The Arc Texas

For people with intellectual and developmental disabilities

Alternatives to Guardianship: Supported Decision-Making Agreements

Guardianship is a legal process to determine if a person is "incapacitated." The court decides if, due to a physical or mental condition, the individual is substantially unable to manage their financial affairs or personal affairs (to provide food, clothing, or shelter for themselves, and to care for their physical health). Under a guardianship, someone is appointed to make decisions on behalf of the incapacitated person, referred to as the "ward." There are two main types of guardianships:

1. **Guardian of the Person:** Responsible for the physical well-being of the ward, including making medical decisions and choosing residence
2. **Guardian of the Estate:** Responsible for the ward's assets

Under a full guardianship of the person, an individual **loses many rights**, including the right to drive, choose where to live and work, vote, get married, consent to medical treatment, and more.

The Arc of the United States and The Arc of Texas believe that **the majority of people with intellectual and developmental disabilities** can manage their own affairs with informal assistance and guidance and **do not need a guardian**. There are many alternatives to guardianship that give people with disabilities support to make decisions without taking away their rights. During the 84th Texas Legislative Session in 2015, legislators passed HB 39 and SB 1881, making Texas the first state to have laws recognizing **supported decision-making agreements** as an informal alternative to guardianship.

Supported decision making allows individuals to make their own decisions and stay in charge of their lives, while receiving any support they need to do so. **All people need and use support to make important life decisions.** Even if a person with a disability needs extra help to make significant life decisions, their right to make their own choices should not automatically be taken away. Using a supported decision-making agreement, a person with a disability chooses someone they trust to serve as their supporter.

Under a supported decision-making agreement, the supporter...

...CAN help a person with a disability:

- Understand the options, responsibilities, and consequences of their decisions.
- Obtain and understand information relevant to their decisions.
- Communicate their decisions to the appropriate people.

...CANNOT make a decision FOR the person with a disability.

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Supported decision-making empowers people with disabilities to use available support to make their own choices so they can live more independent and self-directed lives.

So, how does this work? People with disabilities who want to use supported decision-making should...

1. Choose people they trust to help them make decisions.
2. Ask these individuals to be their supporters.
3. Think about the type of decisions they need help making.
4. Complete a written plan called a supported decision-making agreement (found on next pages). Provide the agreement to people like doctors and service providers.

Then, when people with disabilities need to make a decision and want some extra support, they can call upon their supporters to help them through the process. Supported decision-making agreements are an excellent self-advocacy tool that people with disabilities can use to advocate for the right to make their own decisions, and to have the support they need to make those decisions. You and your loved one can use the process above to help plan for future decision making and avoid the need for a restrictive guardianship.

For more information, please contact our offices at **1-800-252-9729** or visit the websites below.

The Arc of Texas
http://www.thearcoftexas.org/guardianship

The Arc US
http://bit.ly/1TTeK20

National Resource Center for Supported Decision-Making
http://supporteddecisionmaking.org/

Texas Guardianship Reform and Supported Decision Making
www.grsdm.org

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Under Texas law, you can use the form below or any form that is not inconsistent with this one.

Supported Decision-Making Agreement

This agreement is governed by the Supported Decision-Making Act, Chapter 1357 of the Texas Estates Code. This supported decision-making agreement is to support and accommodate an individual with a disability to make life decisions, including decisions related to where and with whom the individual wants to live, the services, supports, and medical care the individual wants to receive, and where the individual wants to work, without impeding the self-determination of the individual with a disability. This agreement may be revoked by the individual with a disability or his or her supporter at any time. If either the individual with a disability or his or her supporter has any questions about the agreement, he or she should speak with a lawyer before signing this supported decision-making agreement.

Appointment of Supporter:

I (Name of Adult with Disability), _____ am entering into this agreement voluntarily.

I choose (Name of Supporter)_____ to be my Supporter.

Supporter's Address: _____

Phone Number: _____

E-mail Address: _____

My Supporter may help me with life decisions about:

Yes ___ No___ obtaining food, clothing and a place to live

Yes ___ No___ my physical health

Yes ___ No___ my mental health

Yes ___ No___ managing my money or property

Yes ___ No___ getting an education or other training

Yes ___ No___ choosing and maintaining my services and supports

Yes ___ No___ finding a job

Yes ___ No___ Other:_____

My Supporter does not make decisions for me. To help me make decisions, my Supporter may:

1. Help me get the information I need to make medical, psychological, financial, or educational decisions;
2. Help me understand my choices so I can make the best decision for me; or
3. Help me communicate my decision to the right people.

Yes____ No____ My Supporter may see my private health information under the Health Insurance Portability and Accountability Act of 1996. I will provide a signed release.

Yes____ No____ My Supporter may see my educational records under the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g). I will provide a signed release.

This agreement starts when signed and will continue until _____ (date) or until my Supporter or I end the agreement or the agreement ends by law.

Signed this _____ (day) of _____ (month), _____ (year)

_____ _____

(Signature of Adult with Disability) (Printed Name of Adult with Disability)

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CONSENT OF SUPPORTER

I (Name of Supporter), _____ consent to act as a Supporter under this agreement.

_____ _____
(Signature of Supporter) (Printed Name of Supporter)

This agreement must be signed in front of two witnesses or a Notary Public.

_____ _____
(Witness 1 Signature) (Printed Name of Witness 1)

_____ _____
(Witness 2 Signature) (Printed Name of Witness 2)

OR

Notary Public

State of _____

County of _____

This document was acknowledged before me on _____ (date)

By _____ and _____
(Name of Adult with a Disability) (Name of Supporter)

_____ _____
(Signature of Notary) (Printed Name of Notary)

(Seal, if any, of notary) My commission expires: _____

WARNING: PROTECTION FOR THE ADULT WITH A DISABILITY

If a person who receives a copy of this agreement or is aware of the existence of this agreement has cause to believe that the adult with a disability is being abused, neglected, or exploited by the supporter, the person shall report the alleged abuse, neglect, or exploitation to the Department of Family and Protective Services by calling the Abuse Hotline at 1-**800-252-5400** or online at **www.txabusehotline.org**.

DUTY OF CERTAIN PERSONS WITH RESPECT TO AGREEMENT

A person who receives the original or a copy of a supported decision-making agreement shall rely on the agreement. A person is not subject to criminal or civil liability and has not engaged in professional misconduct for an act or omission if the act or omission is done in good faith and in reliance on a supported decision-making agreement.