

“DAWGNY”

Decision Alternatives With(out) Guardianship NY

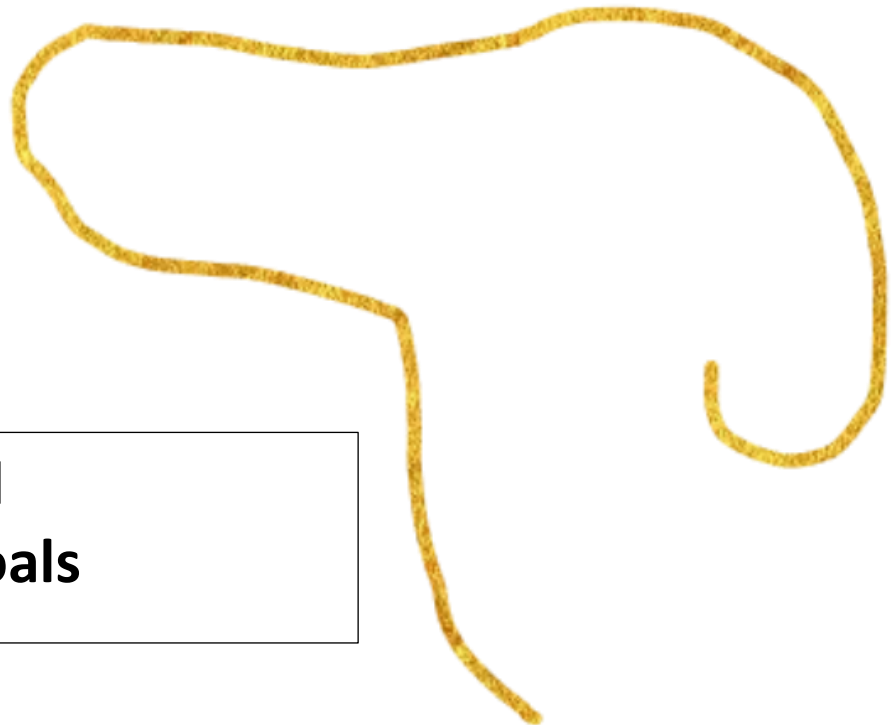
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**Good
Goals**

Welcome to the DAWGNY Supported Decision-Making Section

Article 82 of the NY Mental Hygiene Law

What is Supported Decision-Making?

Everybody needs help sometimes.

People with disabilities might need a little extra.

Supported decision-making is a way to make sure that help is there, without having to go to court to appoint a guardian.

Supported decision-making (SDM) can mean different things at different times. Sometimes it just means turning to a friend for advice. Other times it means a formal agreement with rules and legal power (a Supported Decision-Making Agreement, or SDMA). Or it can be something in between.

Whatever kind of SDM is right for you, here in New York—and in more and more states around the U.S.—you have a right to use it.



The Law (in plain language)



What is a Supported Decision-Making Agreement?



How to Create a Supported Decision-Making Agreement



How to Become a Supporter

Disability & Aging Justice Clinic
CUNY School of Law
SDM explained 5.8.23

Supported Decision-Making: The Law

In 2022, New York's Governor signed Article 82 of the NY Mental Hygiene Law, to empower Supported Decision-Making (SDM).

Why?

To provide an alternative to **Guardianship**.

Guardianship can be **Full Guardianship** (with "all or nothing" powers) under [Article 17-A](#) of the NY Surrogate's Procedure Act.

Or Guardianship can be **Tailored Guardianship** (with only the powers that are necessary to help the disabled person) under [Article 81](#) of the NY Mental Hygiene Law.

The new Article 82 provides a **less restrictive alternative to Guardianship**, called Supported Decision-Making.

You can read a plain language version of the entire law [here](#).

You can read the entire law as written [here](#) (<https://www.nysenate.gov/legislation/laws/MHY/TEA82>).

The law will take effect after the NY State Office of People with Developmental Disabilities (OPWDD) has published regulations to make it work. For updates, click [here](#) (<https://sdmny.org/>).

Supported Decision-Making Agreements: SDMAs and Me

What is Supported Decision-Making (SDM)?

Supported decision-making can mean different things. It can simply mean getting help with a decision from someone you trust. Or it can mean a formal "Supported Decision-Making Agreement"—an SDMA.

What is a Supported Decision-Making Agreement (SDMA)?

An SDMA is an agreement between you and one or more people you trust—your Supporters. SDMAs can be written or spoken. The important thing is: an SDMA describes how you and your Supporters will work together when you need to make a decision.

Some written SDMAs are *formal*. These are made with the help of a *Facilitator*, and they do some special things that a spoken (informal) SDMA can't do. See [N.Y. Mental Hygiene Law § 82.02\(m\)](#).

Do people have to honor my decisions if I have an SDMA?

Yes, if it is a *formal* SDMA made with the help of a Facilitator. See [§ 82.11](#).

Just because you have an SDMA, or want to have an SDMA, or have tried to get an SDMA, that doesn't mean that you can't make your own decisions. No one can deny you services or benefits for those reasons either. See [§ 82.03\(e\)](#).

Do I *have to* have an SDMA to participate in an activity or receive a service?

No. Execution of an SDMA is *not* required for you to participate in any activity, service, or program. See [§ 82.04\(g\)](#).

Who is the **Decision-Maker (DM)**?

You—the person who made the Supported Decision-Making agreement—are the Decision-Maker.

The Supported Decision-Making law assumes that *anyone* has the right to make their own decisions.

But, if you already have a court-appointed Guardian, that might be an obstacle. You might have to ask the court to discharge the Guardian before you can make an SDMA.

Remember, Supported Decision-Making is an alternative to having a court-appointed Guardian.

Under Article 82, unless a court says otherwise, **you** are entitled to have an SDMA, even if you have a disability, even if you need help getting started with it, and no matter how you communicate with others.

Long story short: If you want an SDMA, and if you can understand that you are making an agreement with your Supporters, then that's it. *You qualify for an SDMA.*

Who can I choose as my **Supporters**?

You can choose any adult over the age of 18 who has agreed to support you in making decisions.

Please see our [Supporter Page](#).

Supported Decision-Making: How to Be a Supporter

This page is for people who are or who might become Supporters of a Decision-Maker (DM). If you'd like to review what Supported Decision-Making is, then you can click [here](#).

What does it mean to be a **Supporter**?

A Supporter is a person who agrees to help a Decision-Maker (DM) with decisions. A DM is someone who is making, or who has made, an [SDMA](#). If a Decision-Maker chooses you to be their Supporter, it's a sign of great trust and respect.

Who can be a **Supporter**?

Almost any adult over 18 can be a Supporter, if they are able to help and agree to help. You must also meet certain eligibility requirements under [§ 82.08](#).

Should I agree to be a **Supporter**?

You should only agree to be a Supporter if you take the responsibility seriously. But that doesn't mean you have to be an expert in anything, and it isn't a full-time job. You do need to *be there* for the Decision-Maker when they need help with a decision.

Some Decision-Makers have more than one Supporter. Not every Supporter needs to be there for every decision.

If there is a Supported Decision-Making Agreement (an SDMA), then you only have to help out in the ways described in the SDMA. If it's not in the SDMA, then it's not your job as a Supporter. (You might still want to do it for other reasons, or you might not. That's up to you.)

What kinds of decisions might I be helping with?

If the Decision-Maker asks for help, then the Supporter can help with any decision at all. The most important ones usually involve medical, legal, or other major life decisions.

Does the Decision-Maker have to do what I say?

No. A Supporter does *not* make decisions *for* a Decision-Maker. With SDM, the DM always makes the decision. A Decision-Maker might listen to your advice, and still make a different decision, and that's OK.

A Supporter talks with the Decision-Maker to help them understand their choices. Usually, that means talking about what each choice means, and what could happen if they make that choice.

The only time a Supporter can make a decision for the Decision-Maker is if it's a decision covered by an [advance directive](#), for example a Health Care Proxy for medical decisions or Power of Attorney for property decisions.

What do I have to do to become a Supporter?

If the Decision-Maker chooses you to become their Supporter, and if you accept that responsibility, then you must promise to be honest and do your best to help the Decision-Maker.

If the Decision-Maker has an SDMA, then the Supporter agrees to follow the rules of that SDMA. Usually, the Supporter participates in making those rules. Sometimes, a Supporter will decide to take a class to prepare for their role.

What are the rules for a Supporter?

As a Supporter, you have to respect the Decision-Maker's privacy.

That means you should let them decide how much they want to tell you, or what documents they want to show you.

It also means you shouldn't announce the Decision-Maker's decision to anyone unless the DM is part of the conversation and asks you to.

Sometimes, a Decision-Maker might ask you to help them get access to some of their own private information. If you receive any private financial, educational, or medical information about the Decision-Maker, then you have to be sure to keep it private and safe.

Can I sign documents for the Decision-Maker?

No, you can't generally sign documents or provide consent *for* the Decision-Maker.

But sometimes, a Decision-Maker might ask you to *co-sign* a document that says they've received a statement of rights and responsibilities. See [82.05\(d\)](#).

What if I decide I don't want to be a Supporter anymore?

If you decide not to be a Supporter anymore, then you have to tell the Decision-Maker in writing, and in a way the Decision-Maker understands.

Your Supported Decision-Making Agreement



What Is in Your Written Agreement?

Supporters

Supporters are adults (over the age of 18) who agree to help you make decisions. *You* choose your Supporters and the type of support you want your Supporter to provide. Supporters *cannot* make a decision for you, and must agree to keep your information private.

Type of Support

Supporters are allowed to provide nearly any type of support. A Supporter is allowed to gather information, speak with professionals, or share information with other Supporters, among other things.

Responsibilities

You choose your responsibilities. The ultimate responsibility rests with you. It's your decision!

Formal vs. Informal

Some Supported Decision-Making Agreements are more formal. These types of SDMAs have to be signed in a specific way. More below!

Who Can Write Your Agreement?

Anyone! You can write your own agreement or have a friend write it. Formal agreements may also require a Facilitator's participation and signature. Remember! SDMAs are not required to be in writing, but writing them offers some benefits that an unwritten SDMA doesn't.

What are the requirements for a written SDMA?

Your agreement must be dated, and you must have at *least* one Supporter. Your agreement should clearly state the areas or types of decisions your Supporter will assist you with.

All Supporters named in your agreement must sign a separate paragraph contained within the agreement which states that they agree to honor your choice(s), *not* make their own decisions *for* you, the Decision-Maker, and honor all other terms of the agreement.

Remember! **You** are the Decision-Maker, and you are free to change or end your agreement at any time! This is also required to be written into your agreement.

Finally, any agreement *must* be signed by *all* of your Supporters. You must also agree with the terms of your agreement and state so orally within the presence of two witnesses. If you do not have at least two witnesses, your agreement must be notarized.

Can I add to or change my written agreement?

Yes! You are more than welcome to change your own agreement; however, you must tell your Supporters.

If you want to add to your agreement, you can do that also, without informing any of your Supporters (but it's usually a good idea to tell all of your Supporters of any changes ... even ones that might not directly affect them).

PLAIN LANGUAGE VERSION OF ARTICLE 82

This is a guide that translates the language of the sections of the New York Supported Decision-Making Law (Mental Hygiene Law Article 82) into more readable and plain language.

§ 82.01 Why do we need this law?

(a) A person can't really be free unless they can make their own decisions. A lot of the time, people with disabilities aren't allowed to make their own decisions, just because other people don't think that they can. Actually, we almost never make decisions all alone. We usually have some kind of help. People with disabilities may need more, or different kinds of help than other people.

(b) One way that people with disabilities – and all people – can get help, is through supported decision-making. Supported decision-making can mean different things. It can simply mean getting help with a decision from someone you trust.

Or it can mean a formal "Supported Decision-Making Agreement" or SDMA. An SDMA is a document that says the Decision-Maker can ask for help from the Supporter or Supporters they choose. When you have an SDMA, your decisions are *your* decisions, and they have to be respected the same as anyone else's, whether or not you have a disability.

(c) SDMAs are often a good idea for people with disabilities. They should be able to use them without any negative consequences. Their services should not be affected, including if they use adult protective services.

(d) The government should work on expanding the kinds of disabilities that can be helped by SDMAs.

§ 82.02 Definitions

When used in this law, these words usually mean the following.

(a) Abuse

"Abuse" can mean physical abuse, sexual abuse, and emotional abuse. There are detailed definitions of each of those things in Section 473 of the Social Services Law, and they are summed up below.

There are three different kinds of abuse:

(1) Physical abuse is when someone causes pain to another person, on purpose. It may result in injuries and/or scarring. Some examples of physical abuse are: being slapped, burned, cut, bruised or kept from moving.

(2) Sexual Abuse is when someone makes sexual contact without permission. Some examples of sexual abuse are: touching, or forcing sexual contact.

(3) Emotional Abuse is when someone upsets another person, on purpose. Some examples of emotional abuse are: threatening, teasing, and/or bullying.

(b) "Adult"

An adult is anyone age 18 or older.

(c) Advance Directive

When an adult either says or writes down what they want to have happen if they can't make their own decisions, that's called an "Advance Directive." The legal word for "can't make their own decisions" is *incapacitated* (in-cuh-PASS-i-tated).

An Advance Directive has legal power. It can cover health care or property decisions.

It might name an agent to make medical treatment decisions for an adult, if a doctor says they can't make those decisions. That's called a "health care proxy."

It might say the person does not want to be revived or given life-saving treatment if they are close to death.

It can also include other statements and beliefs.

A power of attorney names an agent to make certain decisions about property, money, or finances.

(d) Decision-Maker

The adult who is making, or wants to make, an SDMA.

(e) Financial Exploitation

This is when someone takes advantage of another person's money or property. There are many kinds of financial exploitation.

(f) Good Faith

Acting in "Good Faith" means being honest and fair.

(g) Neglect

"Neglect" is when a person's caregiver doesn't give care. Some examples of neglect are: abandonment (which is leaving the person alone for a long time), or keeping them from getting what they need, like food, water, heat, clean clothes or bedding, or health care.

(h) Physical Coercion

"Physical Coercion" means hurting someone or keeping them from going where they want to go, or else just making them afraid those things might happen.

(i) Supported Decision-Making (SDM)

"Supported Decision-Making" is when a Decision-Maker gets help from a Supporter to make a decision. It might be a decision about money, where to live or work, health care, or something else.

(j) Supported Decision Making Agreement (SDMA)

An SDMA is an agreement between you and one or more people you trust—your Supporters. SDMAs can be written or spoken. The important thing is: an SDMA describes how you and your Supporters will work together when you need to make a decision.

Some written SDMAs are *formal*. These are made with the help of a *Facilitator*, and they do some special things that a spoken (informal) SDMA can't do.

(k) Supporter

A Supporter is a person who agrees to help a Decision-Maker (DM) with decisions. A DM is someone who is making, or who has made, an SDMA.

(l) Undue Influence

"Undue influence" (UN-DOO IN-floo-ins) (L) Use of prohibited persuasive actions, including but not limited to, use of threats of physical or mental harm, to force the Decision-Maker to make a decision that they are unable to refuse or resist.

(m) Facilitator

An authorized helper who can guide the making of an SDMA.

§ 82.03 We assume everyone can make their own decisions

(a) You might not be able to decide to have an SDMA if you have a guardian, or if there is clear and convincing evidence that you shouldn't have one. Otherwise, it's assumed that you can decide to have an SDMA.

(b) You can decide to have an SDMA even if you need help getting started with it.

(c) You can decide to have an SDMA even if you have a disability.

(d) You can decide to have an SDMA no matter how you communicate with others.

(e) No one can say that you can't make your own decisions just because you have an SDMA, or want to have an SDMA, or have tried to get an SDMA. No one can deny you benefits for those reasons either.

(f) All that you need in order to qualify for an SDMA is the desire to have one, and the ability to understand that you are making and executing an agreement with your Supporters.

§ 82.04 What this law covers

(a) Here are some of the things a Decision-Maker can ask a Supporter to help with: Getting information, understanding information, thinking about the consequences of making (or not making) the decision, thinking about alternatives to the decision, and talking with other people about the decision.

(b) A Decision-Maker can always make decisions on their own.

(c) A Decision-Maker can always get access to their personal information on their own.

(d) When making a decision that is not part of an SDMA, the Decision-Maker can ask for help from anyone, not only from the Supporters named in the SDMA.

(e) To a court, an SDMA shows you have a "less restrictive alternative to guardianship," which means that maybe you don't need a guardian.

(f) Just because some people get formal SDMAs, that doesn't mean you can't use informal Supported Decision-Making. Even an informal arrangement might show the court that you have a "less restrictive alternative to guardianship."

(g) An SDMA can't be a *requirement* for participation in any activity, service, or program.

(h) Sometimes, the advice you get from a professional (like a doctor or a lawyer) is confidential. That means this advice is only for you, and can't be shared without your permission, even in court. Confidential advice *stays* confidential, even if your Supporter is there when you get it.

(i) An SDMA can't *prevent* you from getting services or supports that you're entitled to, including Adult Protective Services.

(j) If an SDMA is signed by a Facilitator, it will have legal power.

§ 82.05 What do Supporters have to do?

(a)

1. A Supporter must respect the Decision-Maker' right to make a decision, even when the Supporter disagrees with their decision, or thinks that it is not what's best for them.
2. A Supporter must be honest and do their best.
3. A Supporter must do what the SDMA says.
4. While helping the Decision-Maker, the Supporter must make sure they are working only for the Decision-Maker, and not for anyone else.
5. If a Supporter decides not to be a Supporter anymore, they must tell the Decision-Maker in writing, and in a way the Decision-Maker understands.
6. If a Supporter is part of an SDMA, they must follow rules that may include taking a class.

(b)

1. A Supporter must not make decisions for a Decision-Maker unless it's a decision that is specified in an advance directive.
2. A Supporter must not try to force the Decision-Maker to make a decision that is not really their own.
3. A Supporter must not use physical force against a Decision-Maker.
4. A Supporter must not try to get the Decision-Maker's private information unless the Decision-Maker wants them to, and then only if it's to help with the kind of decision that is covered by the SDMA.
5. A Supporter can only get the Decision-Maker's private financial or medical information if the Decision-Maker agrees to it, or if the SDMA officially gives them permission.
6. A Supporter must not communicate the Decision-Maker's decision unless the Decision-Maker is there and wants them to.

(c) A Decision-Maker makes their own decisions. A Supporter is there to be trustworthy and to respect their privacy.

(d) A Supporter does not make decisions for the Decision-Maker, or sign documents for them, or agree to anything on their behalf. If the SDMA says so, then a Supporter may co-sign (with the Decision-Maker) a document that confirms they have received a "statement of rights and responsibilities" so they can participate in a program they want to participate in.

(e) If the SDMA says so, and if the Decision-Maker signs a release, then the Supporter may help the Decision-Maker get certain educational and health records.

(f) If the Supporter does help to get the kind of records mentioned in (e), then the Supporter must keep the information in those records private and safe.

§ 82.06 Formation and term of agreement

(a) Any adult may enter into an SDMA if they want to.

(b) A Decision-Maker can sign an SDMA in any way, including electronically.

(c) An SDMA made in accordance with this law lasts until the Decision-Maker ends it.

§ 82.07 Revoking or adding to the SDMA

(a) If a Decision-Maker wants to take back an SDMA (that is, to *revoke* it) then all they have to do is tell the Supporters, or otherwise make it clear that they want to take it back. They can take back the whole SDMA, or any part of it. Even if they don't tell the Supporters, they can still decide to revoke the SDMA.

(b) If a Decision-Maker wants to add something to an SDMA, all they have to do is tell the Supporters. But even if they don't tell the Supporters, they can still decide to add something to the SDMA.

§ 82.08 What it takes to be a Supporter, or to stop being one

(a) The Decision-Maker can choose any adult to be a Supporter. If that adult works for a company that provides services to the Decision-Maker, then there might be special rules to follow.

(b) A person can't be a Supporter if:

1. a protective order or restraining order keeps them away from the Decision-Maker; or
2. the local social services department finds that they have mistreated the Decision-Maker by abuse, neglect, financial exploitation, or physical coercion. (See Section 82.02 for what those words mean here.)

(c) If a Supporter does not want to be a Supporter anymore, all they have to do is say or write it to the Decision-Maker and any other Supporters.

(d) Even if one Supporter quits, any other Supporters in the SDMA are still Supporters.

(e) If there's only one Supporter in the SDMA, and they quit, then the SDMA has ended.

§ 82.09 Special requirements for a formal SDMA

(a) Most of the rules in Sections 82.11 and 82.12 below only apply to *formal* SDMAs made with a specially qualified Facilitator, who has also signed the SDMA.

§ 82.10 Form of Agreement

(a) An SDMA can take any form, as long as it does the following.

(b) An SDMA must:

1. Be in writing
2. Be dated
3. Name the Decision-Maker and at least one Supporter;

4. List what kinds of decisions the Supporter can help with;
5. List the kinds of help that each Supporter can give;
6. Contain an *attestation*—a promise that the Supporters will honor the Decision-Maker's right to make their own decisions, that the Supporters will respect those decisions, and that the Supporters will not make decisions *for* the DM;
7. Mention that the Decision-Maker can change or cancel the SDMA any time, for any reason;
8. Be signed by all Supporters;
9. Be *executed* or *endorsed*, which means that the Decision-Maker signs off on it officially, in one of two ways: either with at least two adult witnesses who are not Supporters; or with a notary public.

(c) An SDMA may:

1. Appoint more than one Supporter;
2. Allow a Supporter to get personal information for the Decision-Maker (see Section 82.05(e));
3. Allow a Supporter to share information with another Supporter, or with others named in the SDMA; or
4. Limit what a Supporter can do.

(d) To be the kind of formal SDMA that the next two sections apply to, an SDMA must also:

1. Be signed by a Facilitator or educator.
2. Mention that the SDMA was made in a special way—*with a recognized process*; and
3. If it's being used to back up a decision, it needs an *attestation*—a promise by the Decision-Maker that the decision was made according to the SDMA's rules.

§ 82.11 Decisions made with a formal SDMA are legal

- (a) This section only applies to formal SDMAs made with a specially qualified Facilitator, who has also signed the SDMA.
- (b) When a Decision-Maker's decision is made under the rules of a formal SDMA, it has full legal power.
- (c) A Decision-Maker may have to provide an "attestation" to a provider. An attestation is a document that says the decision is being made under the rules of a formal SDMA.
- (d) A provider must honor a decision that is made under the rules of a formal SDMA, unless the provider has a good reason to think that the decision is not being made freely, or that the decision will hurt the Decision-Maker.

§ 82.12 Limits on liability for providers following a SDMA

- (a) This section only applies to a *formal* SDMA made with and signed by a Facilitator, following an approved process.
- (b) If a person does something (or doesn't do something) because they are following a decision made by a Decision-Maker using a formal SDMA, and if they do it honestly, then they can't be held *criminally liable*. That means that they can't be found guilty of a crime. Also, they can't be held *civilly liable*. That means they can't be sued. And they can't get in trouble for professional misconduct.
- (c) If a health care provider gives health care because they are following a decision made by a Decision-Maker using a formal SDMA, then that provider is protected if someone says that the Decision-Maker *lacked capacity*. This means, if someone sues because they think that the Decision-Maker couldn't make their own decisions, then the healthcare provider will not get in trouble.

However, if the provider knew that the Decision-Maker had *cancelled* the SDMA, then they are not protected. Or, if the Supporter is the one who gave consent for

the care, and if the provider knew that the Supporter was not acting in the DM's best interest, then the provider is not protected.

(d) Sometimes, an organization has personal information about a Decision-Maker. That information can't be shared. However, if a formal SDMA says that an organization can share that information, then the organization can't get in trouble for sharing it *in the way the SDMA says*.

However, if the organization knew that the Decision-Maker had *cancelled* the SDMA, then it is not protected.

(e) A health care provider, or anybody else, is *not* protected if they:

1. Hurt a Decision-Maker on purpose, or by being seriously careless;
2. Go against what the Decision-Maker clearly wants;
3. Don't tell the Decision-Maker or the Supporter something they need to know to decide;
4. Break the law.

(f) If a Decision-Maker has a disability, then the law might require services like translation or communication supports. Having an SDMA doesn't change this requirement.

§ 82.13 Notice to a Supporter

(a) If the law says that a provider has to notify the Decision-Maker about something, and if the provider has a copy of an SDMA that says they also have to notify a Supporter about that thing, then the provider also has to notify the Supporter of that thing.

(b) If the thing referred to in (a) includes private information, then the provider can only notify the Supporter if there is also a release attached to the SDMA.

§ 82.14 Reporting abuse, coercion, undue influence, or financial exploitation

(a) If someone thinks that a Supporter is taking advantage of a Decision-Maker, then they can report it to adult protective services (APS).

(b) Sometimes, a person has to report certain kinds of abuse. This law doesn't change that.

§ 82.15 Rules for OPWDD and other state agencies

(a) Within one year after this law is passed, the Commissioner of the New York State Office of People With Developmental Disabilities has to decide how to apply it for people who may receive OPWDD services.

(b) Other state agencies may come up with other rules about how to apply this law to people who receive their services.

[This page could be expanded and linked to from just about everywhere in this document or the website.]

Helpful Definitions

Article 17-A Guardianship

Full (plenary) Guardianship of the person and/or property of an adult with an intellectual or developmental disability. Appointed by a County Surrogate Court judge, the Guardian manages and makes decisions about personal needs or financial matters, or both. Article 17-A Guardians can make almost all the decisions for the adult (depending on whether the Guardianship is of the person or the property, or both).

Article 81 Guardianship

Can be a more limited guardianship for personal needs and/or property management for any adult who is at risk of harm because they are unable to make decisions (including people with an intellectual or developmental disability, age related dementia, or mental health challenges). Appointed by a New York State Supreme Court Judge, the Guardian manages and makes decisions about personal needs or financial matters, or both. Judges are allowed to make the Guardianship only for the specific needs that the person has, instead of giving the Guardian the power to make all decisions.

Alleged Incapacitated Person

The Alleged Incapacitated Person, or AIP, refers to a person who is the subject of an Article 81 guardianship.

Decision-Maker

An adult who has or wants a Supported Decision Making Agreement.

Guardianship

Guardianship is the process by which a court appoints a person to become legally responsible for making certain decisions for another person who either agrees to have a Guardian or is found by the court to be incapacitated.

Plenary Guardianship

Full guardianship, that takes away most rights of the person for whom a Guardian is appointed.

Supported Decision-Making

Supported Decision-Making is the process by which Decision-Makers use the assistance or advice of other trusted adults, called Supporters, to help them make choices about their own lives. Can be a good alternative to Guardianship, for some people. Learn more [here](https://sdmny.org/) (<https://sdmny.org/>).

Supporter

Supporters are adults that legally agree to assist Decision-Makers with making decisions. Supporters cannot substitute their own decisions for those of the Decision-Maker.