The Basic Skills of Supported Decision-Making for Employment

Jeffrey Miller, JD
Policy Specialist
Disability Rights Texas
The Drawbacks of Guardianship

• Can be expensive (attorney’s fees, court costs and bond).

• Requires a court order to establish and ongoing court oversight, including submitting annual accountings and reports on the condition of the ward.

• **Removes some or all of the individual’s decision-making rights and assigns decision-making to a third party.**

• Curtails the individual’s freedom of choice, self-determination and independence.

• May be difficult to terminate or modify.
Important Things to Remember

• Texas law presumes that adults have decision-making capacity – this applies to everyone, including people with disabilities.

• Decision-making is a learned skill – people with disabilities need opportunity, experience and support to learn to make well-informed decisions.

• There are legal ways to assist people with decision-making that do not restrict, limit, or remove their rights.
What is Supported Decision-Making?

“a recognized alternative to guardianship through which people with disabilities use 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).
What is Supported Decision-Making?

A process of supporting and accommodating an adult with a disability to enable the adult to make life decisions, including decisions related to where the adult wants to live, the services, supports, and medical care the adult wants to receive, whom the adult wants to live with, and where the adult wants to work, without impeding the self-determination of the adult.

*Tex. Est. Code § 1357.002(3)*
How Do You Make Decisions?

What if you’re not familiar with the issue?

• Taxes?
• Medical Care?
• Auto Repairs?

What Do You Do?
WHY SUPPORTED DECISION-MAKING?

• It’s about opportunities
• People with Intellectual Disabilities given more opportunities to make choices, are better able to make decisions.

(Tymhuk, Andron and Rahbar, 1998).
WHY SUPPORTED DECISION-MAKING?

It’s about Self-Determination:

• Life control

• People’s ability and opportunity to be “causal agents . . . actors in their lives instead of being acted upon”

(Wehmeyer, Palmer, Agran, Mithaug, & Martin, 2000, p. 440).
What is Self-Determination?

• Self-determination means making your own choices, learning to effectively solve problems, and taking control of and responsibility for one’s life.

• Practicing self-determination also means that one experiences the consequences of making choices.

(National Parent Center on Transition and Employment)
The Benefits of Self-Determination

People with greater self-determination are:

• Healthier
• More independent
• More well-adjusted
• Better able to recognize and resist abuse

(Khemka, Hickson and Reynolds, 2005; O’Connor and Vallerand, 1994; Wehmeyer and Schwartz, 1998).
Why is Self-Determination Important?

When denied self-determination, people:

• “[F]eel helpless, hopeless, and self-critical” (Deci, 1975).
• Experience “low self-esteem, passivity, and feelings of inadequacy and incompetency,” decreasing their ability to function (Winick, 1995).
Supported Decision-Making has the potential to increase the self-determination of people with disabilities, encouraging and empowering them to reap the benefits from increased life control, independence, employment, and community integration.
GUARDIANSHIP AND SELF-DETERMINATION

• Among people with similar abilities and limitations, those without guardians had more self-determination than those with guardians.

AND

• People with Intellectual and Developmental Disabilities who do NOT have a guardian are more likely to:
  
  - Have a paid job
  - Live independently
  - Have friends other than staff or family
  - Go on dates and socialize in the community
  - Practice the Religion of their choice
The Supported Decision-Making Agreement Act – We’re Number One!

Texas is the first state to authorize supported decision-making as a substitute for guardianship.

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 finding a job
Yes No Others

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)
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.txabushotline.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.
Who Can Enter into a Supported Decision-Making Agreement?

- Any individual over 18 who has a physical or mental impairment that substantially limits one or more major life activity. *Tex. Est. Code § 1357.002(1) & (2)*

- A level of capacity a person must have in order to enter a supported decision-making agreement is not defined, but a person must have sufficient capacity to agree to the supporter assisting him or her in making particular decisions.
Who Can Be the Supporter? Any Adult

• The law does not place any restrictions on who may become a supporter.
• The person who needs the support decides on someone they trust.
• Typically, the supporter may be a family member, relative or friend.

*Tex. Est. Code § 1357.002(5)*
What Can a Supporter Do?

A supporter may do any or all of the following:

1. Assist adult with a disability in understanding options, responsibilities and consequences of life decisions;

2. Assist adult with a disability in accessing, collecting and obtaining medical, psychological, financial, educational and treatment records;

3. Assist adult with a disability in understanding information in (2); and

4. Assist adult with a disability in communicating his or her decision to appropriate persons.

*Tex. Est. Code § 1357.051*
How is it Different from Power of Attorney?

• A supported decision-making agreement is distinct from a power of attorney because it does not allow a person to make the decisions for a person.

• In a supported decision-making agreement, the person with a disability retains the right to make decisions.
What does EMPLOYMENT have to do with guardianship and Supported Decision-Making?

Self-Determination – Control of a person’s OWN life

People with more Self-Determination are:

- More Independent
- More Integrated in their Communities
- Healthier
- Better Employed at Higher Wages!
The Individualized Plan for Employment (IPE)

• Lays out the individual’s employment goal – the job they want to get.

BUT, not just any job:
• VR services are designed to help an individual get a job that fits their skills and interests and choices.
Self-Determination and Employment Services

VR Services must Ensure that a person can exercise “Informed Choice.”

“informing each applicant and eligible individual ...about the availability of and opportunities to exercise informed choice, including the availability of support services for individuals with cognitive or other disabilities who require assistance in exercising informed choice throughout the VR process.”
Doesn’t That Sound Like ..... 

- Supported Decision-Making?
- Self-Determination?
Real Choice is the Key

It’s not choice if there is only one option!
Why Discovery?

• Job seekers with complex disabilities often face challenges when presented with standardized assessments and evaluations.

• The Discovery process is often a better option because it uses qualitative methods in natural settings and relies on existing information to paint an accurate picture of an individual and their employment-related skills.
The Discovery Process and Supported Decision-Making

Discovery is person-centered and begins with discovering and gather information about the individual’s:

- Interests, talents, preferred environments, and activities (Where/When are they at their best)?
- Current skills and levels of performance
- Effective strategies; ideal working conditions and environments; strategies/environments that should be avoided
The Discovery Process and Supported Decision-Making

Discovery is:

- An in-depth study of one individual.
- A foundation for customized employment planning
- A process that includes principals of:
  - person-centered planning;
  - self-determination; and
  - informed choice
Proper Preparation is Essential

- Know Basic information
  - SSI
  - Transportation
  - Assessments
  - Planning
  - Alternatives to guardianship

- Know the real options

- Remember – The individual with a disability get to decide
Supported Decision-Making principals can help:

- Identify jobs and job types matching an individual’s skills and interests.
- Identify barriers to preparing for, getting and keeping a job.
- Identifying needed services that can help an individual overcome barriers.
Jeff Miller
Disability Rights Texas
jmiller@drtx.org

THANK YOU