

# Questions and Answers from *Decision Making Options: What You Need to Know as a Support Coordinator or Provider Trainings* April 2023

## Questions & Answers

Q1. Support coordinators (SCs) and providers can select their own authorized representatives (AR). It appears this would cause a conflict when making a decision for the individual. How should support coordinators navigate this?

A1. Each provider is responsible for appointing an authorized representative to assist the individual while receiving services offered by that provider. There could be cases where multiple providers working with the same individual appoint the same person to serve the individual as AR. There could also be cases where multiple providers appoint different people to serve the individual as ARs. In any case where a provider appoints an AR, the provider should only appoint one person, and that person serving as AR is only given the ability to make decisions about and consent to services offered by that specific provider. While an AR appointed by one provider might not agree with an AR appointed by a different provider, neither AR has the authority to make decisions about a service/provider for which they are not the appointed AR. If there are conflicts or concerns, Support Coordinators can utilize facilitation skills to mediate these conflicts and/or contact their [local Human Rights Advocate](#).

Q2. Who can be the witness for individuals who complete their own (free) Power of Attorney document?

A2. Per [§ 64.2-1603. Execution of power of attorney](#), either a notary public or another person who is not either the principal (individual creating the Power of Attorney) or the agent (person appointed on the Power of Attorney document) can serve as a witness.

Q3. If an individual has been deemed in need of an AR and has no one who can act as an AR, how do we handle signing of documents and linking to services, while waiting for Public Guardianship?

A3. Please follow the steps as outlined in the [Human Rights Regulations 12VAC35-115-146](#) and contact your [local Human Rights Advocate](#). If an individual has no one to act as an AR and has been placed on the waiting list for a Public Guardian, providers should document all actions taken in the meantime, to include determination of capacity, attempts to secure an AR, evidence of placement on the waiting list for a Public Guardian, and involvement of the individual, to the extent possible, in decision making.

Q4. How does an individual with disabilities change their guardian if the mother is the guardian (individual is now 21) but does not allow much freedom or choice?

A4. In order to remove or change a legal guardian, an individual would need to petition their local circuit court. The steps for doing so can be found [here](#).

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Q5. A fiduciary focuses on finances and does not offer guidance in other areas of decision making, correct?

A5. This is correct. Fiduciaries are only responsible for overseeing an individual's financial matters as outlined in the formal document appointing the fiduciary. More information on fiduciaries can be found [here](#).

Q6. Should a capacity evaluation be completed before moving forward with assignment of any substitute decision maker? In certain situations, the hospitals treating an individual who has a Power of Attorney (POAs) have questioned whether or not the person had capacity before appointing the person named as the agent on the POA.

A6. Yes, both DBHDS [Human Rights Regulations](#) and the [Health Care Decisions Act](#) state that all adults are presumed to have capacity, regardless of a diagnosis, and that proper steps should be taken to determine capacity, should there be concerns. It is up to the lawyer or other person assisting the individual with completing the Power of Attorney documents to determine if the individual has the capacity to sign at the time that the document was created. As long as the individual had capacity when the document was created and signed, then the [POA remains in effect](#).

Q7. Does the SDM signature line at bottom of Virginia Informed Choice form stand for Supported Decision-Maker?

A7. No, the "SDM signature" line at the bottom of the Virginia Informed Choice form stands for "substitute decision-maker" (i.e., the legal guardian or authorized representative).

Q8. Will SDM always mean "substitute decision maker"? Would a "Supporter" in a supported decision-making agreement ever sign if they are not an authorized decision maker?

A8. No, "SDM" in a signature field might not always mean "substitute decision maker." For example, someone serving as a Supporter in a supported decision-making agreement might sign a document to indicate that they were present at a meeting, but a Supporter would not sign on behalf of the individual/Decision Maker.

Q9. What do we do if an individual does not have a POA or Legal Guardian but needs one due to concerns about their ability to make decisions due to capacity?

A9. If there are concerns regarding an individual's capacity, please follow the [DBHDS Human Rights Regulations](#) and/or contact your [local Human Rights Advocate](#).

Q10. Does DBHDS provide a training for individuals and parents exploring different levels of decision-making supports through guardianship?

A10. DBHDS provides a variety of trainings for individuals and parents related to supported decision-making, but not solely related to guardianship. Recordings of these trainings, along

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with links to other resources with more information on different decision making options, can be found on the [DBHDS Supported Decision-Making webpage](#).

Q11. The Supported Decision-Making Agreement (SDMA) packet appears to be a 25-page document. Is this something that could be streamlined?

A11. The Virginia Supported Decision-Making Agreement template is 23 pages; however, individuals are not required to use this form for their own agreement. If you are creating your own SDMA, you should include the following information: 1. Who the Decision Maker wants as their Supporter(s), 2. When the Decision Maker wants help, 3. How the Decision Maker wants to receive help, and 4. Signatures from the Decision Maker and Supporter(s) indicating that they agree to the information documented.

Q12. Is there a spreadsheet that outlines the order of the different decision making options for the benefit of SC's?

A12. In general, whomever has the legal decision-making authority is the person who should be listened to when making decisions. For example, if an individual has legal competency, then they have the authority to make their own decisions, however if they have a legal guardian, then the legal guardian has the authority to make decisions on behalf of the individual. Additionally, per [Human Rights Regulations](#), 12VAC35-115-70(A) "Each individual has a right to participate meaningfully in decisions regarding all aspects of services affecting him..." This is regardless of whether they have a substitute decision maker. Slides 8, 23, 24, and 25 of this training provide more details about the continuum of decision-making options and their compatibility with other types of decision making.

Q13. Where can the paperwork to submit to assess the individual's capacity be found?

A13. Virginia does not require a specific evaluation or form for documenting a person's capacity at this time. The Virginia Department of Social Services provides trainings on capacity that providers can request access to through the [Virginia Learning Center](#).

Q14. Can an SC/case manager (CM) at a community services board (CSB) assign an AR without a capacity evaluation?

A14. No, a capacity evaluation is always needed before assigning an AR. Please see [Human Rights regulations](#) for more details.

Q15. What is the difference between a Supporter in a Supported Decision-Making Agreement and a natural support attending the meeting?

A15. Supporters are people the Decision Maker identifies as trusted and knowledgeable in the areas they want help in. A natural support is someone who is already present in an individual's life as a helper but is not paid. This could be a parent, spouse, another relative, or friend. The Supporter is viewed as a natural support and provides assistance to the Decision Maker as

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outlined in the SDMA, or as requested by the Decision Maker. While a Decision Maker can invite anyone they want to a meeting, every effort should be made by the CSB/provider to ensure that Supporters attend meetings on topics that are addressed in the SDMA, as they are assigned. Not including known Supporters in meetings could be a violation of Human Rights Regulation [12VAC35-115-70\(B\)\(2\) and \(3\)](#).

Q16. Can individuals “fire” their Supporter?

A16. Yes, Decision Makers can fire or remove their Supporters. Supporters can also notify the Decision Maker that they no longer feel they can support the Decision Maker and remove themselves from this role. The Virginia Supported Decision-Making Agreement template has a form where the Decision Maker can document this type of change.

Q17. Can an out-of-town legal guardian appoint a group home to have Power of Attorney for medical care or sign forms on the guardian’s behalf?

A17. Per [§ 64.2-2019](#), the legal guardian is responsible for making decisions and signing forms as outlined in the court order. If an individual created a Power of Attorney prior to the legal guardian being appointed (i.e., the individual created the Power of Attorney while having competency), then the Power of Attorney would still stand, even with the legal guardian.

Q18. It is my understanding that there were some issues with the legality of a CSB appointing an AR. Is this true?

A18. All CSBs/BHAs should have policies and procedures in place for determining capacity and appointing authorized representatives, if needed. [12VAC35-115-146](#) of the Human Rights Regulations, outlines the process for a CSB/BHA/DBHDS-licensed provider appointing an authorized representative.

Q19. What happens if an individual has an established authorized representative but the representative passes away or requests to be removed from this role?

A19. If the individual has a legal authorized representative (i.e., legal guardian) and the representative passes away, then another person would have to petition the court to become the legal guardian/legal authorized representative. If the AR no longer want to serve in this role, the legal guardian/legal authorized representative would need to petition the court to remove or modify the guardianship agreement. If the individual has a DBHDS authorized representative, (who is not a legal guardian) who has passed away or wants to be removed, then the entity (CSB/BHA/licensed provider) would contact their [local Human Rights Advocate](#) to discuss the appointment of a new authorized representative.

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Q20. If someone seeks public guardianship, are they placed on a waiting list at the CSB? If so, what is done for someone who doesn't have CSB access?

A20. Only individuals with intellectual and developmental disabilities can access the public guardianship waiting list through the CSB. All other adults who are deemed incapacitated, indigent, and in need of assistance for medical, financial, or daily living decisions, would access the public guardianship waiting list directly through the [Virginia Department for Aging and Rehabilitative Services \(DARS\)](#).

Q21. What do you do if an individual who is non-verbal and serving as his own guardian cannot give verbal consent to take a needed medication or describe side effects and the doctor refuses to accept his signature?

A21. An individual not using spoken words to communicate is not sufficient to justify questioning someone's capacity to consent. It is up to those supporting and working with the individual to determine how they communicate. [The Americans with Disabilities Act provides requirements for effective communication](#). If a doctor is concerned about the individual's capacity to consent to treatment, then they would need to follow the steps for determining capacity, as outlined in the [Health Care Decisions Act](#).

Q22. What happens if a Supporter has a conflict of interest? For example, an individual selects a sibling to help make housing decisions, but the sibling is also the individual's landlord. The sibling has a vested interest in keeping the individual/tenant in the home and paying rent.

A22. It is recommended that Supporters remove/do not agree to support a Decision Maker in matters that could be considered a conflict of interest. However, it is ultimately up to the Decision Maker to determine who they want support from, in what areas of life, and how they receive support. If you are working with someone and have these concerns, then you express your concerns to the Decision Maker in order to ensure that the Decision Maker is aware of the potential conflict of interest and their options for removing a Supporter.

Q23. Does supported decision-making decrease the risk of abuse and exploitation?

A23. Supported decision-making does not eliminate the risk of abuse and exploitation; however, studies show that supported decision-making increases self-determination, which is positively related to reducing abuse and exploitation in individuals with disabilities. Other substitute decision-making options, such as legal guardianships, do not increase an individual's self-determination and do not prevent an individual from being abused or exploited.

Q24. Are there any examples of what a meeting to create a Supported Decision-Making Agreement looks like?

A24. There are no recorded examples at this time, however there are examples of completed SDMAs and Discovery Tools on the [DBHDS website](#). If you are interested in creating an SDMA

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and would like assistance, please contact Sara Thompson, Supported Decision-Making Community Resource Consultant Lead, at [sara.thompson@dbhds.virginia.gov](mailto:sara.thompson@dbhds.virginia.gov).

Q25. Is there a template document for "Supported Decision-Making Agreement?" Are signatures required for this to be in effect?

A25. Yes. The Virginia Supported Decision-Making Agreement template can be found on the [DBHDS website](#). The Decision Maker and all Supporters need to sign the agreement.

Q26. What happens when an individual has an authorized representative and a Power of Attorney, but the provider still wants a guardian appointed, even though the family does not want to pursue guardianship.

A26. It is not up to a provider to determine if someone needs to go on the public guardianship waiting list. Additionally, if there are family or friends in the individual's life who could support the individual with decision-making tasks, then the individual may not need guardianship and [would not be eligible for a public guardians](#). If a provider has concerns about an individual's capacity, then they can complete a capacity evaluation and assign an authorized representative for their service. An authorized representative has the authority to consent to services and the release of information for that specific agency/provider. If there are additional concerns, please contact your [local Human Rights Advocate](#).

Q27. How can I be added to the listserv?

A27. To join the Provider Network Listserv, submit your information on this [page](#).

Q28. Is an advance directive needed for children/kids?

A28. No, people under the age of 18 are not eligible to create an advance directive, as their parents/legal guardians are responsible for making all medical, psychiatric, and end of life decisions.

Q29. In your napkin example, is the process for creating an SDMA similar to a signed Plan of Support and signed individualized service plan (ISP)?

A29. No, in Virginia there are required elements which have to be included in Plans of Supports and Individual Support Plans, and the individual, providers, and authorized representative/ legal guardian (if applicable) must sign these documents. An SDMA can be written in any format and is only signed by the Decision Maker and Supporters.

Q30. If someone has a backup agent listed on their Power of Attorney document, does the backup agent have to create a new Power of Attorney agreement or can they assume what is in place already?

A30. As long as the successor agent (backup agent) is officially documented within the Power of Attorney agreement then another agreement does not need to be written.

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Q31. For supported decision-making or any substitute decision maker, what type of documentation should providers keep on file?

A31. It is best practice for providers to have a copy of the formal document/agreement. For substitute decision-making, this could be a copy of the court order for legal guardianship or conservatorship, or the document appointing someone as the authorized representative for your agency (including a copy of the capacity evaluation). For supported decision-making, this could be a copy of the SDMA, the Power of Attorney, and/or a copy of the advance medical directive.

Q32. Several schools within Fairfax County really do push for guardianship rather than exploring other options. Can other schools and/or social workers receive this training?

A32. Yes. DBHDS is currently working with the Virginia Dept. of Education on how to disseminate additional information to the schools. If there are specific concerns, please feel free to send the Supported Decision-Making Community Resource Consultant Lead's contact information to the school/social worker- Sara Thompson, [sara.thompson@dbhds.virginia.gov](mailto:sara.thompson@dbhds.virginia.gov).

Q33. Is the disAbility Law Center of Virginia (dLCV) able to support an individual who has proof of fraud done to them by someone at their local Department of Social Services who was their acting representative payee? If not, who can help this person?

A33. The dLCV has information about [representative payee responsibilities and concerns online](#), however allegations of fraud, waste, and abuse concerning Social Security Administration programs should be reported to the Office of the Inspector General. This can be done using this [online form](#).

### Online Resources

[DARS Public Guardianship Program](#)

- [Public Guardianship for Individuals with ID/DD](#)

[DBHDS Office of Human Rights](#)

[DBHDS Supported Decision-Making](#)

[disAbility Law Center of Virginia](#)

[Parent Educational Advocacy Training Center \(PEATC\)](#)

[Partnership for People with Disabilities](#)

[Person Centered Thinking Training](#)

[Virginia WINGS booklet](#)



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**Virginia Regulations**

**Human Rights**

[12VAC35-115-70. Participation in decision making and consent.](#)

[12VAC35-115-145. Determination of capacity to give consent or authorization.](#)

[12VAC35-115-146. Authorized representatives.](#)

**Supported Decision-Making Agreements**

[§ 37.2-314.3. Powers and duties of the Department related to supported decision-making agreements; report.](#)

**Health Care Decisions Act**

[Article 8. Health Care Decisions Act.](#)

[§ 54.1-2983.2. Capacity; required determinations.](#)

**Guardianship**

[Part D. Guardianship of Incapacitated Persons.](#)

[§ 64.2-2019. Duties and powers of guardian.](#)

**Power of Attorney**

[Chapter 16. Uniform Power of Attorney Act](#)