how they receive support.

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- The right to amend or revoke their Supported Decision-Making Agreement at any time.

Decision Makers should give careful consideration to whom they select as Supporters and ensure those selected agree to be a Supporter. They should communicate with their Supporters on a regular basis to ensure that their Supporters are aware of what is going on in their life and their support needs. Decision Makers need to be open about their wants, needs, desires, and concerns so that Supporters can provide the best and most honest advice when considering each scenario.

10. What are the roles and responsibilities of a Supporter?

Supporters can be people that the Decision Maker is around all the time like family members, friends, and co-workers as well as those who are paid to support the Decision Maker, such as a doctor, waiver provider, or teacher. The life areas and the ways a Supporter assists a Decision Maker can vary from Supporter to Supporter. Supporters should:

- Be available to the Decision Maker, when needed, for decisions about the life areas they are assigned to in the agreement.
- Recognize they do not make decisions for the Decision Maker and are not legally responsible for the decisions a Decision Maker makes based on their advice.
- Provide the Decision Maker with honest and fair advice in the life areas they are selected for so that the Decision Maker is able to make the most educated and informed decision.
- Accept that Decision Makers have dignity of risk when making life decisions.
- Not offer advice or support if the Decision Maker hasn't asked for it.
- Not provide advice related to topics that could be a conflict of interest, i.e. benefits them as a Supporter, and/or they are not knowledgeable about.
- Provide advice that is honest and offered in a way that agrees with the Decision Maker's values, needs, and preferences.
- When requested by the Decision Maker, help them plan and arrange for supports and services that will help them live safely and successfully in the community without a legal guardian.
- Respect the confidentiality of the Decision Maker.

Protocol for Addressing Abuse and Exploitation: Supporters agree to not use their position to abuse, exploit, manipulate, neglect, or provide undue influence on the Decision Maker. Should you have concerns, discuss with the Decision Maker and contact Adult Protective Services, if needed. If abuse, exploitation, or neglect is suspected, contact Adult Protective Services and emergency services (911), as appropriate. The Virginia Adult Protective Services hotline is 888-832-3858 or find the number to your local Adult Protective Services at <https://www.dss.virginia.gov/localagency/index.cgi>. You can learn more about Adult Protective Services and mandated reporting at <https://www.vadars.org/aps/AdultProtServ.htm>.

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11. What are the roles and responsibilities of Supported Decision-Making Facilitator?

Having a Supported Decision-Making Facilitator is optional, however the person who serves in this role cannot also be a Supporter. The Supported Decision-Making Facilitator agrees to:

- Coordinate meetings with the Decision Maker and Supporters if and when needed.
- Provide help and advice to the Decision Maker, should they have issues or concerns with any of their Supporters.
- Make reasonable efforts to ensure that the Supporters are acting honestly, in good faith, and in accordance with the choices of the Decision Maker.
- Monitor for suspected abuse, exploitation, manipulation, neglect, or undue influence by Supporters.

Should the Supported Decision-Making Facilitator suspect abuse, exploitation, manipulation, neglect, or undue influence, they will follow the “Protocol for Addressing Abuse and Exploitation”, as outlined above.

12. Where can I go for more information on Supported Decision-Making and Supported Decision-Making Agreements?

The following organizations have additional information about Supported Decision-Making and Supported Decision-Making Agreements:

- *The Arc of Northern Virginia*- <https://thearcofnova.org/programs-services/sdm-resource-library/>
- *Charting the LifeCourse*- <http://www.lifecoursetools.com/lifecourse-library/exploring-the-life-domains/supported-decision-making/>
- *disAbility Law Center of Virginia*- <https://www.dlcva.org/supported-decision-making>
- *PEATC*- <https://peatc.org/services/transition-to-adulthood/>
- *Supported Decision Making*- <http://www.supporteddecisionmaking.org/>