

The **RIGHT**  
**To Make** **CHOICES**

A Supported  
Decision-Making  
Toolkit for  
People with  
Disabilities  
and Their  
Supporters



[www.DRTx.org](http://www.DRTx.org)  
January 2018 Edition

## About Disability Rights Texas

Beginning in 1975, Congress created a national network of protection and advocacy organizations to help secure and advance the rights of people with disabilities. Disability Rights Texas is the federally mandated legal protection and advocacy agency for people with disabilities in Texas. Our mission is to help people with disabilities understand and exercise their rights under the law, ensuring their full and equal protection in society. Our lawyers and advocates fulfill this mission through individual advocacy, legal representation, policy work, and systems reform initiatives.

**www.DRTx.org**

Statewide Intake Phone Line for New Callers

9 am – 4 pm, Monday – Friday

1 (800) 252-9108

**Online Intake (Available 24/7)**

[intake.drtx.org](http://intake.drtx.org)

**Statewide Video Toll Free Phone Line**

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TEXAS COUNCIL *for*  
DEVELOPMENTAL  
DISABILITIES

## The Right to Make Choices:

A Supported Decision-Making Toolkit for  
People with Disabilities and Their Supporters

Section.....	Page
1. Introduction.....	1
2. Self-Determination.....	3
3. Guardianship.....	5
4. Alternatives to Guardianship.....	7
5. Supports and Services.....	13
6. Supported Decision-Making.....	15
7. Advice for Supporters.....	19
8. Frequently Asked Questions.....	21
9. Making My Own Choices:.....	25
<i>An Easy-to-Follow Guide on Supported     Decision-Making Agreements</i>	
10. Additional Resources.....	33
11. Texas Home and Community-Based Services.....	35
12. Forms.....	61
• <i>Supported Decision-Making Agreement</i>	
• <i>Authorization for Release of Confidential Information</i>	
• <i>Disclosure Statement for Medical Power of Attorney</i>	
• <i>Medical Power of Attorney</i>	
• <i>Durable Power of Attorney</i>	



# Section

# 1

**Section 1: Introduction**



## Section 1: Introduction

All of us have the right to make decisions about our lives, and getting support to make decisions from people we trust is something we all do. If a decision is important to us, we may take longer to decide and may ask other people for ideas or information, or to help us make up our mind by talking about the options. There may be times in our lives when we need extra support to make decisions, especially when we have to make a major decision.

People with disabilities have the same rights to make decisions as everyone else. However, many people with disabilities have not had the same opportunities to make decisions and develop the skills and knowledge to direct their own lives.

Texas was the first state to recognize supported decision-making (SDM) as an alternative to guardianship. SDM is a practical way for a person with a disability to get the help they may need to make their own decisions and ensure that those decisions are heard by those around them. With supported decision-making, a person with a disability enters into a voluntary agreement with someone he or she trusts to help them make decisions and communicate the decisions to others. The supporter could be a family member, friend, service provider or someone else chosen by the person. Supported decision-making may not only help a person with a disability avoid guardianship, but may also help the person develop his or her decision-making skills and develop confidence in his or her ability to make decisions.

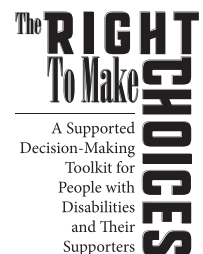
### Who Can Use this Tool Kit?

A range of people may be involved in supporting a person with a disability to make his or her own decisions and develop his or her knowledge, skills and confidence to make decisions. This toolkit is designed to help:

- A person with a disability who wants support to make decisions
- A supporter who provides decision-making support to a person with a disability
- Family members who want to better understand supported decision-making and other alternatives to guardianship
- Legal and educational professionals and service providers who work with people with disabilities and their supporters

### Things to Keep in Mind

The decisions we make, big and small, add up to the type of life we lead and who we are. Being able to make decisions about the way we live our lives is a human right.



# Section 1

Supported decision-making is built on important beliefs and principles, including:

- People with disabilities have the right to make decisions about things that affect their lives.
- People with disabilities are presumed to have the capacity to make their own decisions and give informed consent when needed.
- People with disabilities have the right to be supported in making decisions.
- People with disabilities have the right to choose who will provide them decision-making support, what types of decisions they want support to make, and how this support will be provided.



# Section

# 2

**Section 2: Self-  
Determination**



## Section 2: Self-Determination

Supported decision-making (SDM), an alternative to guardianship where people use trusted friends and family members to help them understand and make choices, is an important tool for increasing self-determination. Self-determination is making decisions based on your own choices. Through making decisions, we learn many things, including problem-solving skills, goal-setting, and taking responsibility for one's life. In fact, when we make a mistake or a "bad choice" we may learn the most and are able to grow and be more prepared for future decision-making. Indeed, there is dignity in being able to both succeed and fail, and to learn from our failures.

Although exercising self-determination is a crucial part of every person's life, people with disabilities often find that their ability and opportunity to make decisions about their lives is restricted. Others may make decisions for them in an effort to protect them, or because they do not believe that people with disabilities can make their own choices. When we deny people with disabilities the right to choose and take risks, we deny them their civil right to full citizenship.

In advancing the goal of persons with disabilities to have more control over their lives, SDM recognizes that we all use support to make decisions. When we face a difficult choice at the doctor's office, the mechanic, school, or anywhere else, we take certain steps in order to make an informed decision. We might do some research, or call upon a trusted friend or family member for advice. We listen to experts in the field and take their advice. People with disabilities are no different. With the right supports, all people can make their own decisions and exercise self-determination in their lives.

### The Benefits of Self-Determination

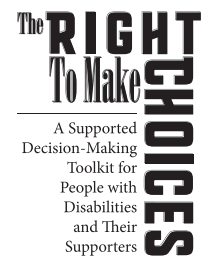
Research shows that practicing self-determination leads to a higher quality of life. People with disabilities with higher levels of self-determination are healthier, more likely to be employed, earn more per hour, and experience more independence.<sup>1</sup>

Studies have also found that when denied self-determination, individuals with disabilities are more likely to feel helpless, hopeless, and passive, and are at greater risk of abuse.<sup>2</sup>

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<sup>1</sup>Losier, G. F., & Vallerand, R. J. (1994). *The temporal relationship between perceived competence and self-determined motivation. Journal of Social Psychology, 134, 793-801; see also Wehmeyer & Schwartz, 1998. The Relationship between Self-Determination and Quality of Life for Adults with Mental Retardation.*

<sup>2</sup>Khemka, I., L. Hickson, and G. Reynolds. 2005. *Evaluation of a decision-making curriculum designed to empower women with mental retardation to resist abuse. American Journal on Mental Retardation 110:193-204; see also Cole, S. S., Sexuality and Disability. 1984.*



Clearly, self-determination is crucial for the independence and happiness of all people, including those with disabilities. It is a skill that should be taught from a young age and practiced regularly so that all people learn to use available supports to make informed decisions and direct their own lives.

# Section

# 3

**Section 3: Guardianship**



## Section 3: Guardianship

Guardianship is a legal process to determine if a person is “incapacitated.” A court decides if, due to a physical or mental condition, an individual is substantially unable to manage their financial affairs, care for their physical health, or provide food, clothing, or shelter for themselves.

Under a guardianship, someone is appointed to make decisions on behalf of the incapacitated person, referred to as the “ward.” Guardianship severely limits an individual’s civil rights and decision-making. Therefore, guardianship should always be the last resort for an individual with a disability. Fortunately, there are many alternatives to guardianship available to help individuals with disabilities make decisions without taking away their rights (see “Section 6: Alternatives to Guardianship” for more information).

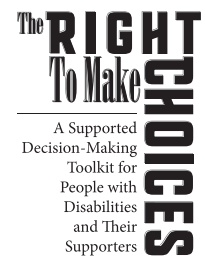
### Types of Guardianship

There are two types of guardianship—guardian of the person and guardian of the estate. A guardian of the person is responsible for the physical well-being of the person under guardianship. Their responsibilities may include making medical decisions, choosing where the person lives, and ensuring that he or she has food and clothes. A guardian of the estate is responsible for the person’s property and assets. One person can be both guardian of the person and guardian of the estate, or two different people can assume these roles. Not every person under guardianship will have both types of guardians.

Both types of guardianship can be either full or limited. Under a limited guardianship, the judge gives the guardian only certain rights and responsibilities, while allowing the individual with a disability to keep the rights not granted to the guardian. Under a full guardianship, an individual loses many of his or her civil rights, including the right to drive, choose where to live and work, vote, choose to get married, and consent to medical treatment.

### The Guardianship Process

Guardianship is a legal process where decisions about whether an individual needs a guardian and, if so, the scope of the guardianship are made by a judge. An individual seeking to become guardian is called an “applicant,” and must be represented by an attorney to obtain guardianship. The applicant files an application for guardianship stating the reasons he or she believes guardianship is necessary. However, whether guardianship is appropriate for a particular person is a medical decision and a court will not grant a guardianship application unless a physician provides his or her opinion about whether the individual is unable to make decisions on his or her own, with or without support, completing a physician’s certificate of medical examination (CME). For the CME, a doctor provides his or her professional



# Section 3

opinion about the individual's ability to make decisions with or without support.

After the application has been filed, an attorney ad litem will be appointed to represent the desires of a person with a disability. In some cases, a guardian ad litem may also be appointed to advocate for the best interest of the person with a disability. A court hearing is then held. The judge has the ultimate authority to decide whether or not someone needs a guardian, and if the guardianship should be full or limited. The judge also has the final say in who is appointed guardian. The judge may decide, for example, that the applicant is unfit to be guardian and can appoint someone else to fill that role.

### **Evidence Required Before Appointing a Guardian**

Texas law requires that probate courts consider alternatives to guardianships and supports and services before a guardianship is created. Under the law, before appointing a guardian, the court must find by clear and convincing evidence that alternatives to guardianship and supports and services have been considered and determined not to be feasible.

If the court grants a limited guardianship, the court order must specify the rights retained by the proposed ward with or without supports and services. The court must also state whether the proposed ward has ability to make decisions about residence, voting and operating a motor vehicle.

### **The Drawbacks of Guardianship**

Obtaining guardianship can be an expensive and complicated process. Applicants must hire an attorney and pay a fee to file the application for guardianship. There may also be costs associated with the required medical exam. The guardian must also post a bond with the court if the application is granted.

Once a guardianship is established, the guardian has many responsibilities. Each year, a guardian of the estate must file an accounting, explaining what money was received and how exactly money was spent. A guardian of the person must file an annual report on the condition of the person under guardianship. In addition, guardians must fulfill all duties granted to them by the court and may be asked to justify decisions they have made on behalf of the person with a disability. Another issue to consider is that many people with disabilities do not want a guardian. People with disabilities desire to have decision-making power over their own lives, even if they sometimes need additional support. Pursuing a guardianship when a person does not agree, can lead to family conflict.

Additionally, once a guardianship is established, changing or ending it can be difficult. This underscores the importance of looking at all available alternatives to guardianship, including supported decision-making, before pursuing guardianship. It is up to the judge to decide whether to change or terminate a guardianship.



# Section

# 4

**Section 4: Alternatives to  
Guardianship**



## Section 4: Alternatives to Guardianship

Because guardianship takes away a person’s rights, a court must consider less restrictive alternatives before granting a guardianship. Alternatives to guardianship can be used to avoid the need for a guardianship.

In addition to supported decision-making, Texas law (*Tex. Est. Code §§ 1002.0015 & 1357.001 et seq*) recognizes a number of alternatives to guardianship, including, but not limited to the following:

1. Medical Power of Attorney
2. Durable Power of Attorney
3. Declaration for Mental Health Treatment
4. Representative Payee
5. Trusts and Savings Accounts
6. Joint Bank Account
7. Designation of Guardian Before the Need Arises
8. Alternate Forms of Decision-Making Based on Person-Centered Planning
9. Supported Decision-Making Agreement

While not all alternatives to guardianship may be appropriate for the individual or his or her circumstances, below is information on several alternatives to consider before pursuing guardianship.

### 1. Medical Power of Attorney

A medical power of attorney is a legal document that allows an individual (called the “principal”) to delegate the authority to make health care decisions to a third party (called the “agent”) in the event the principal becomes incapable of making choices.

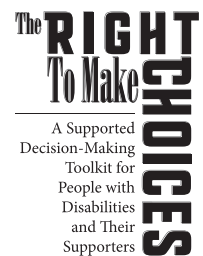
Allows the principal to give written instructions regarding the type of treatment they do and do not want to receive.

The principal continues to make medical decisions as long as they are capable of doing so and the agent’s authority begins when a physician certifies that the principal lacks the capacity to make health care decisions.

A medical power of attorney can be revoked by the principal at any time.

### 2. Durable Power of Attorney

A durable power of attorney is a legal document that appoints a person (agent) to conduct financial transactions and make business decisions for another person (principal), including transferring property, banking, investing and taxes. A “durable” power of attorney stays valid even if you



become unable to handle your own affairs (incapacitated). If you don't specify that you want your power of attorney to be durable, it will automatically end if you later become incapacitated.

Because there is potential for exploitation when authority to make financial decisions is delegated to another person, it is very important to choose someone trusted as the agent. Should the principal change their mind, the document can be changed or canceled at any time if the person has capacity.

A person can make a durable power of attorney effective immediately, however, another option exists. The durable power of attorney can stipulate that the power of attorney will only go into effect if you become incapacitated.

### **Durable Power of Attorney for Educational Decisions**

When a child in special education turns 18, they are considered an adult and they take over the right to make their own educational decisions. A parent or guardian's right to make educational decisions for a student in special education transfer automatically to the student when a child turns 18.

A durable power of attorney for education is one way a parent can continue to make educational decisions. It is a good way for students who can express their desire to have their parent continue to be involved in the educational process.

The University of Montana Rural Institute has a sample form to use to with schools or other adult agencies to authorize parents' participation in special education decisions and meetings. Find it online at: [ruralinstitute.umt.edu/transition/handouts/consent to authorize advocacy.pdf](http://ruralinstitute.umt.edu/transition/handouts/consent%20to%20authorize%20advocacy.pdf).

### **3. Declaration for Mental Health Treatment**

A declaration for mental health treatment allows a person to make decisions in advance about mental health treatment as it relates to psychoactive medication, electroconvulsive therapy and emergency mental health treatment.

The instructions will only be followed if a court believes an individual is incapacitated to make treatment decisions. If not, the individual will be able to give or withhold consent.

Once executed, the document continues in effect for three years unless the individual becomes incapacitated. If this occurs, the directive will continue in effect until the person is no longer incapacitated.

A declaration for mental health treatment can be revoked at any time except during periods of incapacity.

### 4. Representative Payee

Federal law provides for money management assistance from individuals or organizations for people who receive government benefits and may have difficulty managing them alone. For Supplemental Security Income (SSI) and Social Security Disability (SSDI) beneficiaries, a representative payee may be appointed to help manage their benefits. Individuals who receive veterans' benefits may also be appointed a fiduciary to help management their benefit.

If a person with a disability or elderly person receives Supplemental Security Income (SSI) or Social Security payments, the Social Security Administration (SSA) may appoint a representative payee to receive the benefits for the person who cannot manage or direct the management of his or her benefits. The person getting benefits can tell the SSA who they want to be their representative payee. A representative payee can be a person or an organization.

A payee's main duties are to use the benefits to pay for the current and future needs of the beneficiary, and properly save any benefits not needed to meet current needs.

A payee must also keep records of expenses. The payee must provide an accounting to the SSA of how he or she used or saved the benefits when asked.

Once the payee makes sure the person's need are met, the person has a right to spending money, even if the payee does not approve of what he or she wants to buy with their money.

To apply to be a representative payee, you must contact the Social Security office or nearest you. You can find your local Social Security office at the SSA locator website: <https://secure.ssa.gov/ICON/main.jsp>. You could also call SSA at 1-800-772-1213. Usually, a person is required to complete the application in person.

More information can be found at the [www.ssa.gov/payee/faqrep.htm](http://www.ssa.gov/payee/faqrep.htm) or you can ask for a printed copy of the "Guide for Representative Payees" at your local Social Security office or call 1-800-772-1213.

### Rights of a Person Who has a Representative Payee

If a person has representative payee and believes their money is being used wrongly, they should tell the SSA right away at 1-800-772-1213. If a person does not believe they need a representative payee, they can show the SSA that they are able to handle their own money. This could be shown in evidence like:

- A statement from a doctor who will say they believe you are able to care for yourself

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- An official copy of a court order saying that the court believes that you can take care of yourself
- Other evidence that shows your ability to take care of yourself

The evidence will have to be given to the Social Security Office. But, always get an appointment first by calling 1-800-772-1213.

### 5. Trusts and Savings Accounts

Trusts are an alternative to guardianship that help to plan for the long-term financial needs of a person with a disability. A trust creates a legal relationship where one person lets another person or entity, such as a bank, to take care of their money and property. The person managing the money or property is called the “trustee.” The person who benefits is called the “beneficiary.” Setting up a trust requires the assistance of an attorney.

#### Special Needs Trusts

A special needs trust lets a person with a disability receive money or property without losing their benefits like Medicaid or Supplemental Security Income (SSI). If money or property is given directly to the person with a disability, the individual could lose benefits. So, it is put into the special needs trust and the trustee will spend the money as allowed by law. Funds from a special needs trust cannot be used to pay for items that Medicaid and SSI cover, like housing and medical care. Money from a special needs trust can be used to pay for things like furniture, education, transportation, entertainment, travel, and out-of-pocket medical and personal care expenses. The person with a disability has very little control over the use of their money which decreases their opportunity to be independent.

There are private and pooled trusts and trustees can be a parent or a professional. Private trusts can have high costs to set up and manage. Fortunately, Texas has a master pooled special needs trust managed by The Arc of Texas that is an affordable alternative to private trusts. More information about The Arc of Texas Master Pooled Trust can be found at: [www.hearcoftexas.org/trust/index.php](http://www.hearcoftexas.org/trust/index.php).

#### ABLE Account (Tax-Deferred Savings Account)

People with disabilities using an ABLE account can save money in their own name to pay for certain expenses without fear of losing eligibility for the Supplemental Security Income (SSI) program, Medicaid, and other federal means-tested benefits. Tax-deferred savings accounts, called ABLE accounts, are a new option available under federal and Texas state law that will allow the person with a disability to deposit and have others deposit money into an account that belongs to and is controlled by the person with a disability.

Each year a person with a disability who receives government benefits, such as SSI, will be able to save a total of \$14,000 into an ABLE account. The account can save as much as \$100,000 before SSI benefits are suspended. Funds can come from earned wages, a family member, a friend or any other source. This savings account and income earned by the accounts will not be taxed.

The federal Achieving a Better Life Experience (ABLE) Act passed at the end of 2014 and the Texas ABLE Act became law in May 2015. The Texas Comptroller is managing the program. For more information, see the Texas Comptroller website: [www.texasable.org](http://www.texasable.org).

### **6. Joint Bank Account**

A joint bank account is one owned by more than one person where each person has the right to deposit and withdraw funds.

Although the Texas Estates Code lists joint bank account as an alternative to guardianship, there are limitations and cautions to consider. One can have a joint account and receive SSI, but the Social Security Administration will consider all of the money in the account as belonging to the person receiving SSI. If the funds in the account exceed \$2,000, then the person has exceeded the asset limit for a person on SSI and would lose eligibility for SSI and Medicaid.

Second, both signers to the account have 100% rights to the money and, no matter who started the account or who puts in more money, you are equal owners. There is nothing the bank can do if one of you takes out all of the money.

### **7. Designation of a Guardian Before the Need Arises**

Texas law allows individuals to choose a guardian in advance of needing one. Any person who is not incapacitated may designate in writing a person that he or she wishes to serve as guardian in the event they need one. The person may also indicate persons they do not want to serve as guardian. These individuals may not be appointed guardian under any circumstances.

A declaration designating a future guardian or disqualifying a future guardian must be carefully drafted and witnessed. If the declaration is properly done, the court will consider it strong evidence that the person signing it was competent at the time the declaration was made and that the wishes expressed in the declaration should be followed.

### **8. Person-Centered Planning**

Person-centered planning is a broad term used to describe an intentional, deliberate approach to planning for and with the person with a disability. It has been described as a discovery process that helps find the balance between what is important to a person with a disability and what is

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important for the person. The idea of person-centered planning has evolved over the last 20 years, resulting in a variety of methods. Different approaches were designed to deal with different issues (for example challenging behavior, developing relationships, or gaining more of what matters to the person with the disability), but they all share a common set of beliefs:

- The person at the focus of planning, and those who love the person, are the primary authorities on the person's life direction. The essential questions are: "Who is this person?" and "What community opportunities will enable this person to pursue his or her interests in a positive way?"
- The purpose of person-centered planning is learning through shared action.
- Person-centered planning aims to change common patterns of community life.
- Person-centered planning requires collaborative action and challenges practices that separate people and perpetuate controlling relationships.
- Honest person-centered planning can only come from respect for the dignity and completeness of the focus person.
- Assisting people to define and pursue a desirable future tests one's clarity, commitment and courage.

### 9. Supported Decision-Making

Historically, many people with disabilities have been placed under guardianship, losing the right to make choices about their lives such as where they live and whether or not to consent to medical care. Supported decision-making is an alternative to guardianship that offers an opportunity for adults with disabilities to make their own decisions.

Supported decision-making is a process whereby adults with disabilities who need assistance with decision-making receive help with understanding the situations and choices they face so they can remain in control of decisions about their lives. The individual with a disability enters into a voluntary agreement with an individual of their choosing, such as a friend or family member, who assists them with making decisions, such as where they want to live, who they want to live with, where they want to work and whether to consent to a medical procedure. Supported decision-making essentially formalizes the process most adults go through when they make decisions – they seek advice, input and information from friends, family or professionals who are knowledgeable about those issues – so they can make their own well-informed choices.



# Section

# 5

## Section 5: Supports and Services



## Section 5: Supports and Services

Texas law requires that a court must also consider supports and services before a guardianship is created. Under the law (*Tex. Est. Code § 1101.101(a) (D) & (E) and (c)*), before appointing a guardian, the court must therefore find by clear and convincing evidence that supports and services have been considered and determined not to be feasible.

If the court grants a limited guardianship, the court order must also state the rights retained by the proposed ward with or without supports and services. The court must also state whether the proposed ward has ability to make decisions about residence, voting and operating a motor vehicle.

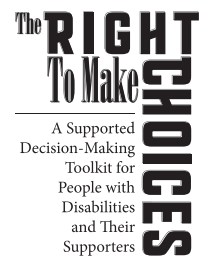
Supports and services are formal and informal resources that allow an individual with a disability to maintain independence and self-determination. Supports and services complement alternatives to guardianship and create additional opportunities for persons with disabilities to avoid being placed under a guardianship.

Under Texas law (*Tex. Est. Code § 1002.031*), "Supports and Services" means available formal and informal resources and assistance that enable an individual to:

- Meet the individual's needs for food, clothing, or shelter
- Care for the individual's physical or mental health
- Manage the individual's financial affairs
- Make personal decisions regarding residence, voting, operating a motor vehicle, and marriage

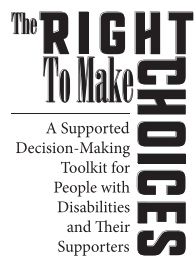
Formal supports might consist of services an individual receives through a Medicaid waiver, such as the Home and Community-Based Services (HCS) waiver, that supports the individual in the community. Waiver services must be tailored to the individual's needs and may include residential support, nursing services, medication set-up, or behavioral support services. Similarly, a case management service, which assesses the individual's medical and social service needs and uses that assessment to coordinate assistance from paid service providers and unpaid help from family and friends, can enable a person with a disability to live as independently as possible. Another option is a daily call or home visit service, where a volunteer makes daily calls or visits to an individual to check in and give assistance if needed.

Informal supports can also help support the individual and avoid the need for guardianship. Being surrounded by supportive and trusted family members and friends who can assist with explaining potential benefits and risks when making decisions about everyday issues like cooking, hygiene and safety can help the person to make informed choices. A helpful strategy to identify and capitalize on formal and informal supports is person-centered planning (see Section 4: Alternatives to Guardianship), which is the process of planning with and supporting an individual in a way that honors the individual's preferences, choices and abilities.



# Section 5

Other formal and informal supports and services can help people with disabilities to live as independently as possible. Some cities provide free or reduced cost transportation through taxi vouchers, van services or public transit, allowing the individual the independence that comes with mobility. In addition, devices such as smart phones and tablets can help people with disabilities become and remain independent through the use of timers and apps to remind them when to take medication, turn off the stove or lock the door, etc.



# Section

# 6

**Section 6: Supported  
Decision-Making**



## Section 6: Supported Decision-Making

At the heart of supported decision-making is a simple premise: everyone receives help from people they trust to make important life decisions. Even if people with disabilities need extra support or a different kind of support to make decisions, it does not mean that they cannot make decisions or that their right to make choices should be taken away through guardianship. Supported decision-making is a process of supporting and accommodating an adult with a disability to make their own choices. Using a supported decision-making agreement, an adult with a disability chooses another adult they trust to serve as their supporter and to help them make decisions and live a more self-determined life.

Under a supported decision-making agreement, the supporter **CANNOT** make a decision for the person with a disability. The supporter **CAN**, however, help a person with a disability:

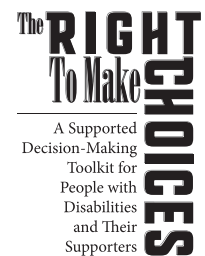
- Understand the options, responsibilities, and consequences of their decisions
- Obtain and understand information relevant to their decisions (including medical, psychological, financial, educational, and treatment records)
- Communicate their decisions to the appropriate people

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.

### The History of Supported Decision-Making

In 2009, the Texas Legislature passed a law to create a supported decision-making pilot project run by The Arc of San Angelo and administered by the Texas Department of Aging and Disability Services. Over three years, the pilot trained volunteers to assist individuals with intellectual or developmental disabilities (IDD) living in a state supported living center to make their own decisions using supported decision-making as an alternative to guardianship.

In 2013, the Jenny Hatch case received national attention when she became the first person in the country to have a court order the use of supported decision-making instead of a guardianship for a person with a disability. The previous year, Jenny Hatch, a 29 year-old woman with Down Syndrome, was placed under guardianship, and lost her right to do many things she loved including seeing her friends and using her cell phone and laptop. With the help of Quality Trust for Individuals with Disabilities, Jenny won back her right to make her own decisions using supported decision-making. She now lives and works where she wants and has the friends she chooses.



In 2015, many advocates came together to work on reforming the Texas guardianship system. As a result, the Texas Legislature passed the nation's first law specifically identifying supported decision-making as an alternative to guardianship.

### **How Does Supported Decision-Making Work?**

Supported decision-making can be used by any adult who has a disability. While supported decision-making is a good alternative to guardianship for many people with disabilities, it may not be appropriate for everyone. The person with a disability must have the ability to understand what supported decision-making is and must have the capacity to choose who he or she wants to be his or her supporter and what kind of decisions he or she needs help making.

The supporter can be any adult the person with a disability chooses. However, the supporter should be someone that the adult with a disability trusts. Often this will be a family member or friend who knows the person with a disability well. After a supporter is selected, the person with a disability and his or her supporter can then fill out a supported decision-making agreement together.

### **Requirements of a Supported Decision-Making Agreement**

The person with a disability and his or her supporter can use the sample supported decision-making agreement found in Section 1357.056(a) of the Texas Estates Code, or any form consistent with that one. A version of the form can be found in Section 12: Forms. Filling out the form does not require going to court, having an attorney, or paying a fee. For the agreement to be valid, it needs to be witnessed by two people over the age of 14 or a notary public.

On the supported decision-making agreement, people with disabilities can specify what kinds of decisions they want help making, and whether they want their supporters to be able to access their private health and education records. A person with a disability can have multiple supporters to help with different kinds of decisions. The individual will just need to fill out a separate form with each supporter.

The person with a disability or the supporter can keep the original form, and copies can be provided to professionals who work with the individual, such as doctors, teachers, service providers, and others. According to the law, people who receive a copy of the supported decision-making agreement cannot be held to criminal or civil liability or professional misconduct as long as they act in good faith to what is in the agreement.

Having a supported decision-making agreement does not guarantee that someone can provide informed consent. The person with a disability still needs to demonstrate that he or she has the capacity to make a particular



decision. The supporter's role is to help the person with a disability to understand and communicate what is needed to provide informed consent.

### **What Legal Duties Does the Supporter Have to the Person with a Disability?**

Under Texas law, (*Tex. Est. Code § 1357.052*), a supported decision-making agreement creates a fiduciary relationship between the supporter and a person with a disability. This fiduciary duty requires the supporter to act loyally, in good faith and without self-interest. The supporter must also avoid conflicts of interest. A supporter could be held liable for violating these duties.

### **Access to Confidential Information**

Through supported decision-making, an adult with a disability can authorize his or her supporter to help him or her access confidential information. This includes things like medical and school records. While the agreement may authorize the supporter to assist with obtaining records, the adult with a disability will need to fill out an authorization to release confidential information form (See Section 12: Forms). The supporter must make sure the information obtained is kept confidential, and is only used to support the adult with a disability. The person with a disability can also still get confidential information on her or his own without the assistance of the supporter.

### **Termination of a Supported Decision-Making Agreement**

The four reasons a supported decision-making agreement can end are listed below.

- The adult with the disability or the supporter can choose to end the agreement at any time.
- The adult with a disability and the supporter can put a termination date on the supported decision-making agreement form.
- The agreement ends automatically if the Department of Family and Protective Services finds that the supporter has abused, neglected, or exploited the adult with a disability.
- The agreement ends automatically if the supporter is found criminally liable for the abuse, neglect, or exploitation of the adult with a disability.

### **Use of a Supported Decision-Making Agreement with Other Alternatives to Guardianship**

Supported decision-making can be used along with other alternatives to guardianship. For example, an adult with a disability may need a representative payee for SSI, a special needs trust to protect assets and help

plan for the future, or a Medical Power of Attorney for medical decisions if he or she becomes incapacitated, while having a supported decision-making agreement to get support with other kinds of decision-making.

It is important to remember that there is no “one size fits all” alternative to guardianship. The key is to take a person-centered approach so that adults with disabilities can choose alternatives to guardianship that provide the support they need to help them reach their goals.

### **What Happens if Someone Suspects Abuse, Neglect, and Exploitation by the Supporter?**

If a person who receives or is aware of a supported decision-making agreement has reason to believe that the supporter is abusing, neglecting, or exploiting the adult with a disability, the person must report this information to the Department of Family and Protective Services (DFPS). In addition, the supported decision-making agreement ends if DFPS finds that the supporter has abused, neglected, or exploited the person with a disability, or if the supporter is found criminally liable for abuse, neglect, or exploitation.

# Section

# 7

**Section 7: Advice for  
Supporters**



## Section 7: Advice for Supporters

Being a supporter is hard work. A supporter's role is to assist a person with a disability to make decisions. The relationship between the person with a disability and his or her supporter is one of trust and works best when the supporter knows and understands the person's preferences and values.

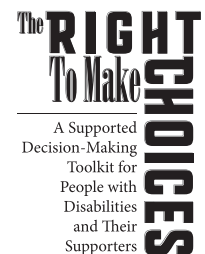
A supporter could be someone who helps a person with a disability do other things in their life, like a family member, advocate, friend, or in some cases, even a service provider.

A person with disability can have more than one supporter and could have a lot of people working together to help them make decisions. This could be part of person-centered planning and is sometimes called a "circle of support" because everyone works together to support a person with a disability to make decisions.

Supporters assist with decisions by finding information, helping the person with disability consider consequences and communicating the decision. The final decision must always be the decision of the person with disability. To ensure the person with disability is the one deciding, supporters must put aside their own opinions, values, and influences. Supporters should not unduly influence the person with disability, but the individual has a right to seek the opinion of their supporters and to use their help in decision-making.

While no two supporters are alike, there are some things that good supporters have in common. Good supporters:

- Believe that people with disabilities have the right to make their own decisions
- Support people with disabilities to speak for themselves
- Like to listen to what other people think and are interested in others
- Are patient
- Respect the privacy of others, especially the person they support
- Are able to put aside their own opinions, values, and influences
- Know the person they support and what is important to them



# Section 7

- Listen to the person they support and communicate in the way the person with a disability wants
- Help when there is a problem
- Let the person they support make his or her own decisions

# Section

# 8

**Section 8: Frequently Asked  
Questions**





## Section 8: Frequently Asked Questions

Most people with disabilities can manage their own affairs with assistance and guidance from a person whom they trust 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.

### What are the drawbacks of guardianship?

Guardianship should be a last resort for several reasons. Guardianship requires going to court and can be costly. Further, guardianship deprives an adult with disabilities of significant civil and legal rights. Consequently, Texas law requires that alternatives to guardianship be considered first.

### Other drawbacks of guardianship to consider:

- 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
- Terminating or modifying a guardianship requires the services of an attorney and a court hearing
- Can lead to family conflict

### Why try supported decision-making before pursuing guardianship?

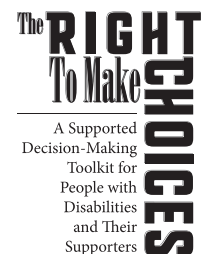
Texas law requires a court to consider alternatives to guardianship before a guardianship is created. Supported decision-making is an alternative to guardianship that is recognized under Texas law.

### What is supported decision-making?

Supported decision-making (SDM) is a tool that allows people with disabilities to keep their ability to make decisions by choosing someone to help them make choices. Supported decision-making allows individuals to make their own decisions and stay in charge of their lives, while receiving the help and assistance 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 be taken away. Using a supported decision-making agreement, a person with a disability chooses someone he or she trusts to serve as their supporter.

### Under a supported decision-making agreement, the supporter CAN help a person with a disability:

- Understand the options, responsibilities, and consequences of their decisions



# Section 8

- Obtain and understand information relevant to their decisions
- Communicate their decisions to the appropriate people
- Under a supported decision-making agreement, the supporter **CANNOT** make a decision for a person with a disability

## What does supported decision-making look like?

Supported decision-making can look different for each person. It includes supporting a person with a disability to understand, make, and communicate their own choices. A supporter may assist a person with a disability in making decisions by:

- Using plain language, materials or information in audio or visual form to help the person with a disability understand choices and/or possible outcomes
- Taking extra time to discuss choices
- Listing pros and cons
- Using role-playing to help the person with a disability understand and communicate choices
- Accompanying the person with a disability to important appointments to take notes and help the person remember and discuss their options

## Who can enter into a supported decision-making agreement?

A supported decision-making agreement may be entered into by an adult with a physical or mental disability. The adult with a disability must voluntarily agree to the supported decision-making agreement and cannot be pressured into entering a supported decision-making agreement.

The law does not establish a specific level of capacity required for an individual to enter into a supported decision-making agreement. The individual should have the ability to understand that he or she needs assistance in making particular decisions, to choose a trusted friend or trusted family to be his or her supporter and be able to make decisions with the help of the supporter.

## Who can be the supporter?

Any adult may be a supporter. Usually it is a family member or friend. The adult with a disability must choose who will serve as his or her supporter. The individual should pick someone they trust. A supported decision-making agreement is based on trust. An adult with a disability cannot be told whom to select as his or her supporter.

## **What does the supported decision-making agreement do?**

The adult with a disability may allow his or her supporter to help gather information needed for a life decision, support the decision-making process by helping the adult evaluate and understand the options and consequences, and communicate that decision to other parties. The agreement may be established for one specific decision or for many decisions.

The agreement may be customized to fit the situation as long as it is substantially similar to the statutory form.

## **What authority does the supporter have?**

The supporter has no authority to make the decisions for the adult with a disability. The supporter is only allowed to assist the individual with whatever is specified in the agreement. The supporter helps the individual gather information and understand that information in order to make an informed decision. The supporter can also assist the person with a disability in communicating the decision to the necessary third parties. The supporter merely assists the individual—the individual with a disability is “the decider.”

## **What rights are maintained by the adult with a disability?**

The adult maintains the right to make the decisions, including where to live, with whom to live, where to work, and what supports and services they want. The individual can reject the advice of the supporter or make life decisions without the assistance of the supporter.

## **How does supported decision-making differ from a power of attorney?**

A power of attorney grants another person the authority to make decisions and handle matters without input from the individual. A supported decision-making agreement does not give the supporter the power to make decisions. The person with a disability retains right to make decisions for himself or herself.

## **Can supported decision-making be used with guardianship and other alternatives?**

A supported decision-making agreement could be used in conjunction with other alternatives to guardianship such as powers of attorney and representative payee. The use of other alternatives to guardianship with a supported decision-making agreement should be consistent with the goal of promoting self-determination of the person with a disability and avoiding a full guardianship.

## **How is supported decision-making different from discussions we have at home with my child with a disability?**

Many families are already using the concept of supported decision-making in their everyday lives. Helping a person learn decision-making skills by making

their own choices with help and guidance is supported decision-making. Most supportive parents are already engaged in supported decision-making with their child.

### **If I'm already doing this, why does it matter what we call it?**

Often parents are encouraged to change this relationship, and consider guardianship or other more formal processes when their child reaches the age of 18. However, if this relationship is working for both of you, formalizing your relationship in a supported decision-making agreement can ensure that you remain in a supportive role as your child considers their major life decisions such as education, services, and benefits they may be eligible for.

# Section

# 9

## **Section 9: Making My Own Choices**

**An Easy-to-Follow Guide on Supported  
Decision-Making Agreements**



## Section 9: Making My Own Choices

### An Easy-to-Follow Guide on Supported Decision-Making Agreements

#### What is self-determination?

Self-determination is making your own choices. You have a right to make your own decisions.

You make decisions every day. You choose things like:

- What to wear
- Where to work
- Which friends or family members to spend time with
- And more!

All people need help to make important decisions. You have the right to make your own choices, even if you need help. Your right to make choices should not be taken away just because you need help.

#### What is guardianship?

Guardianship is when a judge decides that a person with a disability cannot make their own decisions. The judge chooses a guardian. A guardian is someone who makes decisions for you.

Under guardianship, you can lose your rights to:

- Drive
- Choose where you live
- Choose where you work
- Vote
- Get married
- Make medical decisions
- And more

Full guardianship means the guardian makes every decision. Limited guardianship means the guardian only makes certain decisions.

#### What are alternatives to guardianship?

Alternatives to guardianship are ways that can help you make life decisions and get support without having your rights taken away. Here are a few alternatives to guardianship:

- Supported Decision-Making: This is when someone you trust helps you make choices.

- **Power of Attorney:** You give someone else permission to make some decisions for you, but you still keep your right to make decisions without this person. These could be medical, school, money, or other kinds of decisions.
- **Representative Payee:** If you receive SSI or other social security, someone will keep track of and manage your money.
- **Special Needs Trust:** A trust is an account where you and others save money for your benefit, and you will not lose your Medicaid or SSI benefits.
- **ABLE Account:** This is a special bank account you have control over. You can save money in an ABLE Account and still get all of your Medicaid or SSI benefits. More information at [www.texasable.org](http://www.texasable.org).
- **Joint Bank Account:** This is an account you and someone else share. You and the other person can both put money in and take money out.
- **Person-Centered Planning:** This is when people you choose help you plan for your future. They help you decide what is important to you. They also ask what helps keep you safe and healthy. With people you trust, you can make goals for your life. They help you make decisions about what you want.

For more information on these options, call Disability Rights Texas at 1-800-252-9108 or visit [www.DRTx.org](http://www.DRTx.org), call The Arc of Texas at 1-800-252-9729 or visit [www.arcoftexas.org](http://www.arcoftexas.org), or talk to someone you trust.

### **What are supports and services?**

You can get supports and services to help you make life choices instead of getting a guardian. For example, a friend or family member may help you pay your bills. Or an attendant could help you get dressed and cook food.

Many people with disabilities also get help through something called a Medicaid waiver. Medicaid waivers have waiting lists, so be sure to get on an interest list.

To find out more about Medicaid waivers, call 1-855-937-2372 or go to [www.dads.state.tx.us/services/contact.cfm](http://www.dads.state.tx.us/services/contact.cfm).

Another thing you can use is supported decision-making.

### **What is supported decision-making?**

Supported decision-making means choosing someone you trust to help you make decisions. Your helper, or supporter, can be someone like your parents or a good friend.



Your supporter CANNOT make decisions for you. Your supporter CAN, however:

- Help you understand your choices and decisions
- Help you get and understand information to help you make your decisions
- Help you tell your decisions to other people
- With supported decision-making, you make your own choices with help. This lets you be more independent

### **How does supported decision-making work?**

If you want to use supported decision-making, follow the steps below.

- Choose people you trust to help you make decisions.
- Ask them to be your supporter(s). You can change your mind and say you don't want this person to support you whenever you want.
- Think about what decisions you need help making. Your supporter can help you choose things like where to live, where to work, what medical help you want, and more.
- Create a written plan called a supported decision-making agreement.

When you need to make a decision and want help, you can ask your supporter(s) to help you. You can also take your agreement with you to the doctor, to school, when looking at places to live, and more!

You can use the worksheet on the next page to help you think about the decisions you make and who can help you make them. After the worksheet, you will find step-by-step help on how to fill out a supported decision-making agreement. You can find a copy of a blank supported decision-making agreement form that you can use in Section 12 of this toolkit.

# Section 9

## Decision-Making Worksheet

Choices I Make	Do I need Help?			Who Could Help Me?
	Yes	No	Sometimes	
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				

The **RIGHT**  
To Make **CHOICES**  
A Supported  
Decision-Making  
Toolkit for  
People with  
Disabilities  
and Their  
Supporters

## How do I fill out a supported decision-making agreement?

Before filling out a supported decision-making agreement, you will need the following:

- Your supporter(s)
- A blank copy of the supported decision-making agreement (see a sample after Step 10 in this Section or get a blank form that you can use in Section 12 at the end of this toolkit)
- Two people over age 14 (called witnesses) OR a notary public
- Your decision-making worksheet, if you filled one out

### Step 1: What is a Supported Decision-Making Agreement?

The first paragraph in the agreement explains what supported decision-making is, and that it is in the law. Your supporter can help explain this paragraph to you if it is confusing.

*"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."*

### Step 2: Who is making the Agreement?

It says "Appointment of Supporter." This means you are choosing someone to help you make decisions.

**You should write your name on the next line. Write your name after "I (Name of Adult with Disability)".**

*I (Name of Adult with Disability), \_\_\_\_\_  
am entering into this agreement voluntarily.*

On the next lines, your supporter will write her/his name. The supporter also puts her/his address, phone number, and email address.

*I choose (Name of Supporter) \_\_\_\_\_ to be my Supporter.*

*Supporter's Address: \_\_\_\_\_*

*Phone Number: \_\_\_\_\_*

*E-mail Address: \_\_\_\_\_*

# Section 9

### Step 3: What decisions you want help with.

Put an X in the boxes for the types of decisions you want your supporter to help with. You can check yes or no for each type of decision. For example, if you want your supporter to help with decisions about your medical care, you would check yes on the second line, before “my physical health.” You can write other kinds of decisions on the last line.

Write in the kind of decision after the word “Other.”

*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 \_\_\_ *Other: \_\_\_\_\_*

### Step 4: What private information about you do you want to share with others?

The lines below have to do with your private information. The first one asks if your supporter can see your private medical records. The second one asks if your supporter can see your private school records.

You can check yes or no for these questions. The decision is up to you. If you say “yes,” your supporter will use the private information to help you make choices. If you say “no,” you will decide what information you need to share with your supporter to help you make decisions.

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.*

### Step 5: When does the agreement start and end?

The next part says that the agreement starts when you and your supporter sign it. You or your supporter can end the agreement whenever either of

you want. You can also pick a day for the agreement to end. If you want the agreement to end on a certain day, you write it in the space below.

*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.*

### Step 6: You sign the agreement

At the bottom of the first page, you put the date that you signed the agreement and then sign and print your name. By signing, you are saying that you want your supporter to help you make decisions.

Signed this \_\_\_\_\_ (day) of \_\_\_\_\_ (month), \_\_\_\_\_ (year)  
\_\_\_\_\_  
(Signature of Adult with Disability) (Printed Name of Adult with Disability)

### Step 7: Information for supporters

This part says that your supporter must help you in ways that are best for you and not the supporter or anyone else.

#### IMPORTANT INFORMATION FOR SUPPORTERS

*When you agree to provide support to an adult with a disability under this supported decision-making agreement, you have a duty to:*

1. Act in good faith
2. Act loyally and without self interest
3. Avoid conflicts of interest

### Step 8: Your supporter signs the agreement

Your supporter signs the top of the second page where it says, "I (Name of Supporter)".

#### CONSENT OF SUPPORTER

I (Name of Supporter) \_\_\_\_\_, consent to act as a Supporter under this agreement.

\_\_\_\_\_  
(Signature of Supporter) (Printed Name of Supporter)

### Step 9: Witnesses sign the agreement

In the middle of page 2, two people over 14 years old sign and write out their names. These people are called witnesses. If you don't have two witnesses, you can have someone called a "notary public" sign. They also put a stamp on the agreement. A notary public might be at your bank.

*This agreement must be signed in front of two witness or a Notary Public.*

\_\_\_\_\_  
(Witness 1 Signature) (Printed Name of Witness 1)

# Section 9

\_\_\_\_\_ (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 Person with Disability) (Name of Supporter)

\_\_\_\_\_ (Signature of Notary) \_\_\_\_\_ (Printed Name of Notary)  
 (Seal (if any) of Notary) My commission expires: \_\_\_\_\_

**Step 10: Protection from harm.**

This part says that your supporter should not hurt you or take advantage of you. If your supporter is hurting or taking advantage of you, you can call the Texas Department of Family and Protective Services Abuse Hotline at 1-800-252-5400 for help.

*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.txabusehotline.org](http://www.txabusehotline.org).*

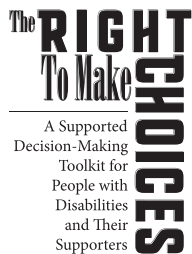
**Step 11: Relying on the agreement.**

The last part tells doctors, teachers, providers and other people who get the agreement that they should accept it. They won't get in trouble for letting your supporter help you. If you have problems with people letting you use your supported decision-making agreement, please call Disability Rights Texas at 1-800-252-9108 or The Arc of Texas at 1-800-252-9729.

*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.*

With supported decision-making, you make your own choices. You make decisions with help from people you trust. You can use this tool to live the life you want!



# Section

# 10

**Section 10: Additional  
Resources**





## Section 10: Additional Resources

Please visit the websites below for additional information on the topics discussed in this toolkit. In addition to the resources listed below, you can always contact Disability Rights Texas for assistance at 1-800-252-9108 or find further information at [www.disabilityrightstx.org](http://www.disabilityrightstx.org). The Arc of Texas may be contacted at 1-800-252-9729 or more information is available at [www.thearcoftexas.org](http://www.thearcoftexas.org).

### Self-Determination and Decision-Making Support

#### American Association on Intellectual and Developmental Disabilities

[www.aidd.org/news-policy/policy/position-statements/self-determination](http://www.aidd.org/news-policy/policy/position-statements/self-determination)

#### Jenny Hatch Justice Project

[www.jennyhatchjusticeproject.org/](http://www.jennyhatchjusticeproject.org/)

#### National Gateway to Self-Determination

[www.ngsd.org](http://www.ngsd.org)

#### National Parent Center on Transition and Employment

[www.pacer.org/transition/learning-center/independent-community-living/self-determination.asp](http://www.pacer.org/transition/learning-center/independent-community-living/self-determination.asp)

#### Self Advocates Becoming Empowered

[www.sabeusa.org](http://www.sabeusa.org)

#### Alternatives to Guardianship

#### Social Security Representative Payee Program

[www.ssa.gov/payee/](http://www.ssa.gov/payee/)

#### Texas Guardianship Reform and Supported Decision-Making Workgroup

[www.grsdm.org](http://www.grsdm.org)

#### Texas Institute for Person-Centered Practices

[www.person-centered-practices.org/](http://www.person-centered-practices.org/)

#### Texas Achieving a Better Life Experience (ABLE) program

[www.texasable.org](http://www.texasable.org)

The **RIGHT**  
To Make **CHOICES**  
A Supported  
Decision-Making  
Toolkit for  
People with  
Disabilities  
and Their  
Supporters

## Texas Probate For Power of Attorney Forms

[www.texasprobate.com/professional-forms/disability-planning-forms/](http://www.texasprobate.com/professional-forms/disability-planning-forms/)

## The Arc of Texas Master Pooled Trust

[www.thearcoftexas.org/trust](http://www.thearcoftexas.org/trust)

## Supports and Services

### Texas Department of Aging and Disability Services Information on home and community-based services

<https://hhs.texas.gov/services/health/medicaid-chip/about-medicaid-chip/homecommunity-based-services>

### Texas Health and Human Services Find the local authority serving your county

<https://hhs.texas.gov/doing-business-hhs/provider-portals/long-term-care-providers/local-intellectual-developmental-disability-authority-lidda/local-authorities-directory>

### Texas Institute for Person-Centered Practices

[www.person-centered-practices.org/](http://www.person-centered-practices.org/)

## Supported Decision-Making

### Autistic Self-Advocacy Network

[www.autisticadvocacy.org/2016/02/the-right-to-make-choices-new-resource-on-supported-decision-making/](http://www.autisticadvocacy.org/2016/02/the-right-to-make-choices-new-resource-on-supported-decision-making/)

### Jenny Hatch Justice Project

[www.jennyhatchjusticeproject.org/](http://www.jennyhatchjusticeproject.org/)

### National Resource Center for Supported Decision-Making

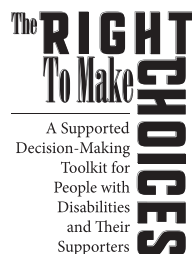
[www.supporteddecisionmaking.org/](http://www.supporteddecisionmaking.org/)

### Texas Guardianship Reform and Supported Decision-Making Workgroup

[www.grsdm.org](http://www.grsdm.org)

### The Arc of Texas

[www.arcoftexas.org](http://www.arcoftexas.org)



# Section

# 11

**Section 11: Texas Home And  
Community-Based Supports  
And Services**



## Section 11: Texas Home And Community-Based Supports And Services

The information in this section was compiled from a variety of sources and includes the most current information available at the time of printing this publication (April 2017). Content is subject to change, so please consult websites or phone numbers listed for the most current information.

Many programs have extensive wait lists (sometimes called interests lists). After you have your name placed on a list, you will be contacted by the program when services are available.

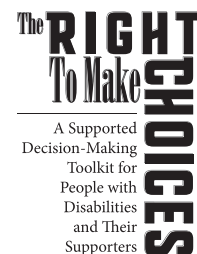
### 1. Community Living Assistance and Support Services (CLASS)

CLASS provides home- and community-based services to people with related conditions as a cost-effective alternative to placement in an intermediate care facility for individuals with an intellectual disability or a related condition (ICF/IDD). A related condition is a disability, other than an intellectual disability, that originated before age 22 and that affects a person's ability to function in daily life.

*Note: This service may not be available right away. Your name may be placed on an interest list. You will be contacted when services are available. If you are a current nursing facility resident and want to transition to the community using CLASS services, you will not have to be placed on an interest list.*

#### What services are available?

- Adaptive aids and medical supplies
- Behavioral support
- Case management
- Cognitive rehabilitative therapy
- Continued Family Services
- Dental and dental sedation
- Employment assistance
- Habilitation
- Minor home modifications
- Nursing
- Occupational therapy
- Physical therapy
- Pre-vocational habilitation



- Respite care
- Specialized therapies (auditory enhancement/auditory integration training, dietary, therapeutic horseback riding, and massage, recreational, music, aquatic and hippo therapies)
- Speech and language pathology
- Supported employment
- Support Family Services
- Transition Assistance Services

**In the CLASS program, the Consumer Directed Services (CDS) option is available to individuals who choose to self-direct one or more of the following program services:**

- Habilitation
- Cognitive rehabilitative therapy
- Employment assistance
- Nursing services
- Occupational therapy
- Physical therapy
- Respite care
- Speech and language pathology
- Support consultation
- Supported employment
- Transition Assistance Services

When individuals select the CDS option, they are required to use Financial Management Services (FMS) and may access support consultation in the CLASS Provider Manual by going to *hhs.texas.gov* and clicking on **Laws and Regulations**, then **Handbooks**, then scrolling down to the **Long-term Waiver Care Programs** section and see the **2nd bullet point**. Or go to the following link:

<https://hhs.texas.gov/laws-regulations/handbooks/community-living-assistance-support-services-provider-manual/class-pm-section-4000-consumer-directed-services-cds>

#### **Who can get services?**

- You must be diagnosed with a related condition that manifested before age 22.
- You must be eligible for Medicaid in the community and not be enrolled in another Medicaid waiver program.
- You must meet level of care criteria for placement in an ICF/IDD.

- You cannot be enrolled in another waiver program.
- You must need habilitation and case management services.
- You must live in your own or your family's home.
- Your income and resources may not exceed specified limits.

### How do I apply for services?

Call the Texas Health and Human Services office toll-free at 1-877-438-5658. Please be prepared to provide Social Security and Medicaid numbers, type of disability, age of the onset of the disability, date of birth, address and telephone number of the person needing services.

## 2. Home and Community-Based Services

*Note: This service may not be available right away. Your name may be placed on an interest list. You will be contacted when services are available. Certain individuals transitioning from or at risk of entering an institution may qualify for transition or diversion services without waiting.*

The Home and Community-Based Services (HCS) program provides individualized services and supports to people with intellectual disabilities who are living with their families, in their own homes or in other community settings, such as small group homes where no more than four people live. The local authority provides service coordination.

The Consumer Directed Services (CDS) option is available for some services in this program. Visit [hhs.texas.gov/services/disability/consumer-directed-services](https://hhs.texas.gov/services/disability/consumer-directed-services) for information.

### What services are provided?

- Adaptive aids
- Audiology
- Behavioral support
- Cognitive rehabilitation therapy
- Day habilitation
- Dietary
- Dental treatment
- Employment assistance
- Minor home modifications
- Nursing
- Occupational therapy
- Physical therapy

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People with  
Disabilities  
and Their  
Supporters

- Residential assistance
- Respite
- Speech and language pathology
- Supported employment
- Transition assistance service

In the HCS program, the Consumer Directed Services (CDS) option is available only to those who live in their own home or family home. Individuals who receive foster/companion care, Residential Support or Supervised Living are not eligible to use the CDS option.

**The HCS services currently available for self-direction are:**

- Supported Home Living (SHL)
- Employment Assistance
- Nursing
- Supported Employment
- Cognitive Rehabilitation Therapy
- Respite

When individuals select the CDS option, they are required to use Financial Management Services (FMS) and may access support consultation in the CLASS Provider Manual by going to [hhs.texas.gov](https://hhs.texas.gov) and clicking on **Laws and Regulations**, then **Handbooks**, then scrolling down to the **Long-term Waiver Care Programs** section and see the **2nd bullet point**. Or go to the following link:

<https://hhs.texas.gov/laws-regulations/handbooks/home-community-based-services-handbook/hcs-section-13000-consumer-directed-services>

**Who can get services?**

- You can be of any age.
- You must qualify for care in an intermediate care facility for individuals with an intellectual disability or related conditions (ICF/IDD). You must have one of the following:
  - a determination of an intellectual disability in accordance with state law
  - have a diagnosis of a related condition with an IQ of 75 or below
  - be an individual with a related condition who meets medical necessity for a nursing facility level of care, have a moderate to extreme deficit in adaptive behavior, and may or may not have an intellectual disability.
- You cannot be enrolled in another waiver program.
- Your income and resources may not exceed specified limits.



### How do I apply for services?

Contact your Local Intellectual and Developmental Disabilities Authority (LIDDA). To find the LIDDA that serves you, visit:

<https://hhs.texas.gov/doing-business-hhs/provider-portals/long-term-care-providers/local-intellectual-developmental-disability-authority-lidda/local-authorities-directory>

## 3. Texas Home Living

The Texas Home Living (TxHmL) program provides selected essential services and supports to people with an intellectual disability or a related condition who live in their own home or their family's home.

**The Consumer Directed Services (CDS) option is available for some services in this program. Visit**

[hhs.texas.gov/services/disability/consumer-directed-services](https://hhs.texas.gov/services/disability/consumer-directed-services) for information.

### What services are available?

- Adaptive aids
- Audiology
- Behavioral support
- Community support
- Day habilitation
- Dental treatment
- Dietary
- Employment assistance
- Minor home modifications
- Nursing
- Occupational therapy
- Physical therapy
- Respite
- Speech and language pathology
- Supported employment

In the TxHmL program, the Consumer Directed Services (CDS) option is available for all services.

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**Who can get services?**

- There is no age limit.
- Be determined eligible for Medicaid services before enrolling in the program
- You must meet specified functional criteria, including having a determination of an intellectual disability made in accordance with state law or having been diagnosed by a physician as having a related condition with an IQ of 75 or below
- You must live in your own home or your family's home
- You cannot be enrolled in another Medicaid waiver program
- Your income and resources may not exceed specified limits

**How do I apply for services?**

Contact your Local Intellectual and Developmental Disabilities Authority (LIDDA). To find the LIDDA that serves you, visit:

<https://hhs.texas.gov/doing-business-hhs/provider-portals/long-term-care-providers/local-intellectual-developmental-disability-authority-lidda/local-authorities-directory> .

**4. Deaf Blind with Multiple Disabilities**

*Note: This service may not be available right away. Your name may be placed on an interest list. You will be contacted when services are available. If you are a Texas nursing facility resident, you may qualify without being placed on an interest list*

The Deaf Blind with Multiple Disabilities (DBMD) program provides home and community-based services to people who are deaf blind and have another disability. This is a cost-effective alternative to an intermediate care facility for individuals with an intellectual disability or related conditions (ICF/IDD). The DBMD program focuses on increasing opportunities for consumers to communicate and interact with their environment.

The Consumer Directed Services (CDS) option is available for some services in this program. Visit [hhs.texas.gov/services/disability/consumer-directed-services](https://hhs.texas.gov/services/disability/consumer-directed-services) for information.

**What services are provided?**

- Adaptive aids and medical supplies
- Assisted living (licensed up to six beds)
- Audiology
- Behavior support services
- Case management

- Chore provider
- Dental treatment
- Dietary services
- Employment assistance
- Environmental accessibility
- Intervener
- Minor home modification
- Nursing services
- Occupational therapy
- Orientation and mobility
- Physical therapy
- Prescription drugs, if not covered through Medicare
- Residential habilitation
- Respite care
- Speech, hearing and language therapy
- Supported employment
- Transition assistance services

**You can access the following services through the CDS option:**

- Residential habilitation
- Employment assistance
- Intervener
- Nursing services
- Respite care
- Support consultation
- Supported employment

**Who can get services?**

You must have a diagnosis of deaf blindness (or a related condition that will result in deaf blindness) as well as another disability resulting in a demonstrated need for one or more service on a monthly basis.

- Your related condition must have manifested before age 22.
- You must meet level of care criteria for placement in an ICF/IDD.
- Your income and resources may not exceed specified limits.
- You **cannot** be enrolled in another waiver program.

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and Their  
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**Where can I get services?**

The program is available statewide.

**How do I apply for services?**

Call 1-877-438-5658 and ask for the DBMD program. Please be prepared to provide the Social Security and Medicaid numbers, type of disability, age of the onset of the disability, date of birth, and address and telephone number of the person who needs services.

**5. Medically Dependent Children Program**

*Note: This service may not be available right away. Your name may be placed on an interest list. You will be contacted when services are available. If you are a Texas nursing facility resident, you may qualify without being placed on an interest list.*

The Medically Dependent Children Program (MDCP) provides services to support families caring for children who are medically dependent and encourages the transition of children in nursing homes back to the community.

The Consumer Directed Services (CDS) option is available for some services in this program. Visit [hhs.texas.gov/services/disability/consumer-directed-services](https://hhs.texas.gov/services/disability/consumer-directed-services) for information.

**What services are provided?**

- **Adaptive aids** — items necessary to treat, rehabilitate, prevent or compensate for conditions resulting in disability or loss of function. Adaptive aids also may be devices enabling a person to perform the activities of daily living or control the environment in which they live.
- **Employment assistance** — assistance to help a person find paid employment in the community.
- **Flexible family support services** — individualized and disability-related services, including personal care supports for basic activities of daily living (ADL), instrumental ADL, skilled care and delegated care supports, to:
  - assist a child to participate in child care
  - assist a person to participate in post-secondary education
  - increase a person's independence
- **Minor home modifications** — necessary physical modifications of a person's home to prevent institutionalization or support de-institutionalization. The modifications must be necessary to ensure health, welfare and safety or to enable greater independence in the home.

- **Financial management services** — assistance delivered by a consumer directed services agency.
- **Respite services** — temporary relief for the primary caregiver from their caregiving role during times when the caregiver would normally provide care.
- **Supported employment** — assistance to sustain competitive employment for a person who, because of a disability, requires intensive, ongoing support to be self-employed, work from home or perform work in a setting at which people without disabilities are employed.
- **Transition assistance services** — a one-time service to help Medicaid-eligible Texans transition from the nursing home to the community.

The MDCP services currently available for consumer-direction are:

- Employment Assistance
- Flexible Family Support
- Supported Employment
- Respite

When individuals select the CDS option, they are required to use Financial Management Services (FMS) and may access support consultation.

### Who can get services?

You must be under 21. If under 18, you must live with an adult family member (such as a parent, guardian or sibling) or with a foster family that includes no more than four children unrelated to you.

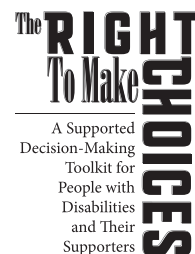
You must be a U.S. citizen or an alien with approved status who lives in Texas.

You must meet Medicaid eligibility guidelines including:

- Be a low-income family with children, as provided in §1931 of the Social Security Act
- Be receiving Supplemental Security Income
- Be eligible for Medical Assistance Only
- Meet eligibility for all other mandatory and optional Temporary Assistance for Needy Families criteria in the Texas Medicaid State Plan
- Meet the medical necessity determination for nursing home care
- Cannot be enrolled in another waiver program

### How do I apply for services?

Call 1-877-438-5658 to get on the interest list.



## 6. STAR+PLUS Waiver

*Note: This service may not be available right away. Your name may be placed on an interest list. You will be contacted when services are available.*

STAR+PLUS is a Texas Medicaid managed care program for people who have disabilities or are age 65 or older. People in STAR+PLUS get Medicaid health-care and long-term services and support through a medical plan that they choose.

Long-term services and support includes things like:

- Help in your home with basic daily activities
- Help in making changes to your home so you can safely move around
- Short-term care to provide a break for caregivers
- Help with things that need to get done

Another feature of STAR+PLUS is service coordination. A STAR+PLUS staff member works with the member, the member's family and the member's doctors and other providers to help the member get the medical and long-term services and support they need.

### Who can get services?

To get services through STAR+PLUS you must: (1) be approved for Medicaid, (2) live in a STAR+PLUS service area, and (3) be one or more of the following:

- Age 21 or older, getting Supplemental Security Income (SSI) benefits, and able to get Medicaid due to low income
- Not getting SSI and able to get STAR+PLUS Home and Community-Based Waiver Services
- Age 21 or older, getting Medicaid through what are called "Social Security Exclusion programs" and meet program rules for income and asset levels
- Children age 20 and younger who have Medicaid and get SSI can volunteer to be in STAR+PLUS until the Fall of 2016 when the Star Kids program will be available to them. Or they can keep getting their Medicaid services in traditional Medicaid.

### The following people can't be in the STAR+PLUS Waiver program:

- People who get other Medicaid 1915(c) waiver services
- Those who live in facilities for people with Intellectual Developmental Disabilities (IDD)

- People who are not able to get full Medicaid benefits, such as Frail Elderly program members, Qualified Medicare Beneficiaries, Specified Low-Income Medicare Beneficiaries, Qualified Disabled Working Individuals and illegal immigrants
- People who aren't able to get Medicaid
- Children in state foster care

### **Important notes for those covered by Medicare:**

- You can get STAR+PLUS even if you get Medicare
- If you are covered by both Medicare and Medicaid (also known as "dual eligible") and you join STAR+PLUS, you will keep getting regular health-care services through your Medicare doctor. STAR+PLUS does not change the way you get Medicare services.

The Consumer Directed Services (CDS) option is available for some services in this program. Visit [hhs.texas.gov/services/disability/consumer-directed-services](https://hhs.texas.gov/services/disability/consumer-directed-services) for information.

### **What services are provided through STAR+PLUS?**

The following is an overview of the services STAR+PLUS offers. Medical plans must have a service coordinator visit with the member within 30 days of enrolling in the program. The coordinator must find out the member's needs and develop a plan of care.

### **Long-term services and supports can include:**

- Day Activity and Health Services (DAHS)
- Primary Home Care (PHC)

### **Other services under the STAR+PLUS Home and Community-Based Services Waiver include:**

- Personal assistance services, including supervision
- Adaptive aids
- Adult foster care home services
- Assisted living
- Cognitive Rehabilitation Therapy
- Dental
- Employment Assistance
- Home delivered meals

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People with  
Disabilities  
and Their  
Supporters

- Medical supplies
- Minor home modifications
- Nursing
- Respite
- Unlimited Prescriptions
- Professional Therapies (occupational, physical, and speech-language)
- Transitional assistance services

**The Star+Plus services currently available for consumer-direction are:**

- Employment Assistance
- Cognitive Rehabilitation Therapy
- Nursing
- Personal Assistance Services
- Professional Therapies (occupational, speech, physical therapy)
- Supported Employment
- Respite

**How do I apply for services?**

Call 1-877-438-5658 ask for the Star+Plus Waiver program.

## **7. 1915 (i) Home and Community Based Services - Adult Mental Health (HCBS-AMH)**

Home and Community Based Services-Adult Mental Health (HCBS-AMH) is a statewide program that provides home and community-based services to adults with serious mental illness. The HCBS-AMH program provides an array of community-based services, tailored to your needs, to support long term recovery.

**What services are provided?**

HCBS-AMH services can be provided in home and community-based settings, including individual homes, apartments, assisted living facilities, and small community-based residences. Services include:

- Host Home/Companion Care
- Supported Home Living
- Supervised Living Services
- Assisted Living



- Psychosocial Rehabilitation services
- Employment Services
- Supported Employment
- Employment Assistance
- Minor Home Modifications
- Home Delivered Meals
- Transition Assistance
- Adaptive Aids
- Transportation Services (non-duplicative of state plan medical transportation)
- Community Psychiatric Supports and Treatment
- Peer Support
- Respite care (short term)
- Substance Use Disorder Services
- Nursing
- Recovery Management
- Flexible Funds

### **Who is eligible for the HCBS-AMH program?**

You must meet the following initial criteria:

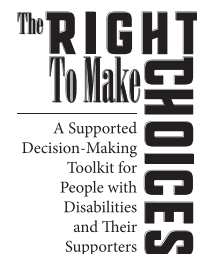
- Diagnosis of serious mental illness
- Extended tenure (three or more cumulative years) in an inpatient psychiatric hospital during the five years prior to enrollment
- Individual is not accessing these services by any other means, including enrollment in other Medicaid waivers or long-term services and supports.

In addition to meeting initial eligibility criteria, HCBS-AMH eligibility is determined using demographic, clinical, functional, and financial criteria.

### **How do I apply for services?**

If you are in state hospital, contact your social worker. If you live in the community, contact your local mental health authority. To find the authority that serves you, visit

<http://www.dshs.texas.gov/mhsa/lmha-list/>



For more information, visit the HCBS-AMH website:

<http://www.dshs.state.tx.us/mhsa/hcbs-amh/>

## 8. Community First Choice

### What is Community First Choice?

Community First Choice (CFC) provides certain services and supports to individuals living in the community who are enrolled in the Medicaid program and meet CFC eligibility requirements. Services and supports may include:

- Activities of daily living (eating, toileting, and grooming), activities related to living independently in the community, and health-related tasks (personal assistance services)
- Acquisition, maintenance, and enhancement of skills necessary for the individuals to care for themselves and to live independently in the community (habilitation)
- Providing a backup system or ways to ensure continuity of services and supports (emergency response services)
- Training people how to select, manage and dismiss their own attendants (support management)

**In Texas, CFC may be available to people enrolled in Medicaid, including those served by:**

- 1915 (c) waiver programs;
- Medicaid managed care; and
- personal care services for children.

**Individuals may use the Consumer Directed Services (CDS) option for certain CFC services.**

CFC as a state plan Medicaid service is available to individuals with a need for habilitation, personal assistance or emergency response services who receive services in the following DADS waiver programs:

- Community Living Assistance and Support Services (CLASS);
- Deaf Blind with Multiple Disabilities (DBMD);
- Home and Community-based Services (HCS); and
- Texas Home Living (TxHmL).

CFC is also available through managed care organizations for individuals who meet eligibility criteria. Get more information at: [hhs.texas.gov/services/health/medicaid-chip/programs/childrens-health-insurance-program-chip/chip-comparison-charts/community-first-choice](https://hhs.texas.gov/services/health/medicaid-chip/programs/childrens-health-insurance-program-chip/chip-comparison-charts/community-first-choice).

Information about CFC for children in traditional Medicaid can be found at: [www.tmhp.com/Pages/Medicaid/Medicaid\\_Publications\\_Provider\\_manual.aspx](http://www.tmhp.com/Pages/Medicaid/Medicaid_Publications_Provider_manual.aspx)

### Who can get Community First Choice services?

To be eligible for Community First Choice services an individual must:

- Be eligible for Medicaid.
- Need help with activities of daily living, such as dressing, bathing and eating.
- Need an institutional level of care.

### Community First Choice Services

Community First Choice Services include:

- Help with activities of daily living and health-related tasks through hands-on assistance, supervision or cueing.
- Services to help the individual learn how to care for themselves.
- Backup systems or ways to ensure continuity of services and supports.
- Training on how to select, manage and dismiss attendants.

**Texas began the Community First Choice program on June 1, 2015. This means:**

- Individuals on a 1915(c) waiver interest list who meet eligibility and coverage requirements may be eligible to get Community First Choice services.
- Individuals already getting services through a 1915(c) waiver will continue to get those services as they do today from their existing providers.

## 9. Community Attendant Services

Community Attendant Services (CAS) is a non-technical, non-skilled service providing in-home attendant services to people who need help with personal care tasks. CAS is available to eligible adults and children whose health problems cause them to be functionally limited in performing activities of daily living.

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Disabilities  
and Their  
Supporters

The Consumer Directed Services (CDS) option is available for some services in this program. Visit [hhs.texas.gov/services/disability/consumer-directed-services](https://hhs.texas.gov/services/disability/consumer-directed-services) for information.

#### What services are provided?

- **Escort:** Accompanying a person to a medical appointment. This service does not include direct transportation by an attendant.
- **Home management:** Help with housekeeping activities to support the person's health and safety, including cleaning, laundry, shopping and other household tasks.
- **Personal care:** Help with activities related to physical health, including bathing, dressing, grooming, routine hair and skin care, preparing meals, feeding, exercising, helping with self-administered medication, toileting, and transferring/ambulating.

#### Who can get services?

- You can be of any age
- You must be functionally limited in performing at least one personal care task, based on your medical condition
- You must have a practitioner's statement of medical need
- You must have an unmet need for home management and personal care
- Your income and resources may not exceed specified limits
- You must **not** be Medicaid eligible

#### How do I apply for services?

Contact your local Texas Health and Human Services (HHS) office at 1-855-937-2372.

## 10. Primary Home Care

Primary Home Care (PHC) provides non-technical, non-skilled, in-home attendant services to people who have an approved medical need for assistance with personal care tasks. PHC is available to eligible people whose health problems cause them to be functionally limited in performing activities of daily living according to a practitioner's statement of medical need. Attendants provide PHC services.

The Consumer Directed Services (CDS) option is available for some services in this program. Visit:

[hhs.texas.gov/services/disability/consumer-directed-services](https://hhs.texas.gov/services/disability/consumer-directed-services) for information.

### What services are provided?

- Escorting a person to medical appointments for diagnosis and/or treatment
- Home management to help with housekeeping activities that support the person's health and safety
- Personal care related to the care of the person's physical health

### Who can get services?

- You must be 21 or older
- You must have an unmet need for help with home management and personal care tasks
- You must have a practitioner's statement of medical need
- You must be eligible for Medicaid
- You must meet a specified functional assessment score and have a functional limitation with at least one personal care task based on your medical condition

### How do I apply for services?

Contact your local Texas Health and Human Services (HHS) office at 1-855-937-2372.

## 11. Consumer Managed Personal Attendant Services

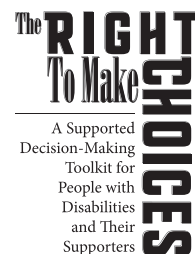
Under the Consumer Managed Personal Attendant Services (CMPAS) program, the Texas Department of Aging and Disability Services (DADS) contracts with licensed agencies to provide personal assistance services to people with physical disabilities who are mentally and emotionally competent and willing to supervise their own attendant or who have someone who can supervise the attendant for them.

Licensed personal assistance services agencies determine eligibility and the amount of care needed, develop a pool of potential personal assistants, and provide emergency back-up personal assistants.

The Consumer Directed Services (CDS) option is available for some services in this program. Visit [hhs.texas.gov/services/disability/consumer-directed-services](https://hhs.texas.gov/services/disability/consumer-directed-services) for information.

### What services are provided?

- Health-related tasks prescribed by a physician.



- Personal assistance, as needed, by personal attendants selected and supervised by the person getting services.

### Who can get services?

- You must be 18 or older.
- You must need help with at least one personal care task.
- You must be able to direct your own care.
- Your doctor must verify you have a current medical need for help with personal care tasks and other activities of daily living.
- You have a copay after \$2,199.00 of income.
- There are no resource limits.

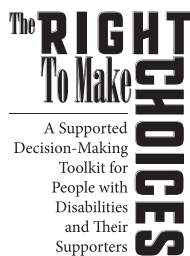
### How do I apply for services?

Contact your local Texas Health and Human Services (HHS) office at 1-855-937-2372:

### Where can I get services?

Services are available in these counties.

- Region 1: Lubbock, Potter and Randall
- Region 3: Collin, Dallas, Denton, Ellis, Hood, Johnson, Kaufman, Parker, Rockwall, Tarrant and Wise
- Region 5: Angelina, Hardin, Houston, Jasper, Jefferson, Nacogdoches, Newton, Orange, Polk, Sabine, San Augustine, San Jacinto, Shelby, Trinity and Tyler
- Region 6: Fort Bend, Harris, Montgomery and Wharton
- Region 7: Travis
- Region 8: Atascosa, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson
- Region 10: El Paso
- Region 11: Aransas, Bee, Brooks, Cameron, Duval, Hidalgo, Jim Hogg, Jim Wells, Kenedy, Kleberg, Live Oak, McMullen, Nueces, Refugio San Patricio, Starr, Webb, Willacy and Zapata



## 12. Family Care

Family Care is a nonskilled, nontechnical attendant care service available to eligible adults who are functionally limited in performing activities of daily living. Services are provided by an attendant and do not require the supervision of a registered nurse.

The Consumer Directed Services (CDS) option is available for some services in this program. Visit [hhs.texas.gov/services/disability/consumer-directed-services](https://hhs.texas.gov/services/disability/consumer-directed-services) for information.

### What services are provided?

**Escort:** Accompanying a person to a medical appointment. This service does not include direct transportation by an attendant.

**Home management:** Help with housekeeping activities to support the person's health and safety, including cleaning, laundry, shopping and other household tasks.

**Personal care:** Help with activities related to physical health, including bathing, dressing, grooming, routine hair and skin care, preparing meals, feeding, exercising, helping with self-administered medication, toileting, and transferring/ambulating.

### Who can get services?

- You must be 18 or older.
- You must have an unmet need for home management and/or personal care tasks.
- Your income and resources may not exceed specified limits.
- You must meet a specified functional assessment score.

### How do I apply for services?

Contact your local Texas Health and Human Services (HHS) office at 1-855-937-2372.

## 13. Home-Delivered Meals

The Home Delivered Meals program provides a nutritious meal delivered to the person's home to ensure he or she gets at least one healthy meal per day.

### Who can get services?

- You must be 18 or older.
- You must be functionally limited in preparing meals.
- You must meet a specified functional assessment score.

### How do I apply for services?

Contact your local Texas Health and Human Services (HHS) office at 1-855-937-2372.

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People with  
Disabilities  
and Their  
Supporters

## 14. Day Activity and Health Services

Licensed day activity and health services (DAHS) facilities provide daytime services to people who live in the community as an alternative to living in a nursing home or other institution. Services, which usually are provided Monday through Friday, address physical, mental, medical and social needs. Sometimes, this is called adult day care or adult day services.

### What services are provided?

- Noon meal and snacks
- Nursing and personal care
- Physical rehabilitation
- Social, educational and recreational activities
- Transportation

### Who can get services?

- You must be at least 18.
- You must have a functional disability related to medical diagnosis.
- You must have a medical diagnosis and a physician's order requiring care or supervision.
- You must need help with one or more personal care tasks.
- You must meet both of these eligibility criteria:
  - You must be a Medicaid recipient to get Title XIX services.
  - Your income and resources may not exceed specified limits to get Title XX services.

### How do I apply for services?

Contact your local Texas Health and Human Services (HHS) office at 1-855-937-2372.

## 15. In-Home and Family Support

The In-Home and Family Support program provides direct grant benefits to people with physical disabilities and/or their families to choose and purchase services that help them to remain living in their own homes.

### What services are provided?

- Access to counseling and training programs to help people provide proper care to a person with a disability



- Attendant care, home health services, home health aide services, homemaker services, chore services to provide instruction/training and assistance with routine body functions, dressing, preparing and consuming food, and ambulating
- Medical, surgical, therapeutic, diagnostic and other health services related to a person's disability, which may include medications not covered by Medicare or Medicaid
- Other disability related services pre-approved by the Texas Department of Aging and Disability Services
- Pre-approved transportation as well as room and board cost incurred by a person with a physical disability or his or her family during evaluation or treatment
- Purchase or lease of special equipment or architectural modifications of a home to facilitate care, treatment therapy or general living conditions of a person with a disability
- Respite care

### Who can get services?

- You must be 4 or older.
- You must have a physical disability substantially limiting one or more major life activities.
- A copayment begins at 105 percent of the state median income for household size.

### How do I apply for services?

Contact your local Texas Health and Human Services (HHS) office at 1-855-937-2372.

## 16. Program of All-Inclusive Care for the Elderly

The Program of All-Inclusive Care for the Elderly (PACE) provides community-based services to people who are frail and elderly who qualify for nursing home placement. PACE uses a comprehensive care approach, providing an array of services that costs less than comparable nursing home care.

### What services are provided?

All necessary health-related services, including in-patient and outpatient medical care, specialty services like dentistry and podiatry, social services, in-home care, meals, transportation and day activity.

### Who can get services?

- You must be 55 or older.

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Disabilities  
and Their  
Supporters

- You must qualify for a nursing facility level of care.
- Your income and resources may not exceed specified limits.

### Availability

PACE is available only in the ZIP Codes listed below.

- **Amarillo/Canyon:** 79015, 79101, 79102, 79103, 79104, 79106, 79107, 79108, 79109, 79110, 79111, 79118, 79119, 79121 and 79124
- **El Paso:** 79901, 79902, 79903, 79904, 79905, 79907, 79915, 79924, 79925, 79930, 79935 and 79936
- **Lubbock:** 79401, 79402, 79403, 79404, 79405, 79406, 79407, 79408, 79409, 79410, 79411, 79412, 79413, 79414, 79415, 79416, 79423, 79424, 79430, 79452, 79453, 79454, 79464, 79490, 79491, 79493 and 79499

### How do I apply for services?

Contact the local PACE organization:

- If you live in El Paso, call: Bienvivir All-Inclusive Senior Health at 1-915-562-3444.
- If you live in Amarillo, call: The Basics at Jan Werner at 1-806-374-5516.
- If you live in Lubbock, call: Silver Star Health Network at 1-806-740-1500.

## 17. Adult Foster Care

Adult Foster Care (AFC) provides a supervised, 24-hour living arrangement in an adult foster home for people who are unable to continue living independently in their own homes because of a physical, mental or emotional limitation.

AFC providers and residents live in the same household and share a common living area. With the exception of family members, no more than three adults may live in the foster home unless the home is licensed as a Type C Assisted Living Facility or as a Type A Small Group Home. The person receiving services pays the provider for room and board.

### What services are provided?

- Help with personal care tasks
- Help with activities of daily living
- Help preparing meals
- Help providing or arranging for transportation

### Who can get services?

- You must be 18 or older.
- You must meet a specified functional assessment score.
- You may be a Medicaid recipient or have resources not exceeding specified limits.

### How do I apply for services?

Contact your local Texas Health and Human Services (HHS) office at 1-855-937-2372.

## 18. Day Activity and Health Services

Licensed day activity and health services (DAHS) facilities provide daytime services to people who live in the community as an alternative to living in a nursing home or other institution. Services, which usually are provided Monday through Friday, address physical, mental, medical and social needs. Sometimes, this is called adult day care or adult day services.

### What services are provided?

- Noon meal and snacks
- Nursing and personal care
- Physical rehabilitation
- Social, educational and recreational activities
- Transportation

### Who can get services?

- You must be at least 18.
- You must have a functional disability related to medical diagnosis.
- You must have a medical diagnosis and a physician's order requiring care or supervision.
- You must need help with one or more personal care tasks.
- You must meet these eligibility criteria:
  - You must be a Medicaid recipient to get Title XIX services
  - Your income and resources may not exceed specified limits to get Title XX services

### How do I apply for services?

Contact your local Texas Health and Human Services (HHS) office at 1-855-937-2372.

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## 19. Pre-admission Screening and Resident Review (PASRR)

All people who are planning to move to a partially federally funded nursing facility and who are suspected of having a mental illness, or a diagnosis of an intellectual disability or a related condition must receive a Pre-admission Screening and Resident Review (PASRR) screening. This includes private pay individuals.

People are assessed to see if they need specialized services. People who are not satisfied with their PASRR determination have the right to a fair hearing to appeal the determination.

### What services are provided?

- Alternate placement services
- Customized manual wheelchairs and specialized durable medical equipment
- Determination of intellectual disability
- Rehabilitative/maintenance therapies
- Service coordination by the local authority or local mental health authority
- Vocational training

## 20. Area Agencies on Aging

The 28 local area agencies on aging (AAA) contract with the Texas Department of Aging and Disability Services (DADS) to help people 60 and older and their caregivers find the information they need to locate and access community services.

### What services are provided?

- Benefits counseling/legal assistance
- Care coordination
- Information, referral and assistance
- Legal awareness
- Ombudsman Program

### Who can get services?

- You must be 60 or older, with priority for services given to:
- People with low incomes
- People who live in rural areas
- People with limited English proficiency

- People with Alzheimer’s disease and related disorders
- People at risk of being placed in a long-term care facility

Family members and/or other caregivers who are younger than 60 may receive support services on behalf of the person for whom they provide care.

### How do I apply for services?

Contact your AAA by calling 1-800-252-9240.

## 21. Area Agencies on Aging Transportation

### Assisted transportation

Assistance and transportation, including escort, is provided to people who are older and have difficulty, whether physical or cognitive, using regular transportation. Each “trip” includes the following:

- Helping prepare for the trip
- Helping the person get in the vehicle at his or her home and out of the vehicle at the destination (such as a medical office)
- Staying with the person at their destination

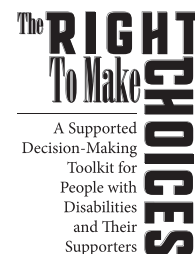
### Transportation

This service involves taking a person who is older from one location to another, but does not include any other activity. There are two types of transportation services:

- Demand/Response takes people from a specific origin to a specific destination upon request. People usually have to request this service 24-48 hours before the planned trip.
- Fixed route transportation operates in a predetermined route with permanent transit stops, which are clearly marked with route numbers and departure schedules. The person who is older does not reserve a ride; he or she simply goes to the designated location at the designated time.

### How do I apply for services?

Contact your AAA by calling 1-800-252-9240.





# Section

# 12

## **Section 12: Forms**

- Supported Decision-Making Agreement
- Authorization for Release of Confidential Information
- Disclosure Statement for Medical Power of Attorney
- Medical Power of Attorney
- Durable Power of Attorney





# 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: \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

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 \_\_\_ Other: \_\_\_\_\_

## My Supporter does not make decisions for me. To help me make decisions, my Supporter may:

- Help me get the information I need to make medical, psychological, financial, or educational decisions;
- Help me understand my choices so I can make the best decision for me; or
- 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)

## IMPORTANT INFORMATION FOR SUPPORTERS:

When you agree to provide support to an adult with a disability under this supported decision-making agreement, you have a duty to:

1. Act in good faith
2. Act loyally and without self-interest; and
3. Avoid conflicts of interest.

# 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.***

\_\_\_\_\_  
(Signature of Witness 1)

\_\_\_\_\_  
(Signature of Witness 2)

\_\_\_\_\_  
(Printed Name of Witness 1)

\_\_\_\_\_  
(Printed Name of Witness 2)

**OR**

## ***Notary Public***

State of \_\_\_\_\_ County of \_\_\_\_\_

This document was acknowledged before me on this \_\_\_\_\_ (day) of \_\_\_\_\_ (month), \_\_\_\_\_ (year)

By \_\_\_\_\_ and \_\_\_\_\_

(Name of Adult with 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.txabusehotline.org](http://www.txabusehotline.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.*

# AUTHORIZATION TO RELEASE CONFIDENTIAL INFORMATION UNDER A SUPPORTED DECISION-MAKING AGREEMENT

Name of Adult with Disability:

Last: \_\_\_\_\_ First: \_\_\_\_\_ Middle: \_\_\_\_\_

Date of Birth: \_\_\_\_\_, \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State \_\_\_\_\_ Zip: \_\_\_\_\_

Phone: (\_\_\_\_\_) \_\_\_\_\_ Alternate Phone: (\_\_\_\_\_) \_\_\_\_\_

**I ALLOW THE FOLLOWING PERSON, PROVIDER OR ORGANIZATION TO RELEASE MY INFORMATION, WHICH MAY INCLUDE PROTECTED HEALTH INFORMATION:**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State \_\_\_\_\_ Zip: \_\_\_\_\_

Phone: (\_\_\_\_\_) \_\_\_\_\_ Fax: (\_\_\_\_\_) \_\_\_\_\_

**Name of Supporter Who Can Receive the Confidential Information?**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State \_\_\_\_\_ Zip: \_\_\_\_\_

Phone: (\_\_\_\_\_) \_\_\_\_\_ Fax: (\_\_\_\_\_) \_\_\_\_\_

## REASON FOR RELEASE

*(Choose only one option below)*

- |  |                                       |
|--|---------------------------------------|
| <input type="checkbox"/> Treatment/Continuing Medical Care | <input type="checkbox"/> Personal Use |
| <input type="checkbox"/> Legal Purposes                    | <input type="checkbox"/> School       |
| <input type="checkbox"/> Employment                        | <input type="checkbox"/> Other        |

## WHAT INFORMATION CAN BE RELEASED?

Complete the following by choosing those items that you want released. Check one of the following:

### 1. HEALTH/MENTAL HEALTH INFORMATION

- All health/mental health information:
- Only the following health/mental health information: \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

Your initials are required to release the following information:

- Psychotherapy Notes \_\_\_\_\_
- Drug, Alcohol, or Substance Abuse Records \_\_\_\_\_
- HIV/AIDS Test Results/Treatment \_\_\_\_\_

### 2. CASE-RELATED INFORMATION

- My entire case file/records

- Only the following case-related information: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**3. EDUCATION/SPECIAL EDUCATION INFORMATION**

- All education/special education records
- Only the following education/special education records: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**4. EMPLOYMENT INFORMATION**

- All employment records
- Only the following employment information: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**5. FINANCIAL/PROPERTY INFORMATION**

- All financial/property records
- Only the following financial/property information: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**6. HOUSING INFORMATION**

- All housing records
- Only the following housing information: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**7. SUPPORTS AND SERVICES**

- All records related to any supports and services provided to me
- Only the following supports and services information: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

PURPOSE OF AUTHORIZATION: I have entered a supported decision-making agreement with my supporter. I only authorize the release of my confidential information to my supporter so that my supporter can help me obtain a copy of the confidential information, help me understand the information contained in this confidential information and help me communicate my decisions based on this confidential information. My

supporter shall ensure that my confidential information is kept privileged and confidential and is not subject to unauthorized access, use or disclosure. My supporter may only release my confidential information to any other person, provider or organization with my permission. I also retain the right to obtain my confidential information on my own without the help of my supporter.

EFFECTIVE TIME PERIOD. This authorization is valid until my death; the end of my supported decision-making agreement; my permission is withdrawn; or until (date): Month \_\_\_\_\_ Day \_\_\_\_\_ Year \_\_\_\_\_.

RIGHT TO REVOKE: I understand that I can withdraw my permission at any time by giving written notice stating my intent to revoke this authorization to release information to my supporter.

SIGNATURE AUTHORIZATION: I agree to the release of my confidential information to my supporter. I understand that this authorization is voluntary and I may refuse to sign this authorization. I further understand that I cannot be denied treatment based on a failure to sign this authorization form, and a refusal to sign this form will not affect the payment, enrollment, or eligibility for benefits. I have read and agree with how my confidential information may be used and shared with my supporter.

---

*(Signature of Adult with Disability)*

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*(Date)*

### IMPORTANT INFORMATION ABOUT THE AUTHORIZATION TO RELEASE PROTECTED HEALTH INFORMATION

#### **Developed Pursuant Texas Health & Safety Code § 181.154(d)**

*Effective October 1, 2015*

This authorization is based on a standard Authorization to Disclose Protected Health Information adopted by the Attorney General of Texas in accordance with Texas Health & Safety Code § 181.154(d). This form is intended for use in complying with the requirements of the Health Insurance Portability and Accountability Act and Privacy Standards (HIPAA) and the Texas Medical Privacy Act (Texas Health & Safety Code, Chapter 181). Covered Entities may use this form or any other form that complies with HIPAA, the Texas Medical Privacy Act, and other applicable laws.

Covered entities must obtain a signed authorization form from the individual or the individual's legally authorized representative to electronically release that individual's protected health information.

The authorization provided by use of this form means that the organization, entity or person authorized can release, communicate, or send the named individual's protected health information to the organization, entity or person identified on this form, including through the use of any electronic means.

Definitions – In the form, the terms "treatment," "healthcare operations," "psychotherapy notes," and "protected health information" are as defined in HIPAA (45 C.F.R. §164.501). "Legally authorized representative" as used in the form includes any person authorized to act on behalf of another individual. (Tex. Occ. Code § 151.002(6); Tex. Health & Safety Code §§ 166.164, 241.151; and Tex. Probate Code § 3(aa)).

Health/Mental Health Information to be Released – If “All Health/Mental Health Information” is selected for release, health/mental health information includes, but is not limited to, all records and other information regarding health/mental health history, treatment, hospitalization, tests, and outpatient care, and also educational records that may contain health/mental health information. As indicated on this form, specific authorization is required for the release of information about certain sensitive conditions, including:

- **Psychotherapy notes.**
- **Drug, alcohol, or substance abuse records.**
- **Records or tests relating to HIV/AIDS.**

*Note on Release of Health Records – This form is not required for the permissible disclosure of an individual’s protected health information to the individual or the individual’s legally authorized representative. (45 C.F.R. §§ 164.502(a)(1)(i), 164.524; Tex. Health & Safety Code § 181.102). If requesting a copy of the individual’s health records with this form, state and federal law allows such access, unless such access is determined by the physician or mental health provider to be harmful to the individual’s physical, mental or emotional health. (Tex. Health & Safety Code §§ 181.102, 611.0045(b); Tex. Occ. Code § 159.006(a); 45 C.F.R. § 164.502(a)(1)). If a physician or mental health professional makes such a determination, DRTx will advise the individual about how the individual may seek access to these records under state or federal law.*

Limitations of this form – This authorization form should only be used for the release of psychotherapy notes when the individual specifically requests the release of psychotherapy notes. Use of this form does not exempt any entity from compliance with applicable federal or state laws or regulations regarding access, use or disclosure of health information or other sensitive personal information (e.g., 42 C.F.R. Part 2, restricting use of information pertaining to drug/alcohol abuse and treatment), and does not entitle an entity or its employees, agents or assigns to any limitation of liability for acts or omissions in connection with the access, use, or disclosure of health information obtained through use of the form.

Charges – Some covered entities may charge a retrieval/processing fee and for copies of medical records

**(Tex. Health & Safety Code § 241.154).**

Right to Receive Copy – The individual and/or the individual’s legally authorized representative has a right to receive a copy of this authorization.

# DISCLOSURE STATEMENT FOR MEDICAL POWER OF ATTORNEY

Advance Directives Act (see §166.163, Health and Safety Code)

## INFORMATION CONCERNING THE MEDICAL POWER OF ATTORNEY

Except to the extent you state otherwise, this document gives the person you name as your agent the authority to make any and all health care decisions for you in accordance with your wishes, including your religious and moral beliefs, when you are no longer capable of making them yourself. Because “health care” means any treatment, service or procedure to maintain, diagnose, or treat your physical or mental condition, your agent has the power to make a broad range of health care decisions for you. Your agent may consent, refuse to consent, or withdraw consent to medical treatment and may make decisions about withdrawing or withholding life-sustaining treatment. Your agent may not consent to voluntary inpatient mental health services, convulsive treatment, psychosurgery, or abortion. A physician must comply with your agent’s instructions or allow you to be transferred to another physician.

Your agent’s authority begins when your doctor certifies that you lack the competence to make health care decisions.

Your agent is obligated to follow your instructions when making decisions on your behalf. Unless you state otherwise, your agent has the same authority to make decisions about your health care as you would have had.

It is important that you discuss this document with your physician or other health care provider before you sign it to make sure that you understand the nature and range of decisions that may be made on your behalf. If you do not have a physician, you should talk with someone else who is knowledgeable about these issues and can answer your questions. You do not need a lawyer’s assistance to complete this document, but if there is anything in this document that you do not understand, you should ask a lawyer to explain it to you.

The person you appoint as agent should be someone you know and trust. The person must be 18 years of age or older or a person under 18 years of age who has had the disabilities of minority removed. If you appoint your health or residential care provider (e.g., your physician or an employee of a home health agency, hospital, nursing home, or residential care home, other than a relative), that person has to choose between acting as your agent or as your health or residential care provider; the law does not permit a person to do both at the same time.

You should inform the person you appoint that you want the person to be your health care agent. You should discuss this document with your agent and your physician and give each a signed copy. You should indicate on the document itself the people and institutions who have signed copies. Your agent is not liable for health care decisions made in good faith on your behalf.

Even after you have signed this document, you have the right to make health care decisions for yourself as long as you are able to do so and treatment cannot be given to you or stopped over your objection. You have the right to revoke the authority granted to your agent by informing your agent or your health or residential care provider orally or in writing or by your execution of a subsequent medical power of attorney. Unless you state otherwise, your appointment of a spouse dissolves on divorce.

This document may not be changed or modified. If you want to make changes in the document, you must make an entirely new one.

You may wish to designate an alternate agent in the event that your agent is unwilling, unable, or ineligible to act as your agent. Any alternate agent you designate has the same authority to make health care decisions for you.

**THIS POWER OF ATTORNEY IS NOT VALID UNLESS:**

YOU SIGN IT AND HAVE YOUR SIGNATURE ACKNOWLEDGED BEFORE A NOTARY PUBLIC; OR

(2) YOU SIGN IT IN THE PRESENCE OF TWO COMPETENT ADULT WITNESSES.

THE FOLLOWING PERSONS MAY NOT ACT AS ONE OF THE WITNESSES:

(1) the person you have designated as your agent; (2) a person related to you by blood or marriage; (3) a person entitled to any part of your estate after your death under a will or codicil executed by you or by operation of law; (4) your attending physician; (5) an employee of your attending physician; (6) an employee of a health care facility in which you are a patient if the employee is providing direct patient care to you or is an officer, director, partner, or business office employee of the health care facility or of any parent organization of the health care facility; or (7) a person who, at the time this power of attorney is executed, has a claim against any part of your estate after your death.



# MEDICAL POWER OF ATTORNEY

## DESIGNATION OF HEALTH CARE AGENT

*Advance Directives Act (see §166.164, Health and Safety Code)*

I, \_\_\_\_\_ (insert your name) appoint:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

as my agent to make any and all health care decisions for me, except to the extent I state otherwise in this document. This medical power of attorney takes effect if I become unable to make my own health care decisions and this fact is certified in writing by my physician.

## LIMITATIONS ON THE DECISION-MAKING AUTHORITY OF MY AGENT ARE AS FOLLOWS:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## DESIGNATION OF AN ALTERNATE AGENT:

(You are not required to designate an alternate agent but you may do so. An alternate agent may make the same health care decisions as the designated agent if the designated agent is unable or unwilling to act as your agent. If the agent designated is your spouse, the designation is automatically revoked by law if your marriage is dissolved.)

If the person designated as my agent is unable or unwilling to make health care decisions for me, I designate the following person(s) to serve as my agent to make health care decisions for me as authorized by this document, who serve in the following order:

### First Alternate Agent

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

### Second Alternate Agent

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

The original of the document is kept at: \_\_\_\_\_

---

The following individuals or institutions have signed copies:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

**DURATION**

I understand that this power of attorney exists indefinitely from the date I execute this document unless I establish a shorter time or revoke the power of attorney. If I am unable to make health care decisions for myself when this power of attorney expires, the authority I have granted my agent continues to exist until the time I become able to make health care decisions for myself.

(IF APPLICABLE) This power of attorney ends on the following date: \_\_\_\_\_  
\_\_\_\_\_

**PRIOR DESIGNATIONS REVOKED**

I revoke any prior medical power of attorney.

**ACKNOWLEDGEMENT OF DISCLOSURE STATEMENT**

I have been provided with a disclosure statement explaining the effect of this document. I have read and understand that information contained in the disclosure statement.

(YOU MUST DATE AND SIGN THIS POWER OF ATTORNEY. YOU MAY SIGN IT AND HAVE YOUR SIGNATURE ACKNOWLEDGED BEFORE A NOTARY PUBLIC OR YOU MAY SIGN IT IN THE PRESENCE OF TWO COMPETENT ADULT WITNESSES.)

**SIGNATURE ACKNOWLEDGED BEFORE NOTARY**

I sign my name to this medical power of attorney on \_\_\_\_\_ day of \_\_\_\_\_ / \_\_\_\_\_ (month, year)  
at \_\_\_\_\_ (City and State)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

State of Texas, County of \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_ (date) by  
\_\_\_\_\_ (name of person acknowledging).

\_\_\_\_\_  
NOTARY PUBLIC, State of Texas  
(Seal, if any, of notary)

\_\_\_\_\_  
Notary's printed name:

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

OR

**SIGNATURE IN PRESENCE OF TWO COMPETENT ADULT WITNESSES**

I sign my name to this medical power of attorney on \_\_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_ (month, year) at \_\_\_\_\_ (City and State)

\_\_\_\_\_

(Signature)

\_\_\_\_\_

(Print Name)

**STATEMENT OF FIRST WITNESS**

I am not the person appointed as agent by this document. I am not related to the principal by blood or marriage. I would not be entitled to any portion of the principal's estate on the principal's death. I am not the attending physician of the principal or an employee of the attending physician. I have no claim against any portion of the principal's estate on the principal's death. Furthermore, if I am an employee of a health care facility in which the principal is a patient, I am not involved in providing direct patient care to the principal and am not an officer, director, partner, or business office employee of the health care facility or of any parent organization of the health care facility.

Signature: \_\_\_\_\_

Address: \_\_\_\_\_

Print Name: \_\_\_\_\_ Date: \_\_\_\_\_

**SIGNATURE OF SECOND WITNESS**

Signature: \_\_\_\_\_

Address: \_\_\_\_\_

Print Name: \_\_\_\_\_ Date: \_\_\_\_\_

*Version 1/01/14*



# STATUTORY DURABLE POWER OF ATTORNEY

*NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE EXPLAINED IN THE DURABLE POWER OF ATTORNEY ACT, SUBTITLE P, TITLE 2, ESTATES CODE. IF YOU HAVE ANY QUESTIONS ABOUT THESE POWERS, OBTAIN COMPETENT LEGAL ADVICE. THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTH-CARE DECISIONS FOR YOU. YOU MAY REVOKE THIS POWER OF ATTORNEY IF YOU LATER WISH TO DO SO.*

You should select someone you trust to serve as your agent (attorney in fact). Unless you specify otherwise, generally the agent's (attorney in fact's) authority will continue until:

- (1) you die or revoke the power of attorney;
- (2) your agent (attorney in fact) resigns or is unable to act for you; or
- (3) a guardian is appointed for your estate.

I, \_\_\_\_\_  
(insert your name and address), appoint \_\_\_\_\_  
\_\_\_\_\_ (insert the name and address of the person appointed); as my agent  
(attorney-in-fact) to act for me in any lawful way with respect to all of the following powers that I have  
initialed below.

- TO GRANT ALL OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF (L) AND IGNORE THE LINES IN FRONT OF THE OTHER POWERS LISTED IN (A) THROUGH (K).
- TO GRANT A POWER, YOU MUST INITIAL THE LINE IN FRONT OF THE POWER YOU ARE GRANTING.
- TO WITHHOLD A POWER, DO NOT INITIAL THE LINE IN FRONT OF THE POWER. YOU MAY, BUT DO NOT NEED TO, CROSS OUT EACH POWER WITHHELD.

- \_\_\_\_\_ (A) Real property transactions;
- \_\_\_\_\_ (B) Tangible personal property transactions;
- \_\_\_\_\_ (C) Banking and other financial institution transactions;
- \_\_\_\_\_ (D) Estate, trust, and other beneficiary transactions;
- \_\_\_\_\_ (E) Claims and litigation;
- \_\_\_\_\_ (F) Personal and family maintenance;
- \_\_\_\_\_ (G) Benefits from social security, Medicare, Medicaid, or other governmental programs or civil or military service;
- \_\_\_\_\_ (H) Retirement plan transactions;
- \_\_\_\_\_ (I) Tax matters;
- \_\_\_\_\_ (J) Education and vocational training;
- \_\_\_\_\_ (K) Other: \_\_\_\_\_
- \_\_\_\_\_ (L) ALL OF THE POWERS LISTED IN (A) THROUGH (K). YOU DO NOT HAVE TO INITIAL THE LINE IN FRONT OF ANY OTHER POWER IF YOU INITIAL LINE (L).

**SPECIAL INSTRUCTIONS:**

Special instructions applicable to gifts (initial in front of the following sentence to have it apply):

\_\_\_\_\_ I grant my agent (attorney in fact) the power to apply my property to make gifts outright to or for the benefit of a person, including by the exercise of a presently exercisable general power of appointment held by me, except that the amount of a gift to an individual may not exceed the amount of annual exclusions allowed from the federal gift tax for the calendar year of the gift.

ON THE FOLLOWING LINES YOU MAY GIVE SPECIAL INSTRUCTIONS LIMITING OR EXTENDING THE POWERS GRANTED TO YOUR AGENT.

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UNLESS YOU DIRECT OTHERWISE ABOVE, THIS POWER OF ATTORNEY IS EFFECTIVE IMMEDIATELY AND WILL CONTINUE UNTIL IT IS REVOKED.

CHOOSE ONE OF THE FOLLOWING ALTERNATIVES BY CROSSING OUT THE ALTERNATIVE NOT CHOSEN:

- (A) This power of attorney is not affected by my subsequent disability or incapacity.
- (B) This power of attorney becomes effective upon my disability or incapacity.

YOU SHOULD CHOOSE ALTERNATIVE (A) IF THIS POWER OF ATTORNEY IS TO BECOME EFFECTIVE ON THE DATE IT IS EXECUTED.

IF NEITHER (A) NOR (B) IS CROSSED OUT, IT WILL BE ASSUMED THAT YOU CHOSE ALTERNATIVE (A).

If Alternative (B) is chosen and a definition of my disability or incapacity is not contained in this power of attorney, I shall be considered disabled or incapacitated for purposes of this power of attorney if a physician certifies in writing at a date later than the date this power of attorney is executed that, based on the physician's medical examination of me, I am mentally incapable of managing my financial affairs. I authorize the physician who examines me for this purpose to disclose my physical or mental condition to another person for purposes of this power of attorney. A third party who accepts this power of attorney is fully protected from any action taken under this power of attorney that is based on the determination made by a physician of my disability or incapacity.

I agree that any third party who receives a copy of this document may act under it. Revocation of the durable power of attorney is not effective as to a third party until the third party receives actual notice of the revocation. I agree to indemnify the third party for any claims that arise against the third party because of reliance on this power of attorney.

If any agent named by me dies, becomes legally disabled, resigns, or refuses to act, I name the following (each to act alone and successively, in the order named) as successor(s) to that agent:

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Signed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
(Your Signature)

State of \_\_\_\_\_ County of \_\_\_\_\_

This document was acknowledged before me on \_\_\_\_\_ (date) by \_\_\_\_\_

\_\_\_\_\_  
(Name of Principal).

\_\_\_\_\_  
(Signature of Notarial Officer)

(Seal, if any, of notary)

\_\_\_\_\_  
(Printed Name)

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

### **IMPORTANT INFORMATION FOR AGENT (ATTORNEY IN FACT)**

#### **Agent's Duties**

When you accept the authority granted under this power of attorney, you establish a "fiduciary" relationship with the principal. This is a special legal relationship that imposes on you legal duties that continue until you resign or the power of attorney is terminated or revoked by the principal or by operation of law. A fiduciary duty generally includes the duty to:

- (1) act in good faith;
- (2) do nothing beyond the authority granted in this power of attorney;
- (3) act loyally for the principal's benefit;
- (4) avoid conflicts that would impair your ability to act in the principal's best interest; and
- (5) disclose your identity as an agent or attorney in fact when you act for the principal by writing or printing the name of the principal and signing your own name as "agent" or "attorney in fact" in the following manner: \_\_\_\_\_

(Principal's Name) by (Your Signature) as Agent (or as Attorney in Fact)

In addition, the Durable Power of Attorney Act (Subtitle P, Title 2, Estates Code) requires you to:

- (1) maintain records for each action taken or decision made on behalf of the principal;
- (2) maintain all records until delivered to the principal, released by the principal, or discharged by a court; and
- (3) if requested by the principal, provide an accounting to the principal that, unless directed by the principal or otherwise provided in the special instructions, must include:
  - (A) the property belonging to the principal that has come to your knowledge or into your possession;

- (B) each action taken or decision made by you as agent or attorney in fact;
- (C) a complete account of receipts, disbursements, and other actions of you as agent or attorney in fact that includes the source and nature of each receipt, disbursement or action, with receipts of principal and income shown separately;
- (D) a listing of all property over which you have exercised control that includes an adequate description of each asset and the asset's current value, if known to you;
- (E) the cash balance on hand and the name and location of the depository at which the cash balance is kept;
- (F) each known liability;
- (G) any other information and facts known to you as necessary for a full and definite understanding of the exact condition of the property belonging to the principal; and
- (H) **all documentation regarding the principal's property.**

### **Termination of Agent's Authority**

You must stop acting on behalf of the principal if you learn of any event that terminates this power of attorney or your authority under this power of attorney. An event that terminates this power of attorney or your authority to act under this power of attorney includes:

- (1) the principal's death;
- (2) the principal's revocation of this power of attorney or your authority;
- (3) the occurrence of a termination event stated in this power of attorney;
- (4) if you are married to the principal, the dissolution of your marriage by court decree of divorce or annulment;
- (5) the appointment and qualification of a permanent guardian of the principal's estate; or
- (6) if ordered by a court, the suspension of this power of attorney on the appointment and qualification of a temporary guardian until the date the temporary guardian expires.

### **Liability of the Agent**

The authority granted to you under this power of attorney is specified in the Durable Power of Attorney Act (Subtitle P, Title 2, Estates Code). If you violate the Durable Power of Attorney Act or act beyond the authority granted, you may be liable for any damages caused by the violation or subject to prosecution for misapplication of property by a fiduciary under Chapter 32 of the Texas Penal Code.

THE ATTORNEY IN FACT OR AGENT, BY ACCEPTING OR ACTING UNDER THE APPOINTMENT, ASSUMES THE FIDUCIARY AND OTHER LEGAL RESPONSIBILITIES OF AN AGENT.





# What's Inside

## Information about:

- Self-Determination
- Guardianship
- Alternatives to Guardianship
- Supports and Services
- Supported Decision-Making
- Advice for Supporters
- Frequently Asked Questions
- Easy Guide to Creating Supported Decision-Making Agreements
- Additional Resources
- Texas Home and Community-Based Services
- Sample Forms



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