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## COVER

REVISED

### **Default 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

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## **BOBBIE ASPLUND DEFAULT SUPPORTIVE DECISION MAKING -A LEGISLATIVE HEALTH CARE PROPOSAL-**

- 1) Declarations p.2
- 2) Definition of terms p.5
- 3) PROPOSED SUPPORTIVE DECISION MAKING LAW CONCEPT pp.6 through 14
  - 3(a) Checklist Options And SDM Agreement Form: p.15  
(Suggested list of powers to be shared or delegated to a Suggested Decision Maker Assistant

### **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 persons who are deemed by a court to require certain alleged “protections” which deprive them of their rights. Reasons for these deprivations under State Law include some degree of diminished cognitive/mental capacity or competency, age, or physical disability. The person with suspected disability is often denied Due Process, legal representation or choice of legal representative, may not be informed of the proceeding or be present, and little or no evidence might be presented before the court.

\*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 rights from an Individual, even if they are not fully competent or mentally incapacitated, and then without a medical or psychiatric evaluation determining that such action is necessary to preserve life, and then giving those rights to another person by appointing that other person as a fiduciary over that Individual, then those 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 the Individual to effectively challenge a wrongful action because the person they challenge has been given full control of the Individual and their money. The restrictions on communications, access to representation which is not appointed by a potentially corrupt judge, the Individual'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 Individual from justice and leave them vulnerable to exploitation. For these reasons, Challenges of Constitutionality are rare and have not overturned State Laws which violate Federal law. Many cases are never brought to court.

\*The typical Probate Court practice under State law often violates State law as well as Due Process and other Constitutional Rights. The inherent and common discrimination violates the Americans With Disabilities Act. Guardians frequently deprive wards of their rights under the Olmstead Act. And when a judge enables and supports fiduciaries in deprivation of rights, then both the judge and the fiduciary have committed violations of Title 18, sections 241 and 242, Deprivation of Rights under Color of Law.

\*By the US Constitution, the right to Self-Determination of a person is Inviolable if they have not been convicted of a crime. Other rights which arguably can be restricted by States to preserve safety for severe cognitive infirmity should not be removable where no crime or danger exists as recognized by an appropriate medical or psychiatric doctor in writing after an appropriate full evaluation which indicates that the Individual presents a clear, unambiguous, and continuing threat to their own life or that of another.

\*The accuracy of 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 an Individual. If the doctor is brought as a witness, the testimony often reveals only a brief examination rather than a responsible assessment.

\*It is inappropriate for the government officials, including judges, 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 subjective and a Deprivation of Rights violation. Doctors should be limited to assessing *actual* capabilities, without regard to personal preference, circumstance or the acts of other persons associated with the Individual.

\*Third party threats are never an excuse to deprive any person's rights under the guise of protection. Age or other vulnerability cannot be reason to impose guardianship. Other means of protection exist under the law for persons of all ages and abilities who face the same threats. Making protective acts such as guardianship over a person when such protections exist becomes a discrimination, and thus a violation of the Americans with Disabilities Act.

\*Professional guardians and conservators have been shown to be no more likely to be protective over wards than family members or friends. They have inherent self-interest for profit and to protect themselves from liabilities, thus leading to excessive restrictions on liberty and life choices of the Individual. When guardians and conservators are also probate attorneys, they have a better understanding of how to manipulate the law and court in order to exploit an Individual without being held accountable.

\* Courts unfairly favor professional fiduciaries for the amount they may charge wards, especially attorneys, by allowing them to charge high enough fees for their services to be far more lucrative than Social Workers or Accountants. By contrast, family or friends are seldom approved to charge for

services. 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 others in order to make guardianship and conservatorship financially lucrative enough to interest an attorney, but the ward receives no greater level of care expertise from an attorney. This arrangement is a cornerstone of probate corruption.

\*Fiduciary costs per hour can be far higher than the ward can afford, creating a dark ripple effect. The costs artificially waste the estate until there is no choice but to place the ward 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. The consequence for the ward is often depression leading to decline in mental and physical health, disease acquired at a facility from transmission that would not have occurred at home, and often early death.

\*Family members and friends who are trusted by the Individual 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:**

“Individual” : The person who is the subject of the Supported Decision Making system. Any adult person who believes they require a third party to help them cope with mental or physical reduced ability. The Individual 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 an Individual to have powers to advise and/or act for the benefit of the Individual, with the consent of the Individual. The SDM agreement is revocable by the Individual at will.

“D-SDM” Default SDM An SDM system which is not reliant on court decision and supersedes previous guardianship/conservatorship when initiated by an Individual.

“SDMA” Supported Decision Maker Assistant. A person who enters into a formal agreement with an Individual. The SDMA must be an adult.

“D-SDMLP” Default Supportive Decision Making Law Proposal

“GUARDIANSHIP” A specific State supported relationship where one person is given a high degree of control over the life, rights and possessions of another person.

“CONSERVATORSHIP” For purposes of this document, a version of Guardianship where the control is limited to financial matters of an Individual who has significant financial assets, including property.

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## **PROPOSED SUPPORTIVE DECISION MAKING LAW**

### **D-SDMLP 1) WHO MAY CREATE AND ENTER INTO A SDM AGREEMENT:**

Any person who believes they need help making decisions or in managing their life to a significant degree because they believe they have a reduced mental or physical ability may voluntarily, and without undue influence or coercion, enter into a formal legal agreement for Supported Decision Making and Care Assistance.

- 1) The SDM Agreement always provides the SDMA with legal authority to obtain certain specified information in order to discuss the merits of a decision with the individual and assist them in making their best choice.
- 2) The SDM is a single person, not company, who is chosen by and specified by the Individual, and cannot be nominated by or appointed by the court.
- 3) The Individual may enter into SDM Agreements with more than one person, and those persons may be provided the same or different authority.
- 4) The Individual may seek a doctor's or other trusted person's advice on whether to enter a SDM Agreement, what authority to share, and any other aspect of the SDM.
- 5) Verification of SDM Agreement: The SDM Agreement shall be signed by the SDMA and notarized.

If the Individual can physically sign the SDM Agreement, they shall do so. If the Individual cannot physically sign, they may give oral consent before two witnesses who by signing as an Affidavit, they attest that they are an Adult in their State of Residence, not the guardian, conservator or one of their employees, and are not an employee of a facility in which the individual resides.

6) The Start of the SDM Agreement is automatically the date of signing unless the parties designate a later date AND/OR a specific anticipated circumstance.

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

1) Any person currently under Guardianship or Conservatorship, regardless of any mental or physical deficiency except that described under D-SDMLP 4, may Terminate that guardianship and/or conservatorship by choosing one or more persons to serve as SDMA(s), and by providing a written SDM Agreement to the court where they live. The document may be informal, but must contain at least all of the information found on the corresponding official Form in D-SDMLP 8(I) below.

2) The Individual is presumed to have capacity and competence, and the use of an SDM Agreement shall be considered adequate remedy for any possible incapacity or lack of competence due to any possible cognitive or physical deficiency, which is adequately addressed by SDM Assistance.

3) No person or entity may claim that the execution or use of a Supported Decision Making Agreement is evidence that the Individual does not have mental capacity or that they are incompetent.

4) Execution of a supported decision-making agreement may not be used as evidence for the petition or appointment of a guardianship or conservatorship.

5) A SDM Agreement does not preclude the ability of the Individual who has entered into such a SDM Agreement from acting independently of the agreement.

6) The clerk of the Court may charge a minimal fee to register the SDM Agreement unless the Individual is indigent.

**D-SDMLP 3) CRIMINAL INTERFERENCE WITH SDM:**

1) Any guardian, conservator, care provider, family member, or any other person who obstructs an Individual from learning about, having access to, or executing any SDM Agreement shall be guilty of a crime punishable by no more than \_\_\_ in jail and/or a fine not to exceed \$\_\_\_.

2) A guardian and/or conservator must present, explain, and provide their current ward with the option

of a SDM Agreement, and confirm that such information and access has been provided by submitting to the Court a copy of the SDM Agreement form, signed by the ward, and with or without designation of a SDMA. Failure by the guardian or conservator to provide this information to the ward within One month of the beginning of their fiduciary appointment or the date on which this law went into effect, whichever came last, shall constitute a crime punishable by no more than \_\_\_ in jail and/or a fine not to exceed \$\_\_\_.

2) Any SDMA who is convicted of interfering in Bad Faith with the proper informing and consultation with the Individual about a matter or otherwise acting to intentionally misinform the Individual within the scope of the SDM Agreement, and that interference results in loss or damage, is liable for the resulting loss and damage resulting from that interference and shall be fined an additional \_\_\_\_, and shall thereafter be ineligible to serve as the Individual's SDMA.

#### **SDMLP 4) DUTY OF THE COURT TO APPROVE A SDM AGREEMENT:**

Upon Receipt of a n Individual 's SDM Agreement, the court *must* promptly issue an Order on the SDM Agreement Checklist, recognizing the SDM Agreement and appointing legal authority to the person chosen by the Individual, subject to the following:

1) 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 Individual'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 Individual 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 Individual would cause life threatening harm to them self or to another person.

2) Threats by third parties, economic circumstances, and any other external matters beyond the



influence of the Individual shall never be considered reasons for the court to create or retain guardianship or conservatorship instead of approving SDM Agreements.

3) The Individual 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.

4) The court shall never impose guardianship or conservatorship upon an Individual, regardless of the mental or physical condition of the Individual without first offering and explaining SDM as an alternative. If the Individual 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.

#### **D-SDMLP 5) REVOCATION AND MODIFICATION:**

An SDM Agreement is revocable in part or entirely by the Individual at will, at any time, without a court hearing unless the circumstance under D-SDMLP 5(C) below applies. An SDM Agreement may be modified in part or entirely by the Individual at any time, without a court hearing. A specific SDMA may be replaced or the terms of their powers altered by the Individual at will, at any time, following the same procedure as the original SDM Agreement.

A) To revoke a SDM Agreement, the Individual 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 Individual must notify the SDMA(s), and notify the court in writing by Court Form or informal, legible letter, signed and dated if there are no additions to authority, and notarized if there are additions of authority. Such alteration shall be treated as a new SDM Agreement as set forth in D-SDMLP 1,4,6,7and 8.

C) When an Individual using a SDM Agreement was previously under guardianship or conservatorship which was Terminated by the Individual entering that SDM Agreement, and the Individual 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 D-SDMLP 4 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 Individual submits a replacement SDM Agreement which comports with the medical or psychiatric indications of D-SDMLP 4.

D) If another party wishes to contest a SDMA, they may only do so by alerting authorities that they believe the Individual suffers from a condition described in D-SDMLP 4. That party must obtain that evaluation from an appropriate doctor described in D-SDMLP 4.

E) Third Party Seeking Termination of SDMA:

1) Any person who knows of an SDMA performing the following may petition the court to end the SDM Agreement with the SDMA:

- i) Interfering in Bad Faith with the proper informing and consultation with the Individual about a matter, within the scope of their duties,
- ii) Willfully misinforming the Individual within the scope of their duties,
- iii) Commits conversion, fraud, or other theft against the Individual,
- iv) Commits physical, mental or emotional abuse against the individual,
- iv) Coercion.

2) The court may remove an SDMA upon a finding that the SDMA did commit an act in D-SDMLP 5(E)(1)(i) through (iv) if the Individual also agrees with the removal.

3) The court must remove an SDMA upon a conviction that the SDMA did commit one or more acts in D-SDMLP 5(E)(1)(ii), (iii), or (iv).

#### **D-SDMLP 6) SDMA POWERS AND RESTRICTIONS:**

A) The purpose of the SDMA is:

i) The Primary purpose is to help the Individual understand a topic and make better decisions on topics covered in the SDM Agreement by helping explain the nature of the decision, the pros and cons of the decision choices, and possible outcomes. The SDMA is automatically empowered to access, collect, and obtain the necessary information regarding topics checked in Categories A, B, and C.

ii) The secondary purposes of the SDMA are to help facilitate the decisions made by the Individual, to be aware of the needs of the Individual, and when so selected, to act on behalf of the Individual to manage only affairs in the SDM Agreement in category “B” and/or “C”, and then only with consent of the individual.

(iii) The SDMA's advice shall reflect all aspects of a subject with neutrality and fact, but shall

always ensure that the ramifications toward the individual are considered.

B) The SDMA never has the power to override the will of the Individual.

i) The SDMA must inform and consult with the Individual prior to entering agreements, making payments or other significant acts as listed in column “B” if possible.

ii) If it is impossible or unreasonable to inform and consult with the Individual regarding an act in (B)(i) above prior to the time the action must occur, the SDMA must inform and consult with the Individual as soon thereafter as possible.

iii) If the Individual denies consent for the act of the SDMA regarding (B)(i) or (B)(ii) above, the SDMA must immediately reverse the action.

C) 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 Individual and the SDMA. In such a case the SDMA is not co-signing for co-ownership or co-liability.

D) The SDMA can be delegated full legal authority to act on and sign on behalf of the Individual regarding any specific Decisions indicated in the agreement, but such authority is subject to reversal of that decision by the Individual. These specifically delegated rights of the SDMA supersede those of an existing Durable Power of Attorney, Patient Advocate or Payee. That DPoA, PA, or Payee must be notified by the Individual or the SDMA upon entering the SDM Agreement.

E) When a SDMA believes the Individual is making decisions which they suspect might present a clear and continuous likelihood due to physical or mental/psychiatric condition that the Individual would cause life threatening harm to them self or to another person, the SDMA may refer the Individual for evaluation or seek other assistance.

F) The SDMA is not liable for any acts or decisions made by the Individual which were counseled against or unknown to the SDMA. Nor is the SDMA liable for any contracts, losses, or injury to the Individual as long as the SDMA was innocent of malfeasance.

G) The SDM Agreement does not shield a SDMA from criminal or civil liability for acts that would otherwise be subject to civil or criminal liability. 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.

- H) If the SDMA commits a crime using the SDMA authority, the SDMA shall be responsible and liable, but not the Individual .
- I) PAY for Professional Services as SDMA: 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.
- i) The definition of a Professional SDMA is any person employed by a registered company in business to provide SDMA services and receives payment from that company, not direct payment from the Individual. That company may have one or more employees.
- ii) The SDMA shall provide to the Individual and their proper designated account manager an invoice for payment of any fees accrued, or expenses fronted by the SDMA with consent of the Individual, and shall be paid within 30 days.
- J) The SDM Agreement shall be considered Privileged and Confidential. The terms of the SDM Agreement shall only be disclosable to a third party if the Individual consents, or if that third party has a legal authority to access it, or if it is required to show that the SDMA consent is required with the Individual for a category “C” transaction or agreement.
- K) An SDMA or third party who obtains information about the SDM Agreement may only use that information for the purposes in this section, and any misuse of the information may be subject to civil and criminal liability.
- L) If the SDMA is, or ever becomes in debt to the Individual in an amount exceeding \$100 for any reason other than the SDMA fronting or loaning the Individual funds for the benefit of the Individual, they must immediately disclose that debt to the Individual. Such an advance of funds requires consultation and consent as in D-SDMA 6(B)
- M) If the Individual is, or becomes more than \$100 in debt to the SDMA under D-SDMA 6(B) or for any other reason, the SDMA must immediately inform the Individual.

**D-SDMLP 7) SDMA QUALIFICATIONS:**

A person is qualified and suitable under law to be an SDMA only if:

- A) They are 18 years or older, or if they are considered an adult in the State in which the Individual resides.
- B) They have never been convicted of any of the following crimes: Larceny over \$100, Fraud, Abuse of a vulnerable person, or Assault.

- C) They are not an employer of the Individual.
- D) They are chosen by the Individual without undue influence or coercion.
- E) They are in compliance with D-SDMA 6(L) and (M).
- F) They are not a paid provider of non-SDM services to the person with a disability.

**D-SDMLP 8) THE FORM FOR SDM AGREEMENTS**

The 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 D-SDMLP 8(I) below)
- C) An area for the parties to add or modify shared and delegated powers.
- D) An area designating the date the Agreement goes into effect or an anticipated event which would cause the Agreement to go into effect.
- E) NOTARY OR WITNESSES: The Individual and the SDMA entering into the agreement must sign the agreement with a notary unless the Individual is incapable of creating a signature. If the Individual is incapable of providing a signature, the Individual may provide oral agreement before TWO adult witnesses. If witnesses are used to confirm the SDM Agreement:
  - i) The witnesses must sign the SDM Agreement Affidavit section, and
  - ii) The following are excluded from serving as witnesses:
    - a) A person already in or entering into a SDM Agreement with the Individual, or
    - b) An employee or agent of a person in or entering into a SDM Agreement with the Individual,
- F) The Pay category for each suggested Decision type will be identified on the Form 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) There shall be 4 categories of assistance:
  - 1) In all SDM Agreements the SDMA shall always have the authority to have private, personal access to the Individual at any reasonable place or any reasonable time in order to observe and determine the physical, mental and emotional health, and well-being of the Individual, and the authority to alert the proper authorities on behalf of the Individual if a problem is discovered. That access may not be constrained, censored or eavesdropped upon.
  - 2)The SDMA will have authority to conduct SDM assistance for any specific topic in the

following additional 3 categories “A,” “B”, and “C” at the level which is checked or marked with an “X.” If a topic line is left blank or is marked with a “0” the SDMA shall have no authority for that activity.

i) The Categories shall be displayed in column form and designated as follows:

“A” The SDMA has only the right to inform and consult with the Individual, and to obtain pertinent information from the Individual's private records from any applicable entity on only the selected topics.

“B” SHARED AS PROXY, CONDITIONALLY DELEGATED: The SDMA shall inform and consult with the individual, and is granted the authority to enter into third party agreements on behalf of the individual, and without the Individual's direct participation, and to sign, and make payments on behalf of the individual, but only with the current consent of the individual for that specific act.

“C” DIRECT SHARED POWER: The SDMA shall inform and consult with the individual, and shall be required to co-sign or otherwise consent to any actions taken by the Individual on the selected topics, especially for entering agreements, making payments, and other acts requiring signatures.

ii) For actions under (G)(2)(i) Category “C” the SDMA consent shall be required for the act to be legal and binding. The SDMA may provide the other party with the checklist portion of this document which bears the court Order to attest to this requirement.

iii) The SDMA and the other party shall both be immune to liability for an act by the Individual which occurs without the knowledge of the SDMA or the other party. If the act can be undone and fully cured upon discovery of the flaw, it shall be undone unless the SDMA gives approval.

H) The (*appropriate government mental health department*) shall provide the public with the following documents:

1) SUPPORTED DECISION MAKING AGREEMENT

2) INTRODUCTION TO SUPPORTED DECISION MAKING AGREEMENT

3) HANDBOOK FOR SUPPORTED DECISION MAKING ASSISTANTS

I) The SUPPORTED DECISION MAKING AGREEMENT format:

## **SUPPORTED DECISION MAKING AGREEMENT**

I, \_\_\_ (name of individual)\_\_\_ , residing at \_\_\_\_\_, willingly and without coercion enter into this Supported Decision Making Agreement with \_\_\_(name of SDMA)\_\_\_, who resides at \_\_\_\_\_. I have read the entire agreement and had Supported Decision Making and this Agreement explained to me.

### **DECLARATION OF SUPPORTED DECISION MAKING ASSISTANT**

I agree to act as the SDM Assistant for (Name of Individual), hereafter known as the “Individual,” in accordance with (LAW CITATION) which I have read and understand.

I understand that my role is to assist the Individual in making decisions which are checked on the list above and that I have legal authority to obtain access to the Individual and obtain certain information and consult with persons on matters relating to those topics.

I further understand that I have the authority to act on and manage any and all aspects of the topics designated in category (B) of the Checklist, for the sole benefit of the Individual, and that in so doing I must make a reasonable attempt to consult with and inform the Individual of such action before doing it, or to consult with and inform the Individual as soon thereafter as possible. I also understand that the action can be ordered to be reversed by the Individual, and I must then reverse my action.

I understand that I have been asked to provide this service for a reason, and that my responsibility includes having patience and empathy to explain why I believe my consultation is wise, even when the Individual may not at first agree.

I understand that if the Individual does not agree with my opinion, that their opinion and instruction is by default the one which shall be followed. If I believe that doing so would cause significant harm, I may protect myself by providing the Individual with a signed and dated note or letter explaining my belief and counseling in opposition.

I also understand that if I use my influence to override the clearly stated wishes of the individual in order to benefit myself or someone else whom I favor, that I will have have exerted “undue influence” and would be liable for damages.

Signature: \_\_\_\_\_ (Individual of the agreement)

Printed name: \_\_\_\_\_ Date: \_\_\_\_\_

OR

## **AFFIDAVIT**

If the Individual cannot physically sign, they may give oral consent before two witnesses who sign attest that they are an Adult in their State of Residence, not the guardian, conservator or one of their employees, and are not an employee of a facility in which the individual resides.

I, \_\_\_(print name of witness 1)\_\_\_, residing at \_\_\_\_\_ do aver and if called upon to testify in this matter will confirm that \_\_\_(printed name of Individual)\_\_\_ has given verbal confirmation that they have had the entire SDM Agreement explained to them, and that they have made selections in Categories A, B and C on the Supported Decision Making Checklist Form, and that they have designated \_\_\_(printed name of SDMA) as their Supported Decision Making Assistant by this document. I am an Adult in my State of Residence. I am not the guardian, conservator or one of their employees, and I am not an employee of a facility in which the individual resides. Further, Affiant says naught.

\_\_\_\_\_ Signature of Witness no. 1 (Must be notarized below) \_\_\_(Date)\_\_\_

I, \_\_\_(print name of witness 2)\_\_\_, residing at \_\_\_\_\_ do aver and if called upon to testify in this matter will confirm that \_\_\_(printed name of Individual)\_\_\_ has given verbal confirmation that they have had the entire SDM Agreement explained to them, and that they have made selections in Categories A, B and C on the Supported Decision Making Checklist Form, and that they have designated \_\_\_(printed name of SDMA) as their Supported Decision Making Assistant by this document. I am an Adult in my State of Residence. I am not the guardian, conservator or one of their employees, and I am not an employee of a facility in which the individual resides. Further, Affiant says



naught.

\_\_\_\_\_ Signature of Witness no. 2 (Must be notarized below) \_\_ (Date) \_\_

Signature: \_\_\_\_\_ (SDM Assistant)

Printed name: \_\_\_\_\_ Date: \_\_\_\_\_

OR

**WAIVER OF AGREEMENT**

Choosing to *remain* in guardianship or conservatorship

Check which applies:

\_\_\_\_\_ I have a guardian, and my guardian has shown me and explained the SUPPORTED DECISION MAKING AGREEMENT and the INTRODUCTION TO SUPPORTED DECISION MAKING AGREEMENT on \_\_ (date) \_\_.

\_\_\_\_\_ I have a conservator, and my conservator has shown me and explained the SUPPORTED DECISION MAKING AGREEMENT and the INTRODUCTION TO SUPPORTED DECISION MAKING AGREEMENT on \_\_ (date) \_\_.

I understand the basics of Supported Decision Making, and that I have the right to create Supported Decision Making agreements with persons of my choice, but I do not choose to enter a Supported Decision Making agreement at this time.

\_\_\_\_\_ Signature of Individual. (Must be notarized below) \_\_ (Date) \_\_

OR

**AFFIDAVIT**

I, \_\_ (print name of witness 1) \_\_, residing at \_\_\_\_\_ do aver and if called upon to testify in this

matter will confirm that \_\_\_(printed name of Individual)\_\_\_ has given verbal confirmation that they have had the entire SDM Agreement explained to them, and that they have chosen by their free will remain in guardianship or conservatorship, and not to use Supported Decision Making. I am an Adult in my State of Residence. I am not the guardian, conservator or one of their employees, and I am not an employee of a facility in which the individual resides. Further, Affiant says naught.

\_\_\_\_\_ Signature of Witness no. 1 (Must be notarized below) \_\_ (Date)\_\_

I, \_\_\_(print name of witness 2)\_\_\_, residing at \_\_\_\_\_ do aver and if called upon to testify in this matter will confirm that \_\_\_(printed name of Individual)\_\_\_ has given verbal confirmation that they have had the entire SDM Agreement explained to them, and that they have chosen by their free will remain in guardianship or conservatorship, and not to use Supported Decision Making. I am an Adult in my State of Residence. I am not the guardian, conservator or one of their employees, and I am not an employee of a facility in which the individual resides. Further, Affiant says naught.

\_\_\_\_\_ Signature of Witness no. 2 (Must be notarized below) \_\_ (Date)\_\_

**NOTARIZATION**

State of \_\_\_\_\_, \_\_\_\_\_ Judicial District

On this \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, before me, 16 \_\_\_\_\_ (name of notary public), appeared 1 \_\_\_\_\_ (name of Individual), and

\_\_\_\_\_ (name of SDM Supporter named in the agreement), personally known to me to be the persons who executed this agreement, and each acknowledged to me that each executed the agreement as the person's free and voluntary act and deed for the uses and purposes under this agreement. Witness my hand and official seal the day and year written above.

\_\_\_\_\_ (Signature of notary public)

(Seal, if any)

\_\_\_\_\_  
(Title and rank)

My commission expires: \_\_\_\_\_

# SUPPORTED DECISION MAKING CHECKLIST FORM

In order to provide me with proper consultation regarding my decision making, and to ensure my well being, I, \_\_\_(name of individual)\_\_\_ hereby voluntarily agree to allow \_\_\_(name of SDMA)\_\_\_ to have the authority to have private, personal access to any reasonable place or any reasonable time, or on demand in an emergency, in order to observe and determine my physical, mental and emotional health, my well-being, and my condition, and to alert the proper authorities on my behalf if a problem is discovered.

This Supportive Decision Making Agreement is in effect from \_\_\_(either date of signing OR a chosen later date)\_\_\_, and remains in effect until terminated by myself or my SDMA.

This Supportive Decision Making Agreement may also go into effect immediately if the following circumstance occurs: \_\_\_\_\_.

\*

## CATEGORY "A"

In addition to the authority above, I also give my SDMA the authority to obtain information and records, including confidential records, from any corresponding Authority or Provider, on only the topics selected in Category A, in order that my SDMA can inform me, consult with me, and help me make my own decisions on those topics.

To select items in Category A, make a CHECK or "X" mark on the corresponding line. Any open line or line marked with a 0" will be invalid.

If the SDMA is a PAID position, the Pay type is marked "S" for Social Worker or "A" for Accountant.

Check Pay TOPIC

Line Type

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\_\_\_ S Matters of Physical Health Care which are not financial.

\_\_\_ A Finances regarding any Health Care and Health Care Providers.

- \_\_\_ S Matters regarding Psychiatric or other Mental Health.
- \_\_\_ S Matters of where to live and who to live with, including costs and resources.
- \_\_\_ A Financial matters, including but not limited to bank accounts, other financial accounts, taxes, settlements, funds, trusts, payments in or out, and debt collection.
- \_\_\_ S Obtaining legal representation and use of that representation.
- \_\_\_ S Obtaining help from Law Enforcement.
- \_\_\_ S Engagement and use of Community Services
- \_\_\_ S Knowledge of my Social Security number for access to information.

\*

**CATEGORY “B”**

SHARED AS PROXY, CONDITIONALLY DELEGATED:

In addition to the authority above, I also give my SDMA the authority to obtain information and records, including confidential records, from any corresponding Authority or Provider, on only the topics selected in Category B, in order that my SDMA can inform me, consult with me, and help me make my own decisions on those topics. I also grant my SDMA the authority to enter into third party agreements on my behalf, and without my direct participation, and to sign, and make payments on my behalf, but only with my current consent for that specific act.

To select items in Category B, make a CHECK or “X” mark on the corresponding line. Any open line or line marked with a 0” will be invalid.

If the SDMA is a PAID position, the Pay type is marked “S” for Social Worker or “A” for Accountant.

Check Pay TOPIC

Line	Type	TOPIC
___	A	To use my money to obtain my medications or other necessary items for my Health and Welfare and deliver them to me.
___	S	To sign agreements for housing, including financial contracts.
___	A	To purchase property and possessions for my use and ownership, but not use or ownership of my SDMA.

- \_\_\_\_\_ S To enter me into contracts and other agreements which benefit me.
- \_\_\_\_\_ A To access my bank accounts in order to pay my bills and make my purchases.
- \_\_\_\_\_ A To make payments for my utilities, rents, food, medications, contracts, regular bills, licenses, etc.
- \_\_\_\_\_ A/S To engage legal representation, to arrange to take legal action on my behalf, and to consult with that legal representation on my behalf. Legal action includes the right to bring lawsuits and to seek Restraining Orders.
- \_\_\_\_\_ S To seek law enforcement intervention or other Agency intervention on my behalf, and to make reports to those agencies on my behalf .
- \_\_\_\_\_ S To represent me to the State and Federal Tax authorities, and to prepare or hire preparation of tax forms and submit them.
- \_\_\_\_\_ A To act as a fiduciary over my Trusts.
- \_\_\_\_\_ S To transport or arrange for Third Party transportation of me within and outside my State of residence, and within or outside the United States only for my benefit.

\* Where a service requires my Social Security number or other privileged information, my SDMA has the right to access that information for any actions in this section.

\*

**CATEGORY “C”**

**DIRECT SHARED POWER**

SDMA Consent for me to enter agreements or make payments

In addition to the authority above, I also give my SDMA the authority to obtain information and records, including confidential records, from any corresponding Authority or Provider, on only the topics selected in Category B, in order that my SDMA can inform me, consult with me, and help me make my own decisions on those topics. For my own protection, I agree not to take any action on items checked in Category “C unless they are accompanied by the written or verbal consent of my SDMA.

To select items in Category C, make a CHECK or “X” mark on the corresponding line. Any open line or line marked with a 0” will be invalid.

If the SDMA is a PAID position, the Pay type is marked “S” for Social Worker or “A” for Accountant.

Check Pay TOPIC

Line	Type	
___	A	To use my money to obtain my medications or other necessary items for my Health and Welfare and deliver them to me.
___	S	To sign agreements for housing, including financial contracts.
___	A	To purchase property and possessions for my use and ownership, but not use or ownership of my SDMA.
___	S	To enter me into contracts and other agreements which benefit me.
___	A	To access my bank accounts in order to pay my bills and make my purchases.
___	A	To make payments for my utilities, rents, food, medications, contracts, regular bills, licenses, etc.
___	A/S	To engage legal representation, to arrange to take legal action on my behalf, and to consult with that legal representation on my behalf. Legal action includes the right to bring lawsuits and to seek Restraining Orders.
___	S	Representation of me to the State and Federal Tax authorities, and to prepare or hire preparation of tax forms and submit them.
___	S	To transport or arrange for Third Party transportation of me within and outside my State of residence, and within or outside the United States only for my benefit.

\* Where a service requires my Social Security number or other privileged information, my SDMA has the right to access that information for any actions in this section.

The COURT FINDS that:

A Supported Decision Making Agreement has been filed between \_\_\_(name of Individual)\_\_\_ and \_\_\_(name of SDMA)\_\_\_ who serves as the Individual's Supported Decision Making Assistant.

IT IS ORDERED that:

\_\_\_\_(name of SDMA) shall have complete legal authority to act as described on the under law.

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Date

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Judge

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Hon. (printed name of judge, P-number