

SUPPORTED DECISION MAKING UPDATE

New Mexico Developmental
Disabilities Council
10.23.2024

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IMAGE DESCRIPTION: Man with gray hair, dressed in gray suit and burgundy shirt, walks with black service dog on sidewalk in large urban city. Yellow taxi cabs in background.



NEW MEXICO
Developmental
Disabilities
Council

NMDDC PROGRESS ON SUPPORTED DECISION MAKING (SDM)

FY22

- NMDDC received \$15,000 to conduct SDM Task Force.

FY23

- SDM Task Force Report completed in July 2022.
- SB 89 Supported Decision Making Act sponsored by Sen. Siah Hemphill in 2024 Regular Session passes SHPAC but is not scheduled for another hearing.

FY24

- NMDDC received \$75,000 to promote alternatives to guardianship and SDM.
- NMDDC launched the statewide My Life, My Decisions campaign.

FY25

- NMDDC received \$160,000 for FY25 & FY26 to continue alternatives to guardianship and supported decision making work.
- NMDDC secures official endorsement of the SDM Act by the Supreme Court's Working Interdisciplinary Network of Guardianship Stakeholders (WINGS).

Does a person REALLY need guardianship?

Guardianship is the legal process in which the court appoints a guardian for an individual that is unable to make decisions regarding:

- Healthcare/ Mental Healthcare
- Personal care
- Residential placement
- Finances and/or property
- Reporting abuse, neglect, exploitation, and/or fraud.

- "Guardian" means a person who is appointed by a court to assist with decisions regarding the care, custody or control of the person of a minor or incapacitated adult.
- "Conservator" means a person who is appointed by a court to manage the property or financial affairs or both of a minor or incapacitated adult.

2014 Handbook for Guardians and Conservators
NMSA 1978 45-5-101, 45-5-201(21) (2011).

Guardianship MUST be least restrictive . . .

Guardianship for an incapacitated person shall be used **ONLY** as is necessary to promote and to protect the well being of the person, shall be designed to encourage the development of maximum self reliance and independence of the person and shall be ordered to the extent necessitated by the person's actual functional mental and physical limitations.

An incapacitated person for whom a guardian has been appointed retains ALL legal and civil rights except those which have been expressly limited by court order or have been specifically granted to the guardian by the court.

NMSA 1978, § 45-5-301.1

What level of support do I need?

For each task, what can you do?

- I can do this alone.
- I can do this with support.
- I need someone else to do this for me.

For each decision, what can you do?

- No decision-making ability (e.g. comatose)
- Provide opinions or preferences
- Make decisions with assistance
- Make decisions independently

IMAGE DESCRIPTION: Hands holding up multicolored letters that spell "Support."



ALTERNATIVES TO GUARDIANSHIP

SUPPORTS INDIVIDUAL'S CHOICE

The **Uniform Health-Care Decisions Act** supports the individual's choice:

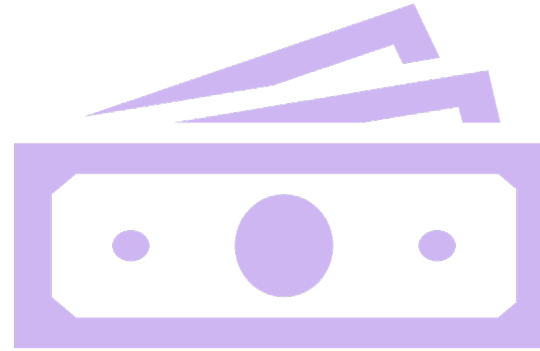
- "Individual Instruction"
- Surrogate for Health Care Decisions
- Power of Attorney for Health Care

- ❖ "Advance Health-Care Directive"

NMSA 24-7A-1 et seq.



MEDICAL



FINANCIAL

SUPPORTS OR SUBSTITUTES CHOICE

Preserves individual's choice:

- Joint account
- Trust
- ABL account
- Power of Attorney *NMSA 45-5B-301*

Substitutes individual's choice:

- Representative-payee / fiduciary
- Protective arrangement / single transaction *NMSA 45-5-405.1*

SUPPORTS INDIVIDUAL'S CHOICE

The **Mental Health Care Treatment Decisions Act** supports the individual's choice:

- "Individual Instruction"
- Power of Attorney for Mental Health Treatment

- ❖ "Advance Directive for Mental Health Treatment"
- ❖ Often known as "Psychiatric Advance Directive"

NMSA 24-7B-1 et seq.



MENTAL HEALTH



SPECIFIC DECISION AREAS, OR AS NEEDED

SUPPORTS INDIVIDUAL'S CHOICE

Power of Attorney (POA)

If not judged to be incapacitated, an individual can set up a POA for most other functions, with a few notable exceptions including:

- Health care decisions (covered with separate POAs)
- Voting

NMSA 45-5B-103

Supported Decision Making (SDM)

Preserves the individual's choice

Series of social interventions and accommodations to assist the individual in understanding and implementing decisions

The SDM Agreement or Plan is individualized to the person, their needs, and the available support system



Meet the NM SDM Ambassadors

- Vashad Frink – Lead Ambassador
- Jenna Montoya
- Sergio Resendiz
- Roel Adamson
- Crystal Garcia
- Morgan White



SDM Laws Enacted in 29 States & DC

Texas (2015) was the first state in the United States to pass a law related to SDM. This law made SDM agreements legally valid documents. Since then, 21 other states and DC have passed SDM-specific laws:

Delaware (2016)

Wisconsin (2017)

DC (2018)

Alaska (2018)

Tennessee (2018)

Indiana (2019)

North Dakota (2019)

Nevada (2019)

Rhode Island (2019)

Louisiana (2020)

Washington (2020)

New Hampshire (2021)

Illinois (2021)

Colorado (2021)

Virginia (2021)

New York (2021)

Oregon (2021) – requiring school districts to provide students and their families SDM training as an alternative to guardianship

California (2022)

Maryland (2022)

Alabama (2023)

Arizona (2023)

Florida (2024)

Connecticut (2024) – requiring Department of Education to provide SDM info to transition age students in special ed

In addition, six other states have revised their guardianship laws to recognize SDM as an alternative to guardianship:

Missouri (2018)

Maine (2019)

Minnesota (2020)

Montana (2021)

Oklahoma (2021)

North Carolina (2023)



Questions?

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