

Understanding Decision-Making Support Options in Virginia

*A guide to common ways people
can get help with making
decisions that are documented
and legally recognized in
Virginia.*



Virginia Department of Behavioral Health
and Developmental Services

Table of Contents

| | |
|---|-------------------|
| Introduction and Definitions | p. 3 |
| Supported Decision-Making Agreements | p. 4 |
| Advance Directives | p. 5 |
| Powers of Attorney | p. 6 |
| Authorized Representatives | p. 7 |
| Conservators | p. 8 |
| Legal Guardians | p. 9 |
| What Options Can Be Combined | p. 10 - 12 |
| Additional Resources | p. 13 - 14 |

Supported Decision-Making Agreements (SDMAs)

WHAT IS IT?

A formal document that states:

- what types of decisions someone ones help with,
- who they want to get help from (Supporters), and
- how they like to be helped.

The person who has the SDMA is called a Decision Maker. The Decision Maker uses their Supporters to help ensure they have the information they need to make an informed decision or to help them communicate their choices to others.

WHO CAN HAVE ONE?

Anyone who is 18 years or older, has a developmental disability (this includes intellectual disabilities), and has the legal ability to make decisions for themselves, meaning a court has not deemed the person legally incompetent.

WHO MAKES THE DECISIONS?

The Decision Maker makes all decisions for themselves and keeps all of their legal rights.

HOW IS ONE CREATED?

SDMAs are free to create and anyone can help a Decision Maker create their own. You can also contact DBHDS's Supported Decision-Making Community Resource Consultant to ask for assistance.

SDMAs can be notarized, but it is not required in Virginia.

[More information can be found at dbhds.virginia.gov/supported-decision-making-supported-decision-making-agreements/](https://dbhds.virginia.gov/supported-decision-making-supported-decision-making-agreements/)

Advance Directives

WHAT IS IT?

A formal document that states what medical and/or psychiatric care someone wants in various situations, including end of life decisions, if a situation were to occur where that person could not make decisions on their own. This can also include information about organ donation.

A person can also appoint someone to make these decisions for them when they are not able to do so. This person is called an Agent and must agree to this role.

WHO CAN HAVE ONE?

Anyone who is 18 years or older and has capacity at the time it is created.

WHO MAKES THE DECISIONS?

The person creating the Advance Directive makes all decisions when they have capacity.

The medical professionals and the appointed Agent, if there is one, use the information in the Advance Directive to carry out decisions when the person no longer has capacity.

When needed, the Agent should be acting on the person's wishes.

HOW IS ONE CREATED?

Advance Directives can be created for free. Medical and healthcare professionals, as well as trained Advance Care Planning Facilitators can help with creating an Advance Directive.

In Virginia, Advance Directives do not have to be notarized, but do need to be signed by 2 witnesses.

More information can be found through Honoring Choices Virginia at <https://honoringchoices-va.org/>

Powers of Attorney (POAs)

WHAT IS IT?

A formal document that states what types of decisions an appointed person(s), called an Agent, can make when the person is no longer able to make decisions for themselves.

Depending on how the document is written, an Agent can sign documents, consent to services, and make decisions on behalf of a person while that person still has capacity, however the person with the POA can veto the decisions of the Agent as long as they have capacity.

WHO CAN HAVE ONE?

Anyone who is 18 years or older and has capacity at the time it is created.

WHO MAKES THE DECISIONS?

The person creating the Power of Attorney makes all decisions when they have capacity, as they keep all of their legal rights.

The appointed Agent makes decisions as outlined in the document. The Agent should be acting based on the person's wishes and preferences.

HOW IS ONE CREATED?

There are different types of Powers of Attorney and different ways to write the document.

Powers of Attorney need to be notarized in Virginia to be valid.

The cost for creating a Power of Attorney can vary. While there are do it yourself templates online, it can be helpful to work with a lawyer to make sure the document meets current Virginia laws and is specific to the person's wants and needs.

Authorized Representatives

(for DBHDS Licensed Providers)

WHAT IS IT?

A person designated by a DBHDS licensed provider (including a community services board or behavioral health authority) to consent to treatment, services, participation in human research, or agree to the release of information on behalf of another person receiving services by a DBHDS licensed provider when that person has been determined to lack the capacity to do so on their own.

The Authorized Representative is someone that the person receiving services and the provider agree to.

WHO CAN HAVE ONE?

Anyone who is 18 years or older and has been determined to lack the capacity to consent to treatment, services, participation in human research, or agree to the release of information for a specific DBHDS licensed provider following a capacity evaluation.

The provider is responsible for covering the cost of the capacity evaluation, however if the person receiving services (or their representative) disagrees with the findings, they can choose to find a different provider and pay for another evaluation.

WHO MAKES THE DECISIONS?

The Authorized Representative can make decisions regarding consent to treatment, services, participation in human research, or agree to the release of information for the entity that they are designated for.

This process does not remove any of the person's legal rights. The person receiving services can make decisions for all other matters, including other services for which they maintain capacity.

HOW IS ONE CREATED?

Each entity must determine on their own that there is a need for a capacity evaluation due to concerns about the person being able to consent to their services. Each entity is responsible for obtaining a capacity evaluation and designating an Authorized Representative, if needed.

Additional details for the process to follow and who to designate can be found in the Human Rights Regulations ([12VAC35-115-146 of the Administrative Code of Virginia](#)) or by [contacting your Regional Human Rights Advocate](#).

Conservators

WHAT IS IT?

A person, or multiple people, appointed by the court to handle another person's financial matters once the court has determined that person to be legally incapacitated.

Conservatorships can be limited (only making decisions about certain parts of a person's finances) or full (making all decisions regarding a person's finances and assets). They can also be temporary (for a period of time set by the court). All of the details are documented in the court order.

WHO CAN HAVE ONE?

Anyone who is 18 years or older and has been determined by the court to be legally incapacitated, meaning they are not legally able to make decisions. This also means that the person loses some, or all, of their legal rights.

WHO MAKES THE DECISIONS?

The Conservator makes all decisions related to the person's financial matters, unless it is a Limited Conservatorship where the person keeps some of their legal ability to make decisions about some of their finances.

The Code of Virginia (§ 64.2-2021. (A)) states that Conservators should act in the best interest of the person and consider the person's desires when making decisions.

HOW IS ONE CREATED?

People can work with a lawyer or petitioning the local circuit court on their own. The cost can vary based on court fees and attorney fees.

If a person needs a Conservator, but there is no one in their life to fulfill this role, staff at their local community services board can refer them for the DARS Public Guardianship waiting list, if they meet certain criteria.

More information on the DARS Public Guardianship program can be found at vda.virginia.gov/publicguardianship.htm

Legal Guardians

WHAT IS IT?

A person, or multiple people, appointed by the court to make decisions about another person and their property once the court has determined that person to be legally incapacitated.

Guardianships can be limited (only making decisions about certain parts of a person's life) or full (making all decisions regarding a person's life, except financial). They can also be temporary (for a period of time set by the court). All of the details are documented in the court order.

WHO CAN HAVE ONE?

Anyone who is 18 years or older and has been determined by the court to be legally incapacitated, meaning they are not legally able to make decisions. This also means that the person loses some, or all, of their legal rights.

WHO MAKES THE DECISIONS?

The Legal Guardian makes all decisions for the person (except financial decisions), unless it is a Limited Guardianship where the person keeps some of their legal ability to make decisions about some parts of their life.

The Code of Virginia (§ 64.2-2019. (E)) states that Legal Guardians should encourage the person to participate in the decision making process and consider the person's desires when making decisions.

HOW IS ONE CREATED?

People can work with a lawyer or petitioning the local circuit court on their own. The cost can vary based on court fees and attorney fees.

If a person needs a Guardian, but there is no one in their life to fulfill this role, staff at their local community services board can refer them for the DARS Public Guardianship waiting list, if they meet certain criteria.

More information on the DARS Public Guardianship program can be found at vda.virginia.gov/publicguardianship.htm

What Options Can Be Combined?

Different types of formal decision-making support can be combined, depending on the specific situation. Below are some possible examples.

SCENARIO 1: An adult who can legally make decisions for themselves.

ANY
COMBINATION
OF:



Supported Decision-Making Agreement*

Advance Directive

Power of Attorney

**Virginia currently only recognizes Supported Decision-Making Agreements for people with developmental disabilities, however anyone can use the concept of supported decision-making when getting help with making decisions.*

SCENARIO 2: An adult that has been determine by a DD Waiver provider and/or Community Services Board/Behavioral Health Authority through a capacity evaluation to not have the capacity to consent to that provider's treatment, services, participation in human research, or agree to the release of information, but has capacity in other parts of their life and can legally make decisions for themself.

ANY
COMBINATION
OF:



Authorized Representative (DBHDS)

Supported Decision-Making
Agreement*

Advance Directive**

Power of Attorney**

**Human Rights Regulations ([12VAC35-115-70\(4\)](#)) state that a person has the right to use supported decision-making during discussions and evaluations related to their capacity to consent.*

***If the Agent in a Power of Attorney is currently empowered to consent or authorize the disclosure under the terms of a Durable Power of Attorney or the Agent appointed under the person's Advance Directive is currently empowered to consent to or authorize the decision needing to be made, then the Agent would be the authorized person and an Authorized Representative (DBHDS) would not be needed. Review the Power of Attorney/ Advance Directive for details related to the Agent's authority.*

SCENARIO 3: An adult who has been determined by a court to not be able to make legal decisions for themselves due to being legally incompetent.

**ANY
COMBINATION
OF:**



Legal Guardian**

Conservator**

Advance Health Care Directive*

Power of Attorney*

**A person can have a Power of Attorney and/or an Advance Directive, as well as a Legal Guardian and/or a Conservator if the document (Power of Attorney, Advance Directive) was created when the person had capacity and before being deemed legally incompetent by the court. Review the court order for Guardianship and/or Conservatorship to determine if these documents were voided when the Guardianship/ Conservatorship were put in place.*

***If the Guardianship and/or Conservatorship are limited, then the decisions that the Guardian/ Conservator can make, might not relate to the decisions indicated in the Power of Attorney or Advance Directive. Review the court order for Guardianship and/or Conservatorship to determine what decisions the Guardian/Conservator have the authority to make and whether or not the Power of Attorney and/or Advance Directive remain in effect.*

Additional Resources

Below are links to resources with more information about the options listed in this guide. Not all resources listed are from DBHDS or other Virginia State Agencies.

General Information

- **disAbility Law Center of Virginia's Supported Decision-Making webpage**- Information on alternatives to guardianship in Virginia, including do-it-yourself templates. (website- [www.dlcva.org/supporte d-decision-making](http://www.dlcva.org/supporte-d-decision-making))
- **The Arc of Virginia's Decision-Making webpage**- Information and resources about different ways to get help with making decisions throughout a person's life. (website: www.thearcofva.org/decision-making-supports)
- **Virginia WINGS' Less Restrictive Options in Virginia: Guardianship and Conservatorship Are Not the Only Options document**- A resource guide with information on different decision-making support options in Virginia categorized based on different types of decisions. (website: bit.ly/4caXzX5)

Supported Decision-Making and Supported Decision-Making Agreements

- **The Arc of Northern Virginia's Supported Decision-Making webpage**- Information and videos about supported decision-making. (website: thearcofnova.org/sdm/)
- **Parent Educational Advocacy Training Center's (PEATC) Supported Decision-Making webpage**- Information on how to use supported decision-making in different parts of your life, such as for healthcare decisions, money decisions, and school decisions. (website: bit.ly/3OmLkwE)

Additional Resources

Advance Directives

- **Virginia State Bar's Healthcare Decisions Day**- Information on Advance Directives, including do-it-yourself templates. (website- bit.ly/45OqEUt)
- **ConnectVirginia's Advance Healthcare Directives Registry**- A free on-line registry where you can upload your Advance Directive and other documents related to how you like to get help with making medical decisions. This helps medical providers know your wishes during an emergency or if something happens and you are not able to communicate your decisions. (website: www.vhi.org/ConnectVirginia/adr.asp)

Powers of Attorney

- **Powers of Attorney in Virginia: A Brief Overview**- An article from the Virginia State Bar about Powers of Attorney in Virginia. (website- bit.ly/45KRddc)

Conservators and Legal Guardians

- **Virginia Courts' Guardianship and Conservatorship website**- Information, forms, and resources about guardianship and conservatorship in Virginia. (website: www.guardian.vacourts.gov/)
- **Virginia Guardianship Training**- An online training that is required for all Legal Guardians in Virginia, however anyone can take the training to learn more about what it means to be a Legal Guardian. (website- bit.ly/4ksbQAP)