

# Supported Decision-Making

Alternative to Guardianship

# + Legal Disclaimer

- This presentation contains general information about the law and legal practice. The information is not legal advice and should not be treated as such.
- You must not rely on the information in this presentation as an alternative to legal advice from your lawyer or other professional services provider.

# + Supported Decision-Making: Fundamentals

- It can sound like a new or unconventional idea.
- In actuality, most families with people with disabilities are already using supported decision-making; they just don't call it that.
- In fact, we all use supported decision-making (SDM) every day. We ask trusted and self-selected friends and family for advice or input when making important decisions, such as:
  - Choosing a doctor;
  - Deciding where to live;
  - Looking for a job; and more.

# + Supported Decision-Making is an Alternative to Guardianship

- Under Rhode Island's limited guardianship law, a judge may decide that a person with disabilities is unable to make some or all of his or her own decisions, and appoint a guardian to make only the decisions the person is not able to make. RI law also requires that alternatives to guardianship be considered and ruled out before petitioning for guardianship.
- RI guardianship law uses four (4) areas of decision-making – health care, residence, finances, and relationships. Depending on capacity, the judge may appoint a guardian to make decisions in one or more areas or within the areas.
- Until recent years, people in the U.S. have usually used guardianship for people with disabilities. Other countries, like Canada, have been using SDM for decades.

# + Other Alternatives to Guardianship

- **Power of Attorney:** An adult can give someone else the power to make some or all decisions.
- **Durable Power of Attorney for Healthcare** – An adult can give someone else authority to make decisions about healthcare the adult is unable to make – the RI Department of Health provides this [form](#).
- **Rep Payee:** A representative payee (rep payee) receives and manages SSI or other Social Security funds on behalf of and belonging to the individual.
- **Special Needs Trust:** An account in which others can save money for benefit of the individual, and the individual will not lose Medicaid or SSI benefits. A trustee makes decisions for the expenditure of funds.

# + Other Helpful Tools for Support

- **ABLE Account (Achieving a Better Life Experience Act of 2014)**: A special bank account over which the individual has control. Families can save for many disability-related expenses tax-free. The individual can save money in an ABLE Account and still get Medicaid and SSI benefits.
- Rhode Island is a member of the National ABLE Alliance (partnership of states supporting ABLE accounts). For information on opening an ABLE account in RI, consult with an attorney or financial advisor.

# + Supported Decision-Making in Rhode Island

- On July 8, 2019, Governor Gina Raimondo signed into law the “Supported Decision-Making Act”.
- Under the new law, Supported Decision-Making is a legal alternative to guardianship by **any adult with a disability** – defined as “a physical or mental impairment that substantially limits one or more major life activities of a person”.
- Before exploring the mechanics of how to utilize supported decision-making, some key background on the principles and intent of the new law is important.

# + Stated Purposes of the Rhode Island SDM Law [42-66.13-2(a)]

- “Provide assistance in gathering and assessing information, making informed decisions, and communicating decisions for adults who would benefit from decision-making assistance.”
- “Give supporters legal status to be with the adult and participate in discussions with others when the adult is making decisions or attempting to obtain information.”
- “Enable supporters to assist in making and communicating decisions for the adult but not substitute as the decision maker for that adult.”
- “Establish the use of supported decision-making as an alternative to guardianship.”

# + Stated Principles of the Rhode Island SDM Law [42-66.13-2(b)]

- “All adults should be able to choose to live in the manner they wish and to accept or refuse support, assistance or protection.”
- “All adults should be able to be informed about and participate in the management of their affairs.”
- “The values, beliefs, wishes, cultural norms, and traditions that adults hold should be respected in supporting adults to manage their affairs.”

# + What does Supported Decision-Making look like for you?



# + Supported Decision-Making

- Self Determination
- Making Your Own Choices



# + Supported Decision-Making: Choosing a Supporter

- SDM means choosing someone you **trust** to help you make decisions. It can be one person or a group of people. Your **supporter(s)** can be someone like your parents, siblings, and/or good friends.
- Your supporter(s) **cannot** be:
  - A person who is your employer or employee, unless that person is an immediate family member;
  - A person who directly provides services to you, unless that person is an immediate family member;
  - A person against whom you have a protective order or is otherwise legally prohibited from contact with you.

# + About Supporters

- Your supporter **cannot** make decisions for you. Your supporter **can**:
  - Help you understand your choices and decisions;
  - Help you get and understand information to help you make decisions;
  - Help you communicate your decisions to other people.



# + Supporters: Examples of Ways They can Assist

- Helping to understand information, options, responsibilities, and consequences of actions, including support services;
- Helping to obtain information, including medical, psychological, education, other important records;
- Helping to make appointments for services;
- Helping to monitor, keep track of information, future or recommended services;
- Help to ascertain, communicate and ensure implementation of your wishes.

# + Summary - Getting Started:

- Choose **people you trust** to help you make decisions.
- Ask them to be your **supporter(s)**.
- Think about what **decisions** you need help making, and also what decisions you don't need help making.
- Create a written plan, your supported decision-making **agreement**. We recommend this sample supported decision-making agreement based upon the RI law.

# + Creating a Supported Decision-Making Agreement in RI

You will need:

- Your supporter(s)
- A blank copy of the supported decision-making agreement, or an agreement that contains the same elements. Using the statutory form should ensure that you are in compliance with the RI law.
- Two adult witnesses or a notary public
- A copy of a supported decision-making worksheet, if you have one.

# + SDM Agreement Section 1: Appointment of Supporter(s)

- In this step, you must state your name and that you make this agreement of your own free will. You are referred to as the “principal” in the agreement.
- You designate specific people as your supporter(s). You must list the name, address, phone number and email address of each designated supporter(s).



# + SDM Agreement Section 1

## Continued: Types of Decisions

- For each supporter, you will also spell out exactly which decisions they may or may not help you to make.
- The SDM Agreement looks like this:
  - **Y/N** Obtaining food, clothing, and shelter – explain in whatever detail is required.
  - **Y/N** Taking care of my healthcare and medical needs – explain in whatever detail is required.
  - **Y/N** Other – explain in detail every issue with which your Supporter(s) may or may not assist, in your determination.

# + SDM Agreement Section 2: Ways Supporters Can Help w/Decisions

- This section details how your supporter(s) may assist you. Supporters may:
  - Help you **access, collect, or obtain** information that is relevant to a decision, including medical, psychological, educational, or treatment records;
  - Help you **gather and complete** appropriate authorizations and releases;
  - Help you **understand** your options so you can make an **informed decision**; and
  - Help you **communicate** your decision to appropriate persons.

# + SDM Agreement Section 3: Effective Date

- The Supported Decision-Making Agreement goes into effect immediately and continues until a date you specify or until you, or your supporter(s), terminate it. Either you, or your supporters, can revoke the agreement at any time.
- Important Note: The Principal and all Supporters (whether 1 or 10) must sign with either 2 witnesses or before a notary. It may be helpful to do at one time, but not necessary.

# + SDM Agreement Section 4: Consent of Supporter

- Supporter signs that they accept the responsibility of being a supporter, pursuant to the RI SDM law. They also state their relationship to you.



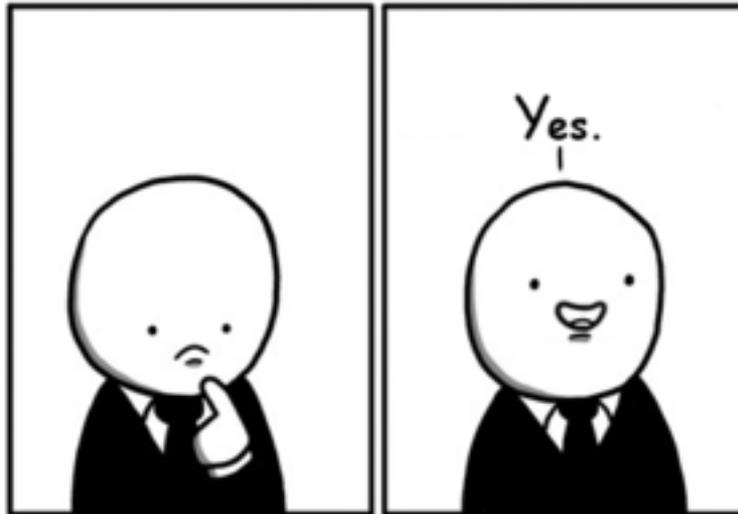
# + Information to be included for Supporters:

A SDM Agreement must contain a separate declaration signed by each supporter named in the agreement indicating all of the following:

- The supporter's **relationship** to the principal;
- The supporter's **willingness** to act as a supporter; and
- The supporter's **acknowledgement of the role** of a supporter under this chapter.

# + SDM Agreement Section 5: Consent of Principal

- In this section, you (as Principal) sign your acceptance of all terms of the agreement.



# + SDM Agreement Section 6: Witnesses or Notary

- The SDM Agreement must be witnessed and signed by **2 adult witnesses**, or it must be notarized by a **notary public**.

If utilizing 2 adult witnesses, they **may not be**:

- A supporter for the principal (person executing the SDM)
- An employee or agent of a supporter named in the SDM agreement
- Any person who does not understand the type of communication the principal uses, unless an individual who does understand the principal's means of communication is present to assist during execution of the SDM

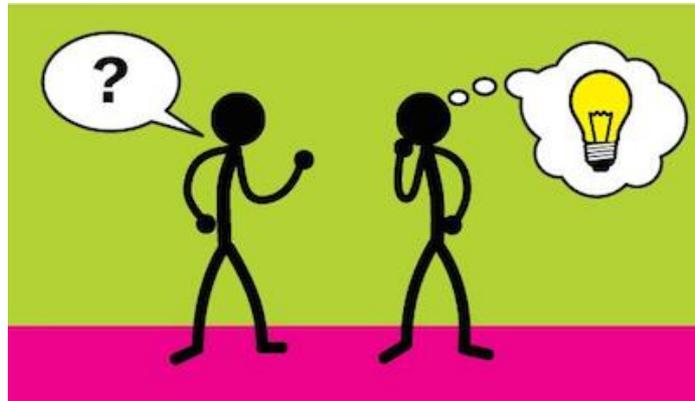
# + SDM Agreement Section 6 Cont.: Witnesses or Notary

- Finally, with all required information, and utilizing 2 witnesses or a notary for signatures:



+ Thank you!

## ■ Questions?



■ Please send us feedback on this presentation at [contact@drri.org](mailto:contact@drri.org).