

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. ⁸⁰⁰¹

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.