

Randy Asplund

2101 S. Circle Dr., Ann Arbor, MI. 48103

(734) 663-0954

Randy@RandyAsplund.com

COVER

Supported Decision Making Proposal

for Consideration

As A Federal Legislative Solution To Greatly Reduce Or Eliminate

Professional Guardianship/Conservatorship Exploitation

And Abuse

By Corrupt State Probate Court Enablement Of Professional Fiduciary Fraud And

Other Abuses under Color Of Law

Randy Asplund
2101 S. Circle Dr., Ann Arbor, MI 48103
734-663-0954
Randy@RandyAsplund.com

3/18/2021

BOBBIE ASPLUND SUPPORTIVE DECISION MAKING LAW, -A HEALTH CARE LEGISLATIVE PROPOSAL-

- 1) Declarations p.2
- 2) Definition of terms p.4
- 3) PROPOSED SUPPORTIVE DECISION MAKING LAW CONCEPT p.5
 - 3(a) Checklist Options for Court Form: Suggested list of powers to be shared or delegated to a Suggested Decision Maker Assistant p.6

DECLARATIONS:

*The US Constitution guarantees the rights to Life, Liberty, Property, Due Process and Equal Treatment under the Law.

*Constitutional rights are often stripped entirely from Vulnerable Persons who are deemed by a court to require certain alleged “protections.” Reasons for these deprivations under State Law include decline to some degree of mental capacity or competency, age, or physical disability.

*The Supremacy clause of the US Constitution means the US Constitution supersedes State Laws not delegated to the States. Therefore, when State Laws allow a judge (who is not a qualified determiner of mental or physical condition and ability) to *effectively* remove all rights from a Vulnerable Person who is not fully incompetent or mentally incapacitated, the laws are inherently unconstitutional, and the court is violating the rights of the individual.

*The nature of removing rights and transferring them to a third party specifically makes it impossible

or nearly impossible for a Vulnerable Person to effectively challenge a wrongful action. The restrictions on communications, access to representation which is not appointed by a potentially corrupt judge, the Vulnerable Person's disability level (executive function), the loss of control of one's own money, and in many cases court action exceeds the life of the victim, all unfairly restrict and obstruct the Vulnerable Person from justice and leave them vulnerable to exploitation. For these reasons, Challenges of Constitutionality are rare and have not overturned State Laws, and many cases are never brought to court.

*By the US Constitution, the right to Self-Determination of a person is Inviolable if they have not been convicted of a crime or their severe infirmity has been recognized by an appropriate medical or psychiatric doctor in writing after an appropriate full evaluation which indicates that they present a clear, unambiguous, and continuing threat to their own life or that of another.

*The scientific medical or psychiatric measure of competency is limited by a myriad of factors which affect testing and lead to subjectivity in determinations. Such factors include but are not limited to: medications, language, hearing, ethnicity/culture, vision, muscle control, mood, amount of sleep, amount of exercise, isolation effects, personality, memory, mental focus, anxiety, education, isolated damage to specific brain regions affecting limited tasks, etc. Nevertheless, informal cognition tests which are too superficial to be used as proofs of incapacity, such as the Montreal Cognitive Assessment and Mini Mental Status Exam are often used as the only alleged evidence against a Vulnerable Person. If the doctor is brought as a witness, the testimony often reveals only a brief examination rather than a responsible assessment.

*It is not for the government or for doctors to determine or impose their personal belief of what is best for a person who has not been properly evaluated to exhibit a clear, unambiguous and continuing threat to the life of them self or others. Doing so is a subjective and a Deprivation of Rights violation.

*Third party threats are never an excuse to deprive any person's rights under the guise of protection.

*Professional guardians and conservators have been shown to be no more likely to be protective over wards than family members or friends. They are more capable of exploitation because they are often

attorneys, and have a better understanding of legal tactics as tools of exploitation.

*Professional fiduciary fees are expensive and frequently cause unnecessary drains on the financial means of their wards. Courts award attorney fiduciaries the right to charge very high fees not available to other's, such as family, because it must be financially lucrative enough to interest an attorney. The costs per hour can be far higher than the ward can afford, thus wasting the estate until there is no choice but to place the person in a facility long before they physically or cognitively require that. The fees often cause the liquidation of estates and greater losses to the remaining family and heirs.

*Family members and friends who are trusted by the Vulnerable Person are usually the most likely and motivated to act positively for the person. That is not always the case, but the right to decide that should rest with the person who would otherwise lose their rights.

DEFINITIONS:

“VP” : Vulnerable person. Any person who believes they require a third party to help them cope with mental or physical reduced ability. A Vulnerable Person can also be a person who has been examined by any medical doctor for physical impairment, or a psychiatrist for mental impairment, and such a determination entered on their medical record, or the court has imposed guardianship and/or conservatorship over the person.

“SDM”: Supported Decision Making. A legal or informal agreement for a third party chosen by the Vulnerable Person to have powers to advise and/or act for the benefit of the VP, with the consent of the VP. The SDM agreement is revocable by the VP at will.

“SDMA” Supported Decision Maker Assistant. A person who enters into a formal agreement with a VP.

“SDMLP” Supportive Decision Making Law Proposal

PROPOSED SUPPORTIVE DECISION MAKING LAW

SDMLP 1) WHO MAY CREATE AN SDM AGREEMENT:

Any person who believes they are a VP because they believe they have a reduced mental or physical ability may enter into a formal legal agreement for SDM which provides a legal authority specified by the VP, but not specified by the court.

SDMLP 2) RIGHT TO CHANGE FROM GUARDIANSHIP OR CONSERVATORSHIP TO A SDM AGREEMENT:

Any person currently under Guardianship or Conservatorship of any level may Terminate that guardianship and/or conservatorship by choosing a person or persons to serve as an SDMA(s), and providing a written agreement to the court with jurisdiction. The document may be informal, but must contain at least all of the information found on the corresponding Court Form.

SDMLP 3) CRIMINAL INTERFERENCE WITH SDM:

Any person who obstructs a VP from learning about, having access to, or executing any SDM Agreement, and any guardian or conservator who fails to explain and provide their ward with the option of a SDM, or does not confirm that such information and access has been provided by another, shall be guilty of a crime punishable by no more than ___ in jail and/or a fine not to exceed \$___.

SDMLP 4) THE COURT FORM FOR SDM AGREEMENTS

The Court Form for SDM Agreements shall include all of the following:

- A) A simple language explanation of SDM,
- B) A list of the suggested Decisions which a SDMA can share or may be delegated power to act upon. (See SDMLP 7(E) below)
- C) An area for the parties to add or modify shared and delegated powers.
- D) An option to set a duration of the agreement.
- E) The VP and all persons entering into the agreement must sign the agreement with a notary.
- F) Each suggested Decision type will be identified with an (A) for Accountant or a (SW) for Social worker as an indication of which pay level a professional SDMA may charge per hour.

G) The suggested list of powers to be shared or delegated to a SDMA:

CHECKLIST FOR COURT FORM

- *The right to access the VP at any reasonable time or on demand in emergency, at any facility, hospital or placement.
- *The right to answer medical/psychiatric questions.
- *The right of access to medical/psychiatric information and records.
- *The right to sign agreements for housing, including financial contracts.
- *The right to purchase property and possessions for use and ownership of the VP.
- *The right to enter the VP into contracts and other agreements.
- *The right to access bank accounts.
- *The right to make payments for the VP for utilities, rents, food, medications, contracts, regular bills, licenses, etc.
- *The rights to engage legal representation, to take legal action for the VP, and to consult with that legal representation on behalf of the VP. Legal action includes the right to bring lawsuits and to seek Restraining Orders.
- *The right to seek law enforcement intervention or other Agency intervention on behalf of the VP, and to make reports on behalf of the VP.
- *The right to represent the VP to the State and Federal Tax authorities, and to prepare or hire preparation of tax forms and submit them.
- *The right to access the Social Security number of the VP for any actions in this section.
- *The right to act as a fiduciary over Trusts.
- *The right to transport the VP within and outside of the State and United States only for benefit of the VP.

SDMLP 5) DUTY OF THE COURT TO APPROVE A SDM AGREEMENT:

Upon Receipt of a VP's SDM Agreement, the court *must* promptly issue an Order recognizing the SDM Agreement and appointing legal authority to the individual chosen by the VP. The court *shall not* withhold any part of the authorization unless it is contraindicated by an appropriate medical or psychiatric evaluation being entered on the VP's medical record and which explains why the authorization does not meet the following criteria:

- A) An appropriate medical evaluation is conducted by a medical doctor, and shall only concern reasons why the physical impairment would necessarily present a clear and continuous likelihood that the VP would cause life threatening harm to them self or to another person.
- B) An appropriate mental/psychiatric evaluation is conducted by a psychiatrist, and shall only concern reasons why the mental/psychiatric impairment would necessarily present a clear and continuous likelihood that the VP would cause life threatening harm to them self or to another person.
- C) Threats by third parties, economic circumstances, and any other external matters beyond the influence of the VP shall never be considered reasons for the court to create or retain guardianship or conservatorship instead of approving SDM Agreements.
- D) The VP has the irrevocable right to seek a medical or psychiatric assessment independent from a qualified specialist of their choice, without the influence of the court or a guardian or conservator.
- E) The court shall never impose guardianship or conservatorship upon a VP, regardless of the mental or physical condition of the VP without first offering and explaining SDM as an alternative. If the VP appears to have limited ability to understand, the court shall explain SDM to the best of its ability, accounting for language and education. The court may appoint a guardian and/or conservator if the medical or psychiatric evaluation criteria in this section are met.

SDMLP 6) REVOCATION AND MODIFICATION:

An SDM Agreement is revocable in part or entirely by the VP at will, at any time, without a court hearing unless the circumstance under SDMLP 6(C) below applies. An SDM Agreement may be modified in part or entirely by the VP at any time, without a court hearing. A specific SDMA may be replaced or the terms of their powers altered by the VP at will, at any time.

- A) To revoke a SDM Agreement, the VP must notify the SDMA(s), and notify the court in writing by Court Form or informal, legible letter, signed and dated.
- B) To alter terms on an SDM Agreement, including who shall serve as SDMA, which Decisions the SDMA may have powers to affect, or to add or subtract a SDMA, the VP VP must notify the SDMA(s), and notify the court in writing by Court Form or informal, legible letter, signed and dated. Such alteration shall be treated as a new SDM Agreement as set forth in SDMLP 5.
- C) When a VP using SDM Agreement was previously under guardianship or conservatorship

which was Terminated by the VP entering that SDM Agreement, and the VP revokes their existing SDM Agreement without a replacement agreement, or modifies it to a lesser delegation of powers which are contraindicated by a medical or psychiatric doctor as in SDMLP 5 above, the court may automatically appoint a temporary guardian and/or conservator with only the powers equal to the revoked SDM Agreement, and until the VP submits a replacement SDM Agreement which comports to the medical or psychiatric indications of SDMLP 5.

SDMLP 7) SDMA POWERS AND RESTRICTIONS:

- A) The SDMA never has the power to override the will of the VP.
- B) The SDMA can be made a co-signing authority regarding any specific Decision where major Decisions indicated in the agreement are legally invalid without the signatures of both the VP and the SDMA.
- C) The SDMA can be delegated full legal authority to act on and sign on behalf of the VP regarding any specific Decisions indicated in the agreement, but such authority is subject to reversal of that decision by the VP. These rights of the SDMA are not conferred when superseded by a Durable Power of Attorney.
- D) When a SDMA believes the VP is making decisions which they suspect might present a clear and continuous likelihood due to physical or mental/psychiatric condition that the VP would cause life threatening harm to them self or to another person, the SDMA may refer the VP for evaluation or seek other assistance.
- E) The SDMA is not liable for any acts or decisions made by the VP which were counseled against or unknown to the SDMA. Nor is the SDMA liable for any contracts, losses, or injury to the VP as long as the SDMA was innocent of malfeasance.
- F) The SDMA would be liable for any damages caused by decisions made and acted upon by the SDMA when shared SDM approval was required but not obtained, or when the SDMA committed a crime, including but not limited to elder abuse, fraud and exploitation.
- G) If the SDMA commits a crime using the SDMA authority, the SDMA shall be responsible and liable, but not the VP.
- H) PAY: Only a professional SDMA can charge for services, and they may only charge fees at a State set rate determined to be the average rate for a Social Worker or an Accountant, as appropriate for the work being done.