



Guardianship & Supported Decision Making

Tuesday Transition Talks at Twelve
Northern Lights Interagency Council
February 23, 2021

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Objectives

- Explore reasons why families are often encouraged to seek guardianship when their child with disabilities turns eighteen and how to address concerns
- Understand the benefits and potential downsides of guardianship
- Describe decision making options for those with impaired decisional capacity, including supported decision making



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Introduction: Transitioning to Adulthood & Current Practices



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Historically

Parents receive subtle and not-so subtle pressure to seek guardianship

- IDEA & Special Education Professionals
- Special Olympics
- Service Providers, Health Care Professionals
- Other Families
- Family worries about safety and vulnerability



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New federal research examines guardianships of people with intellectual, developmental disabilities, finds school-to-guardianship pipeline June 10, 2019

WASHINGTON, D.C. — ...new federal research examining guardianships ...finds data supporting the existence of a **“school-to-guardianship pipeline” that results in people with ID/DD being placed under guardianships from their earliest years of majority rather than exploring use of less restrictive decision-making supports...**



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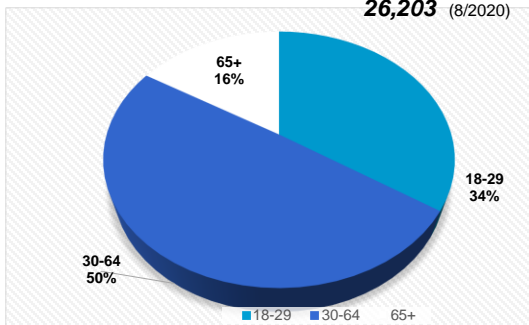
...school officials may be biasing parents toward pursuing guardianships over their adult children with disabilities because of the **manner in which they are conveying information – and without understanding the legal implications of guardianship**. Schools are the **number one referral source for guardianship** and a full 58 percent of people with ID/DD ages 18-22 receiving publicly funded services have guardians, most of whom will remain under guardianships for decades to come – many unnecessarily.



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MN Guardianship by the Numbers

Total # of Adults
under Guardianship:
26,203 (8/2020)



Changing Perspectives...

Recognizing that guardianship has historically been overused

Recognizing that the protections of guardianship also bring significant risks to the person

Recognizing that guardianship is often sought to solve problems that guardianship can't solve.



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An Emerging Approach

- Changing perspectives of guardianship and supporting people with disabilities
- Understanding benefits of self-determination
- Supported Decision Making: how we all make decisions



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Supported Decision Making

- *No court involvement*
- *Better chance of preserving relationship*
- *Less expensive*
- *Better outcomes for person*
- *Can accomplish a lot of what is accomplished in guardianship*
- *Required by law*



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Supported Decision Making

Assistance from one or more persons of an individual's choosing in understanding the nature and consequences of potential personal and financial decisions which enables the individual to make the decisions and, when consistent with the individual's wishes, in communicating a decision once made.

MN Statute 524.5-102, Subd. 16a



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Criteria for Legal Intervention: Guardianship

MN Stat. 524.5-102 Subd. 6: **Incapacitated Person:**

- impaired to extent lacks sufficient understanding or capacity to make personal decisions
- and
- is unable to meet personal needs for medical care, nutrition, clothing, shelter, safety even with use of appropriate technological *and supported decision making assistance and*

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Criteria for Legal Intervention: Guardianship

...and

- Identified needs cannot be met by less restrictive means, including but not limited to use of appropriate technological assistance, *supported decision making, community or residential services, or appointment of a health care agent.*

Court must make specific findings particular to the respondent why less restrictive alternatives do not work.

MN Stat. 524.5-310 (a)(2)

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Legal Intervention: Conservatorship

MN Stat. 524.5-409 Subd. 1(1)(2)(3)

- Person is unable to manage property & business affairs b/c of impairment in ability to receive and evaluate information or make decisions, even with use of appropriate technological assistance;
- Has property which will be wasted or dissipated unless management is provided
- or
- Money is needed for support, care, education, health, and welfare of the person or individuals entitled to the person's support
- and

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Legal Intervention: Conservatorship

...and:

- Identified needs cannot be met by less restrictive means, including but not limited to use of appropriate technological assistance, supported decision making, representative payee, trusts, banking or bill paying assistance, or appt. of AIF

Court must make specific findings particular to the respondent why less restrictive alternatives do not work.

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Limited Guardianships for Persons Under 30

- Court may limit duration of *any* guardianship
- If the respondent is under 30 (and older than 17) the guardianship must be limited, and no longer than 72 months
- Expires automatically
- If need for long term guardianship can be filed at 29



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Supported Decision Making: Paradigm Shift

- “A way people can make own decisions, stay in charge of their lives while receiving help they need to do so.”
- Person making decisions *with* support of others vs. others making decisions *for* the person: “...cutting through the jargon to understand what’s going on and what you need to do...”

~ Jonathan Martinis, Esq.

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Supported Decision Making: Definition

“a recognized alternative to guardianship where people with disabilities use trusted friends, family members, and professionals to help them understand the situations and choices they face, so they may make their own decisions without the 'need' for a guardian”

(Blanck & Martinis, 2015)



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Supported Decision Making:

“[J]ust a fancy way of describing how we all make choices. We all need help making decisions, every single day.

~ Jonathan Martinis, Esq.

(Blanck & Martinis, 2015)



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“[J]ust a fancy way of describing how we all make

“I don’t need a guardian. I just need a little help!”

~ Jenny Hatch

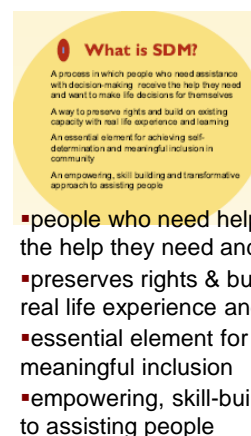
(Blanck & Martinis, 2015)



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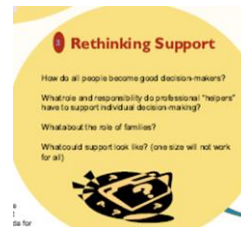
What is SDM?



What Happens Now?

- little to no emphasis on “teaching” decision making skills
- low expectations to be involved in decision-making in meaningful ways
- bias toward use of guardianship as primary support

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Rethinking Support

- how do all people become good decision makers?
- what role & responsibility to professionals have to support individual decision-making?
- what about the role of families?
- what could support look like? (one size does not fit all)

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Providing Support

- take direction from the person & their will & preferences
- customize actions to & with the person
- find new tools for your toolbox: communication; peer support; practice experience; life coaching
- Be flexible & try multiple ways



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What Can You Do?

- acknowledge decision-making as a basic human right & natural part of human experience
- expect that all children w/ disabilities will develop as decision makers and ensure involvement in decision making throughout lifespan



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What Can You Do?

- help people develop relationships & support systems necessary for accessing support when needed (family, friends, trusted professionals, service providers)
- learn to evaluate need for intervention by weighing risk of harm/failure with risk of loss of dignity, self-direction & quality of life
- educate people on available options



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*You might already be using
Supported Decision Making*

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SDM Example: Managing Money

- ~ no one talks about money with the person, & person does whatever wants: not SDM
- ~ someone manages all the person's money, gives no choices about how it's spent: not SDM
- ~ *anything else - opening joint bank account, making a budget together, having a fiduciary who discusses how to spend money: is SDM*

(National Resource Center on SDM Brainstorming Guide)

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SDM Example: Making Health Care Decisions

- person makes own decisions without talking to anyone else: not SDM
- someone else makes all medical decisions for person without discussing preferences/opinions: not SDM
- *anything else - attending medical appts. together, explains healthcare choices in plain language, shares access to medical records: is SDM*

(National Resource Center on SDM Brainstorming Guide)

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SDM Example: Deciding Where to Live

- person makes own decisions without consulting friends, family, professionals: not SDM
- someone else makes all living decisions for person without considering preferences / opinions: not SDM
- *anything else – visiting possible residences together, making pro/con lists; discussing direct service needs: is SDM*

(National Resource Center on SDM Brainstorming Guide)

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Not Everyone is a Candidate for SDM



But a lot of people are!

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Person May Be a Candidate for SDM

- Recognizes needs help or support
- Has trusted others to form team
- Cooperative and/or open to trusted others' ideas
- Ideally, able to also complete HCD/POA
- (Dx. irrelevant)



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Person Likely Not a Candidate for SDM

- Does not recognize need for help/refuses
- Resistiveness cannot be overcome
- Person sabotages others' efforts (and this can't be overcome)
- No trusted supporters
- Supporters not able to act per wishes/best interests (and can't learn how to)

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But What About....?

Isn't Guardianship required when person is "incapacitated"?

- Guardianship is NOT required by MN law:
 - to receive County Services
 - to sign IEP when person turns 18
- Residential and Care Facilities cannot mandate appointment of Guardian as condition of admission



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Guardianship and SDM Considerations

- Harm (and hassle) of guardianship
- Benefits of self-determination/dignity of risk
- Safety & vulnerability concerns
- Modifying expectations of safety (is gship as protective as you think it is?)
- Guardianship is still an option



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But What About....?

- Doctors won't talk to us without guardianship?
- My adult child may be taken advantage of?
- My adult child may make bad decisions?



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"Supported Decision Making can sound like a new, foreign idea. But most families, people with disabilities, and advocates are already using [SDM] even if they don't call it that. In fact, most people without disabilities are also already using [SDM]!"

[SDM] means helping a person understand, make, and communicate her own decisions. This will look different for everyone."

SDM Brainstorming Guide



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SDM TOOLS

- Brainstorming Guide
- How to Make an SDM Agreement
- “Stoplight” Tools

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“I don’t need a guardian. I just need a little help!”
~ Jenny Hatch



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SDM Brainstorming Guide

“This tool can help people brainstorm ways that they are already using supported decision-making, and think about new ways supported decision-making could help the person with a disability learn to make her own safe, informed choices.”

Quality Trust, 2016

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SDM Brainstorming Guide

How to use this tool:

- *Go through each area of the individual’s life. Brainstorm whether you work together to make choices in this area. You might not yet be using [SDM] in all of these fields. If you think of supports you could start using, write these down too.*

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SDM Brainstorming Guide

How we work together to help the person with a disability member manage his/her money: _____

Additional supports that we might want to start using (examples include: appointing a [rep] payee, opening a joint bank account, making and implementing a budget together, taking a money management course: _____

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SDM Brainstorming Guide

How we work together to help the person with a disability make healthcare choices: _____

Additional supports that we might want to start using (examples include: executing a HIPAA authorization to share medical records, attending medical appointments with a supporter, providing complicated health information in simplified plain language: _____

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SDM Brainstorming Guide

How we work together to help the person...make choices about where he/she lives: _____

Additional supports that we might want to start using (examples include: working with...staff to find housing options, discussing priorities in housing): _____

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SDM Brainstorming Guide

How we work together to help the person with a disability decide how to spend his/her time: _____

Additional supports that we might want to start using (examples include help finding and applying for jobs, help learning to take public transportation, setting up "trial runs" or internships in workplaces): _____

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How to Make a Supported Decision Making Agreement

How to Make a Supported Decision-Making Agreement



A Guide for People with Disabilities
and their Families

American Civil
Liberties Union

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Chapter 2 Thinking about Choices



Why do this activity?

This activity will help you think about how you make choices. You can talk about what kind of help you like and don't like. You can think about choices you have made and what you liked and didn't like when you were choosing.

This will help you think about how you want Supported Decision-Making to work.

Supported Decision-Making is different for every person! This activity will help you think about what is important to you.



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What to do:



Think about a choice you made. It could be a choice about:

- where you live
- what you will do in school
- where you work
- who you spend time with
- if you want to go to the doctor
- if you want to go on a date
- or anything else!

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Chapter 2
Thinking About Choices



Write down the choice that you want to think about and talk about: _____



Who made the choice? Check one box.

- ☐ I made the choice alone.
- ☐ I made the choice, but someone helped me. The people who helped me were: _____.
- ☐ Someone else made the choice for me. The person who made the choice for me is named: _____.

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Think about **how** did you make the choice? Did you:

- talk about it? Who did you talk with?
- write down your possible options?
- write down the good and bad things about each choice (pros and cons)?
- visit places (like a home, office, or school)?
- do research?
- talk to people who had made the same choice before?

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Chapter 2
Thinking About Choices



What I did to help me make my choice: _____



What did you like and dislike about making this choice?

- Did you understand your choice?
- Did you understand all of your options (different choices you could make)?
- Could you communicate your choice? Did anyone help you?
- Did you have enough time to make sure you were happy with your choice?
- Did you know what to do if you had questions?
- Did you feel like you could say "no" if you didn't want help?
- Are you happy now with the choice you made?
- Could you change your mind if you wanted to make another choice?

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Chapter 3

Thinking about Support

Supported Decision-Making lets you get help or **support** in making your own choices. Everyone gets support in making choices every day.

Some kinds of support are:

- **Plain-language information.** This means written information is provided in simple words.
- **Information in pictures or explained.** This means getting information in pictures or by someone talking to you.
- **Research to learn more about choices.**
- **Help in knowing what choices you have.**



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- **Visits and trials.** This means trying out different choices, to see how you feel and which one you like.



- **Reminders** about important dates and times



- **Help in thinking about pros and cons.** This means making lists of the good and bad parts of different choices.
- **Having a supporter come to meetings and appointments with you.**

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Thinking About Support



- **Talking to experts** who know a lot about my choice.



- **Extra time to think** about choices.

- **Reminding you of about your values.** Supporters can help you remember what is most important to you. They can remind you how these things might affect your choice.



- **Classes to learn** about healthy choices.

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- **Technological support.** This means using a phone or computer to help with choices.

- **Advice from supporters.** Even if you get advice, you are still the decider.



- **Help communicating a choice.** After you have made a choice, someone might make sure that everyone understands and respects your choice.

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IDENTIFYING ALTERNATIVES TO GUARDIANSHIP				
This tool was designed to assist with identifying a person's ability to make decisions and manage any area of life. It is intended to assist with exploring alternatives and non-restrictive options to primary or full guardianship.				
Name of individual: _____				
Relationship to individual (circle one): Self, Family, Friend, Guardian, Other: _____				
How long have you known the individual? _____				
<p>Step 1. Decide for each question if the answer is yes or no, if yes, and a checkbox in the YES/NO column - also select the person's goal (up to 4), and a mark in the person column.</p> <p>Step 2. When you have completed all the questions, explore alternatives to guardianship to meet the supported decision-making need for all persons indicated in the yellow column.</p> <p>Step 3. ONLY if NO alternative can be identified, then limited guardianship might be considered for those specific areas of need.</p>				
	YES	NO	YES/NO	PERSON
DAILY LIFE & EMPLOYMENT				
Can the person make and communicate choices in regard to employment?				
Can the person look for and find a job (up to employment agency, internet, etc.)?				
Is the person able to manage their money (i.e. meet financial commitments, such as regular bill)?				
Is the person able to manage the monetary benefits he or she is supposed to receive?				
Is the person able to identify and meet financial obligations?				
HEALTHY LIVING				
Does the person make decisions about where, when, & what to eat?				
Can the person follow a prescribed diet and/or take medications as directed?				
Does the person understand the need to maintain personal hygiene and dental care?				
Can the person make and communicate decisions regarding medical treatment, including understanding the consequences of not accepting treatment?				
Does the person understand health consequences associated with high risk behaviors (substance abuse, smoking, high risk sexual activities, etc.)?				
Can the person alert others and seek medical help for personal health problems?				
Is the person able to decide and direct what kinds of support they need or want and what who provides those supports?				

Missouri
Guardianship
Stoplight Tool

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IDENTIFYING ALTERNATIVES TO GUARDIANSHIP

1. SOCIAL & SPIRITUALITY

Can the person determine appropriate relationships with family, friends, co-workers, neighbors, etc. (Does not include co-dependent relationships)?

Is the person able to make appropriate decisions concerning marriage and intimate relationships?

Does the person understand current and potential support options in relation to social relationships?

2. SAFETY & SECURITY

Does the person avoid common environmental dangers (e.g., drugs, crime, objects that cause personal injuries, etc.)?

Is the person able to recognize when someone is taking advantage of them, taking them, or abusing them (physical, sexual, emotional and personal relationships)?

Does the person know who to contact if they are in danger, being exploited, or being treated unfairly (police, fire, etc.)?

3. COMMUNITY LIVING

Is the person able to live on their own without risk of serious harm or injury to themselves?

Does the person understand who to contact with managing a home that is safe (home maintenance, security, insurance, etc.)?

Is the person able to access community resources critical to functioning independently and safely in community settings (food, shelter, transportation, bank, grocery store, computer, internet, etc.)?

4. CITIZENSHIP & ADVOCACY

Is the person able to understand and communicate current and/or potential legal issues (i.e., contracts, powers of attorney or services (i.e., legal counsel, advance directives)?

Is the person able to identify someone they want to represent their interests and support them with decision making?

Does the person understand the ability to appeal?

Does the person understand consequences of making decisions that result in them committing a crime?

Is the person able to communicate and/or share information with parents, family members, and friends (i.e., phone, text, email)?

Rev. 10/2015

Missouri Guardianship Stoplight Tool

How to Make A
Supported Decision
Making Agreement: A
Guide for People with
Disabilities and Their
Families

When Do I Need Support?

	Can I do this alone?	Can I do this with support?	Do I need someone to decide for me?
Taking care of my personal hygiene (e.g., bathing, dressing, eating, grooming, etc.)			
Managing my own finances			
Managing my own health (e.g., taking medicine, seeing a doctor, etc.)			
Managing my own safety (e.g., driving, walking, etc.)			
Managing my own housing (e.g., renting, buying, etc.)			
Managing my own legal affairs (e.g., contracts, etc.)			
Managing my own social and family life			
Managing my own safety (e.g., driving, walking, etc.)			
Managing my own health (e.g., taking medicine, seeing a doctor, etc.)			
Managing my own finances (e.g., banking, etc.)			
Managing my own housing (e.g., renting, buying, etc.)			
Managing my own legal affairs (e.g., contracts, etc.)			
Managing my own social and family life			

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CHARTING the LifeCourse

Tool for Exploring Decision Making Supports

This tool was designed to assist individuals and supporters with exploring decision making support needs for each life domain.

Name of individual: _____

Name of person completing this form: _____

Relationship to individual (circle one): Self Family Friend Guardian Other _____

How long have you known the individual? _____

For each question below, mark the level of support you need when making and communicating decisions and choices in the Charting the LifeCourse life domains.

Legend:
 I can decide with no support
 I need support with my decision
 I need someone to decide for me

Life Domain	I can decide with no support	I need support with my decision	I need someone to decide for me
DAILY LIFE & EMPLOYMENT			
Can I decide if or when to go to work?			
Can I decide if and how to get along with, with, or without contact?			
Can I give what I do well to do?			
Can I decide if I want to learn something new and how to find go about that?			
Can I make big decisions about money (open bank account, make big purchases)?			
Can I make everyday purchases (food, personal items, recreation)?			
Can I take the bus to work, school, etc. (public transit)?			
Can I keep a budget or know how much money I have to spend?			
Can I make decisions about my health (e.g., taking medicine)?			
HEALTHY LIVING			
Can I choose when to go to the doctor or dentist?			
Can I understand what doctors, medical health issues, hospitals, specialists or other health care providers I need?			
Can I make health/medical choices for me day-to-day (will being) (e.g., taking medicine, working out, etc.)?			
Can I make medical choices in an emergency?			
Can I take medications or medicine as I take a prescribed dose?			
Can I know the reasons why I take my medication?			
Can I understand the consequences of making medical decisions?			
Can I ask others and use medical help for serious health problems?			
Can I take drugs (e.g., pain, control, or other)?			
Can I make choices about drugs or alcohol?			
Can I understand the consequences of making decisions with choosing high-risk behaviors (substance abuse, smoking, high-risk sexual activities, etc.)?			
Can I decide when, where, and what to eat?			
Can I understand the need for personal hygiene and dental care?			

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**GUARDIANSHIP
INFORMATION
LINE**

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1-844-333-1748



cesdm@voamn.org

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- Phone Consultation, Advice, I&R
- Assessments
- Facilitation of Supported Decision Making & Surrogate Decision Making Legal Tools
- Petitioning for G/C, Terminations, Modifications



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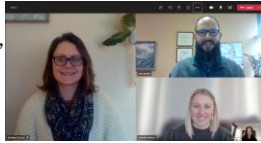
New! Virtual Guardianship Info Clinic

1ST WEDNESDAYS

GUARDIANSHIP INFORMATION CLINIC

Drop in during clinic hours to meet with our social workers or attorney for educational information and to get their questions answered in real time: *no appointments, no voice mail, no phone tag, just direct access to our social work and legal team members!*

Contact: cesdm@voamn.org



The work of CESDM is supported in part by a Live Well at Home grant from MN Department of Human Services (DHS). Grantees carrying out projects under government sponsorship are encouraged to freely express their findings and conclusions. Therefore, points of view or opinions do not necessarily represent official DHS policy.

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www.facebook.com/cesdmvoamn/

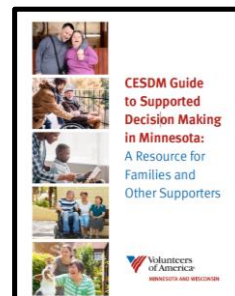


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RESOURCES

VOA MN www.voamnwi.org

- Legal Services: HCD forms and more
<https://www.voamnwi.org/estate-and-elder-law>
- CESDM & Protective Services: links to articles, G&C FAQ and more
www.voamnwi.org/protective-services



www.voamnwi.org/pdf_files/cesdm-guide-to-supported-decision-making



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RESOURCES

National Resource Center on SDM Brainstorming Guide (and SDMA model forms)

<http://www.supporteddecisionmaking.org/sites/default/files/sdm-brainstorming-guide.pdf>

National Resource Center on Supported Decision Making

www.supporteddecisionmaking.org



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RESOURCES

How to Make an SDMA

http://www.ucdmc.ucdavis.edu/mindinstitute/centers/cedd/pdf/How%20to%20make%20a%20SDM%20agreement%20for%20people%20with%20disabilities%20and%20their%20families_ACLU.pdf

Missouri Stoplight Tool

<http://moguardianship.com/Alternatives%20to%20Guardianship%20Tool%20Revised%2011-2015.pdf>

Charting the Lifecourse

<https://www.lifecoursetools.com/lifecourse-library/exploring-the-life-domains/supported-decision-making/>



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RESOURCES

State Courts-forms and manuals:

www.mncourts.gov/Help-Topics/Guardianship-and-Conservatorship.aspx

Bill of Rights for Wards & Protected Persons:

www.revisor.mn.gov/statutes/?id=524.5-120

National Resource Center on Supported Decision Making

www.supporteddecisionmaking.org



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RESOURCES

MN Courts: Online Training

<http://www.mncourts.gov/Help-Topics/Guardianship-and-Conservatorship.aspx>



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Online Training: *Finding the Right Fit*

<https://eji.courtllms.org/>



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RESOURCES

WINGS MN: www.wingsmn.org and:
www.mncourts.gov/Help-Topics/Guardianship-and-Conservatorship/WINGS.aspx

Supported Decision-Making: What, Why, & How by Morgan Whitlatch
http://supporteddecisionmaking.org/sites/default/files/event_files/MD-Arc-2016-Convention.pdf



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**SUPPORTED DECISION
MAKING AGREEMENT
EXAMPLES**

<http://www.supporteddecisionmaking.org/sites/default/files/sample-supported-decision-making-model-agreements.pdf>



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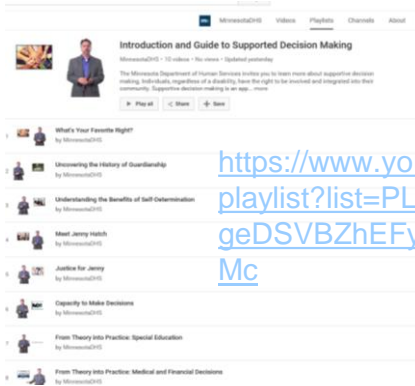
RESOURCES

- **American Association on Intellectual and Developmental Disabilities and The Arc Joint Position Statement**
http://aaidd.org/news-policy/policy/position-statements/autonomy-decision-making-supports-and-guardianship#.WH_huOkIy70
- **National Guardianship Association SDM Position Statement**
http://guardianship.org/documents/NGA_Policy_Statement_052016.pdf



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RESOURCES



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VIDEO RESOURCES

- **What Guardianship Means to Me**
<https://youtu.be/u6FTL7bYUAW>
- **Missouri Tool**
https://youtu.be/D_XnGrCi8L4
- **Michael, St. Thomas School of Law Clinic on WCCO**
<https://youtu.be/acIKso0vqIY>

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- Annual Summit
- Quarterly newsletters with local and national news
- Community and Professional Education & Training: Guardianship, SDM, etc.

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Join our efforts to promote alternatives to guardianship and expand networks of people addressing maltreatment of vulnerable adults:

Become a WINGS MN community member!

cesdm@voamn.org
www.wingsmn.org



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We're Listening!

We want to hear your guardianship or supported decision making story!

Please contact us to tell us more about your experience.

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