

DISTRICT OF COLUMBIA SUPPORTED DECISION-MAKING AGREEMENT INFORMATION AND INSTRUCTIONS

Starting May 5, 2018, if you are a person with a disability, you can use the attached form to make Statutory Supported Decision-Making Agreements (also called “SDMA”). The District of Columbia law that lets you do this is the “Disability Services Reform Amendment Act of 2018,” D.C. Law 22-93.

The D.C. Department on Disability Services and Quality Trust for Individuals with Disabilities developed this Information and Instructions document to explain Supported Decision-Making Agreements and help you understand how to use the SDMA form. Project ACTION! and the Family Support Council reviewed for accessibility.

A. What is “Supported Decision-Making”?

Supported Decision-Making (also called “SDM”) is a way you can make your own decisions with help you need and want. To use SDM, you pick friends, family members, and other people you trust to be your “supporters.”

Supporters do not make decisions for you. They help you make or communicate your own decisions, such as where or with whom you want to live; what services, supports, or medical care you want to get; where you want to work; and how you want to save or spend your money.

If you want them to, supporters may explain what choices you have in ways you understand, ask other people questions for you, help you gather information, or let others know what you decide. SDM is one alternative to guardianship. It does not take away your legal rights or give your supporters the right to overrule your own decisions. To learn more about SDM, visit the National Resource Center for Supported Decision-Making at www.SupportedDecisionMaking.org.

B. What is a “Supported Decision-Making Agreement”?

A Supported Decision-Making Agreement is the way to put an SDM relationship in writing. That way other people and organizations – such as doctors, hospitals, banks, schools, service providers, and governmental agencies -- know who your supporters are, what decisions you want them to help you with, how you want them to help you, and for how long you want their help. Supported Decision-

Making Agreements do not allow a formal supporter to make decisions for you or act in your place. YOU are the decision-maker.

Under D.C. law, there are two ways to make a written Supported Decision-Making Agreement:

- (1) with a Statutory Supported Decision-Making Agreement (“SDMA”) form ([attached to this document](#)), which can be used to help you with many different kinds of life decisions; or
- (2) with a Supported Decision-Making form from D.C. Public Schools (DCPS) (available at: <https://dcps.dc.gov/node/1138951>) or the Office of State Superintendent of Education (OSSE) (available at: <https://osse.dc.gov/service/education-decision-making>), if you are an adult student in special education and want support with educational decisions.

C. Who Can Use The Statutory Supported Decision-Making Agreement (“SDMA”) Form?

If you are an adult (18 years old or older) and have a disability, you may be able to use the attached SDMA form.

However, if you have a guardian (a person who a court has named to make some or all decisions for you), you cannot use this form for the decisions that the court has said you cannot make yourself. For example, if you have a limited medical guardian, you cannot use this form to name supporters to help you with medical decisions without court approval. However, if you have a limited medical guardian, you may be able to use this form to name supporters to help you with financial and other non-medical decisions.

Using an SDMA does not stop you from also using other decision-making tools, such as a Power of Attorney (a legal document that identifies someone you trust to make decisions for you in certain situations).

Using this SDMA form is a choice. Nobody can make you sign this form. You should not feel pressured or forced to use it. It is your right not to sign this form if you don't want to.

D. Who Can and Who Cannot Be Your Formal Supporter under an SDMA?

When you use SDM, you should pick supporters who you know and trust, and who are good at helping you get the information you need to think through choices and make your own decisions.

A person who knows you well, listens to you, and wants YOU to make YOUR OWN decisions – and will not try to make those decisions for you – would be a good choice. On the other hand, a person who has hurt or taken advantage of you in the past, or who might do that in the future, would not be a good choice.

You may have several people – such as family members, friends, staff, professionals, and other people you trust – who help you use SDM in your life, without using an official SDMA. However, if you want to use the official statutory SDMA form to make and record your SDM relationship, you must know the rules about who cannot be your “formal supporter” under the SDMA:

(1) Your formal supporter CANNOT be:

- (a) A person who provides physical, mental, or behavioral health care or disability services to you, or the owner or operator of the entity providing health care or disability services to you; or
- (b) A person who works for a governmental agency that is financially responsible for paying for your care. (Depending on your services or supports, this could be the Department on Disabilities Services, the Department of Health Care Finance, the Department of Behavioral Health, D.C. Office on Aging, or other government agencies.)
UNLESS that person is your relative.

(2) And, even if someone is your relative, your formal supporter CANNOT be:

- (a) A person found by a government agency to have abused, neglected, or exploited you or harmed a child, older adult, or a person with a disability; or
- (b) A person who, within the last 7 years, has been convicted of certain crimes, including sexual offenses or aggravated assault against a child, older adult, or person with a disability; fraud, theft of \$1,000 or more, forgery, or extortion.

UNLESS you are making a Supported Decision-Making Agreement for educational decisions only.

The restrictions on who can be your formal supporter are listed in the law and in the SDMA form. Your formal supporter must sign the form to say none of the restrictions apply to them. If a person cannot honestly state that none of the restrictions apply to them, they cannot be your formal supporter under the law.

E. Once You Want to Make an SDMA and Know You Can, What Is Next?

Before you fill out this form, talk to the person you trust to see if they will agree to be your formal supporter. It is a serious responsibility to be a formal supporter, and you want to make sure they understand the rules by reviewing these instructions and the SDMA form with them.

Once the person you trust has agreed to be your supporter, you should think about the kinds of decisions you want the Supported Decision-Making Agreement to cover. If you only want support with special education decisions, you are not required to complete the SDMA form. Instead you may choose to complete the DCPS or OSSE SDM Forms (see Question B.2 above), which are easier to fill out than the SDMA form and do not have the same background requirements for your formal supporter (see Question D.2 above).

If you decide you want to complete an SDMA form, you are not required to have an attorney help you do so. You can use these instructions. In summary, the SDMA form has four parts.

- In **Part 1**, you identify your formal supporter, with their name, address, phone number, and email address (if any). You then pick which kinds of choices you want your supporter's help with, by circling Y (for "Yes") or N (for "No") for each the options listed. You may also list other duties for your supporter in the space provided. Then you fill in whether you want your supporter to help you get information about the choices you are making, be present with you when you make decisions, help you understand your options, and/or help you communicate your decisions to others.
- In **Part 2**, you identify whether or not you have signed release forms to make sure that your supporter can access private information about you.
 - If the SDMA covers health care decisions, you should sign a Health Insurance Portability and Accountability Act ("HIPAA") release of information form (example available at: <https://dbh.dc.gov/page/dbh-hipaa-privacy-forms-1-and-3-english-version>), which allows doctors and

other health care providers to share private medical information about you with your supporter, and then attach the signed HIPAA form to the SDMA.

- If the SDMA covers educational decisions, you should sign a Family Educational Rights and Privacy Act (“FERPA”) release of information form (example available at: <https://osse.dc.gov/publication/accessing-student-education-records>), which allows schools to share private educational information about you with your supporter, and then attach that signed FERPA form to the SDMA.

When you fill out and sign release-of-information forms, be specific about who can share private information about you, what kind of information they can share, and who can get the information.

- In **Part 3**, you list when the SDMA is “effective,” which means the dates the SDMA starts and ends. The SDMA usually starts the date that you sign it, unless you say differently within the agreement. You can also pick a date that the SDMA will end or just state that it ends when you or your supporter cancels it.
- In **Part 4**, your supporter and you sign the SDMA form in front of 2 adult witnesses (people other than you and the supporter) or a notary public. When your supporter signs, they are saying “yes” to being your formal supporter and are promising that they meet the background requirements discussed in Question D above. If you do not have 2 adult witnesses to sign the form with you and your supporter, you must have a notary public sign and put their notary seal on the document.

You may have more than one formal supporter in your life by signing more than one SDMA – one SDMA for each supporter.

You should keep the original SDMA in a safe place and give a copy of it to your formal supporter. You should share copies of the SDMA with other people and organizations that need to know about it. For example, if your supporter helps you make your own medical decisions, you should give a copy of the agreement to your doctors, nearby hospitals, and other health care providers to let them know that you have an SDMA with a named supporter who helps you with medical decisions. If you have an attorney or advocate, you might want them to have a copy, too. You do not need to submit your SDMA to a court for approval.

F. How Do You Change or Cancel an SDMA?

You or your formal supporter may cancel your SDMA at any time. It is a good idea to put your cancellation in writing, so that you and other people have proof that the SDMA really is cancelled. You or your formal supporter would share the cancellation with each other and with anybody else who knew about the SDMA or had a copy of the SDMA. That way, other people and organizations will know to stop following the SDMA and sharing private information about you with people who are no longer your supporters.

You may change an SDMA by cancelling it and then making a new one that lets others know that your wishes have changed. You may also sign new release-of-information forms to let other supporters get information about you to help you make your own decisions.

G. What if You are Having Problems Using an SDMA?

The law says other people - such as those at medical offices, hospitals, banks, and other businesses - and District agencies who receives an SDMA must usually respect it. However, there are some exceptions to this rule. For example, if people have a good reason to believe that you are being abused, neglected, or exploited, they may not honor your SDMA, and they may be required to report the situation to the police or Adult Protective Services.

The law creating the SDMA is new, and so you may want help in making or cancelling an SDMA. You also may need help to make sure other people know about the new law and respect your SDMA. If you want to ask for this kind of advocacy, you can contact:

- Quality Trust for Individuals with Disabilities at jhjp@dcqualitytrust.org or (202) 448-1448.
- Disability Rights D.C. at University Legal Services at (202) 547-0198.

SUPPORTED DECISION-MAKING AGREEMENT

Pursuant to D.C. Official Code §§ 7-2131 to 7-2134

NOTE: According to D.C. Official Code § 7-2133, a person or a District agency who receives a supported decision-making agreement shall rely on the agreement, unless the person or District agency has substantial cause to believe that the supported person is an adult in need of protective services. Neither a person nor a District agency shall be subject to criminal or civil liability, nor shall a person be considered to have engaged in professional misconduct, for an act or omission done in good faith and in reasonable reliance on a supported decision-making agreement.

PART 1: Appointment of Supporter

I, _____ (printed name of supported person), make this agreement of my own free will.

I agree to designate the following person as my supporter:

Name:

Address:

Phone Number: (_____) _____ Email: _____

My supporter may help me with making everyday life decisions relating to the following (circle Y for Yes and N for No):

Y / N Applying for and maintaining supports and services including District government assistance

Y / N Obtaining food, clothing, and shelter

Y / N Taking care of my physical health

Y / N Taking care of my mental/behavioral health

Y / N Managing my financial affairs

Y / N Managing real property transactions

Any other duties as listed below:

NOTHING IN THIS DOCUMENT GIVES MY SUPPORTER PERMISSION TO MAKE DECISIONS FOR ME.

Nothing in this document prevents my supporter from also serving as a power of attorney or as a healthcare decision-maker.

To help me with decisions, my supporter may (circle Y for Yes and N for No):

Y / N Help me obtain information that is relevant to a decision, including medical, psychological, financial, educational, or treatment records;

Y / N When requested by me, be present to help me make my own decisions;

Y / N Help me understand my options so that I can make an informed decision;
and

Y / N Help me communicate my decision to appropriate persons.

PART 2: Releases

Y / N A release allowing my supporter to see and obtain protected health information under the Health Insurance Portability and Accountability Act of 1996 is attached.

Y / N A release allowing my supporter to see and obtain educational records under the Family Educational Rights and Privacy Act of 1974 is attached.

PART 3: Effective Date of Supported Decision-Making Agreement

This Supported Decision-Making agreement is effective immediately and will continue until _____ (insert date) or until the agreement is terminated by my supporter or me or by operation of law.

PART 4: Signatures

Signed this _____ day of _____ (month), 20__ (year)

Consent and Attestation of Supporter

I, _____ (name of supporter),
consent to act as a supporter under this agreement and affirm that:

1. I have not been found to have abused, neglected, or exploited
_____ (printed name of supported person) by a government agency;

2. I have not been found to have inflicted harm upon a child, elderly individual, or person with a disability by an investigation of a government agency;
3. In the last 7 years, I have not been convicted of any sexual offense where the victim was a child, elderly individual, or person with a disability;
4. In the last 7 years, I have not been convicted of aggravated assault where the victim was a child, elderly individual, or person with a disability; and
5. In the last 7 years, I have not been convicted of fraud, theft in the first degree, forgery or extortion.

Signature of

Supporter _____

Printed Name of

Supporter _____

Signature of Supported Person

I, _____ (name of supported person), consent to have

_____ (name of supporter) act as my supporter under this Agreement.

Signature of

Person _____

Printed Name of

Person _____

Signature of Two Witnesses

Signature of First Witness

Printed Name of First Witness

Signature of Second Witness

Printed Name of Second Witness

NOTARY PUBLIC

(Not required if signed by 2 witnesses)

This document was acknowledged before me on this ____ day of

_____ (month and year) by

_____ (name of person supported)

and _____ (name of supporter).

Signature of Notary Public and notary seal, if any

Printed Name of Notary Public

My commission expires: -

WARNING: PROTECTION FOR PERSON SUPPORTED

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 NAMED AS A SUPPORTED PERSON IS BEING ABUSED, NEGLECTED, OR EXPLOITED BY THE SUPPORTER, THE PERSON MAY REPORT THE ALLEGED ABUSE, NEGLECT, OR EXPLOITATION TO THE CITYWIDE CALL CENTER AT 311, METROPOLITAN POLICE DEPARTMENT AT 911, ADULT PROTECTIVE SERVICES AT (202) 541-3950.