



# FAQ: Supported Decision-Making

## What is Supported Decision-Making?

Supported Decision-Making gives older adults and people with disabilities the help they need to make choices about their own lives. The Person chooses whom they wish—a Supporter—to help them understand, make, and communicate their decisions. The Supporter can help gather information the person needs for a decision, assist the person to understand and evaluate the options, and help communicate the person’s decision to others. With Supported Decision-Making, the Supporter may give advice, but the Person makes the final decision.

## Why is Supported Decision-Making Needed in Wisconsin?

In Wisconsin, there is currently no option for older adults or people with disabilities who want to retain all or some of their own decision-making authority over their life decisions, but need support to do that.

With Supported Decision-Making, older adults and people with disabilities remain fully in charge of their decisions. The Person chooses trusted relatives, friends, and people with expertise in an area to help them gather information, understand options, and communicate decisions to others, but the Person always makes their own decisions. Supported Decision-Making gives the Supporter a defined and recognized role that currently does not exist in state law. Supported Decision-Making can be used for any decisions the Person feels they need additional support—such as housing, health care, financial affairs, or other areas the Person identifies.

All of Wisconsin’s other statutory options for people who need assistance with decisions—Powers of Attorney and guardianship—give another individual the authority to make some or all decisions for the Person.

Powers of Attorney are limited to certain kinds of decisions—for example health care or financial—and the Person assigns decision-making authority in these specific decision areas to another individual.

Limited and full guardianships restrict or remove entirely the Person’s right to make decisions and give a court-appointed Guardian—who may or may not be someone the person knows—responsibility and authority for making some or all decisions for the Person.

## Why make Supported Decision-Making a law?

Adding Supported Decision-Making as a legally recognized agreement benefits older adults and people with disabilities, their support networks, and the professionals with whom they interact.

For older adults and people with disabilities, including Supported Decision-Making in the statutes means they have a new option that retains their right to make their own decisions, allows them to choose who they want to help them and the types of decisions they want help with, and defines what assistance a Supporter can give (information gathering, access to records, helping the Person understand options, and communicating the Person's decisions to others).

For friends, neighbors, extended family members or others who the Person selects as trusted Supporters, codifying Supported Decision-Making in the statutes establishes a legal framework for Supporters to document their role in helping the Person and that professionals can rely on as a legal expression of the Person's wishes.

Likewise, statutory language is needed so that doctors, bankers, and other professionals know that the Person has given the Supporter consent to hear, receive, and discuss information, and that the Supported Decision-Making agreement satisfies statutory privacy or other requirements to release records to the Supporter (if applicable).

## How is Supported Decision-Making different than Guardianship?

With Supported Decision-Making, older adults and people with disabilities remain fully in charge of their decisions. Limited and full guardianships restrict or remove entirely the Person's right to make decisions in some or all areas of decision-making.

Supported Decision-Making agreements can provide the Person with the support they need or want without losing their right to make their own decisions. For many people, Supported Decision-Making agreements may be the only tool they need.

Supported Decision-Making is flexible and can be updated easily as the Person's ability and capacity to make decisions changes over time, through gaining of experience and skills or acquiring additional functional impairments. Supported Decision-Making agreements can include more or fewer Supporters and types of decisions with which the Person wants assistance.

In contrast, guardianships are extremely difficult to change. For example, if guardianship is chosen for an 18-year-old with a disability, it may never be revisited or revoked, even if the young adult matures and becomes more capable.

Supported Decision-Making can be used in combination with other legal arrangements (including Power of Attorney or limited guardianship). These options are not mutually exclusive, and can be used to complement each other. For example, a Supported Decision-Making agreement can ensure the Person's

independence in certain areas of life while designating other decisions to a Power of Attorney or Guardian.

## Are other states using Supported Decision-Making?

Texas and Delaware have already enacted supported decision-making legislation, with Tennessee poised to pass legislation this session.

Additional states exploring Supported Decision-Making legislation include Indiana, Maine, and North Carolina. Virginia recommended Supported Decision-Making legislation in response to a study required by the state legislature. Vermont has established a Task Force on Supported Decision-Making.

The [American Bar Association adopted a Resolution](#) August 14, 2017, encouraging the use of Supported Decision Making as an alternative to guardianship, and specifically urged states to revise their statutes to include supported decision-making as a legally recognized option.

## Does Supported Decision-Making save money?

There is no cost to Supported Decision-Making legislation, and there may be some cost savings if the option to use Supported Decision-Making is chosen instead of more restrictive measures, like guardianships, that require a court process and frequently formal legal advice.

Families often incur legal costs (ranging from \$700 - \$1500) when pursuing a guardianship and each petition for guardianship goes through the court system. In addition to scheduling county court's time for a hearing, once a guardianship is granted there are ongoing reporting requirements and the court continues to have oversight over the Guardian/Ward.

Guardianships can also result in over reliance on paid public supports. Guardians may choose more restrictive and expensive settings due to ease of administration. Assistance provided by Supporters makes it possible for older adults to remain living at home longer, avoiding the need to move prematurely into institutional (and more costly) settings and preserving private resources.

In Wisconsin, there is currently no option for older adults or people with disabilities who want to retain all or some of their own decision-making authority over their life decisions, but need support to do that.

## Does information remain confidential under Supported Decision-Making agreements?

The bill limits access to personal information to only information that is relevant to the decision with which a Supporter has been asked to assist, and establishes clear parameters on how records protected by confidentiality can be accessed by a Supporter with the permission of the Person.

The bill requires Supporters to ensure all personal information they access in the course of fulfilling a Supported Decision-Making agreement is kept privileged and confidential and is not subject to unauthorized access, use, or disclosure.

## Are people who use Supported Decision-Making at risk for financial or other exploitation?

With Supported Decision-Making the Person is always in control of their own decisions and their Supported Decision-Making agreement; they can choose to revoke a Supported Decision-Making agreement at any time. Supported Decision-Making agreements are automatically revoked if the Supporter has a substantiated allegation of neglect or abuse of the person, the Supporter has been found criminally liable for abuse or neglect, or there is a restraining order against the Supporter.

Anyone who suspects that a Supporter is abusing, neglecting, or financially exploiting an older adult or person with a disability can report their concerns to the elder or adult at risk agency, or appropriate law enforcement agency.