

KANSAS MENTAL HEALTH COALITION

... Speaking with one voice to meet the critical needs of people with mental illness

Supported Decision-Making Agreements

Position: The Kansas Legislature should enact legislation to provide a Supported Decision-Making Agreement option for individuals and families in Kansas. The Coalition believes that it is an important tool for Kansans who may face difficulties due to living with disabilities or mental illness. Supported Decision Making offers options to individuals seeking assistance with financial or health decisions without requiring them to give up their independence and ability to make their own life decisions.

The Problem: Kansas does not have a mid-level, effective alternative for a non-guardianship option available for individuals that live with a disability or mental illness. Approximately 420,000 Kansans have a mental health condition. Kansans are faced with limited options for assisting their loved ones who may want the advice and counsel of trusted family members or professionals, but do not want to give up their decision-making rights by living under guardianship.

Why This Matters: The option of a Supportive Decision-Making Agreement is an effective alternative to guardianship. This mid-level option would allow those to live independently and select trusted family members, friends, or professionals to provide support when:

- Making decisions, communicating decisions, and understanding information about, options for, the responsibilities of, and consequences for decisions;
- Accessing, obtaining, and understanding information relevant to decisions necessary for managing the principal's affairs;
 - o This would include medical, psychological, financial, educational, treatments, and other records;
 - o Supporters could also use dated consent to assist the principal in obtaining protected health or education records;
- Ascertaining wishes and decisions of the principal, assisting in communicating those wishes and decisions to others, and advocating to ensure implementation of the principal's wishes or decision; and
- Accompanying the principal and participating in discussions with other persons when the principal is making decisions or attempting to obtain information for such decisions.
- For parents with adult children this is crucial for helping them get the mental health help they need, especially in times of crisis.

Supporters would be required to:

- Act with the care, competence, and diligence ordinarily exercised by individuals in similar circumstances; and
- Keep information collected on behalf of the principal (confidential; protected by unauthorized access, use, or disclosure, and only for the uses authorized by the principal).

The Bottom Line: Supported Decision-Making Agreements work. There are currently nine states (Texas, Delaware, District of Columbia, Wisconsin, Alaska, Indiana, North Dakota, Rhode Island, and Nevada) that have these Agreements. It would be beneficial for Kansas to join them in this fight for those with disabilities or mental illness, and for their families to know there is another option available. It is important to note that this legislation does not remove the legal tools of guardianship or conservatorship but adds a less restrictive option for individuals and families to utilize when preferred by

the individual.

Telling More of the Story

The House Judiciary Committee held an informational hearing on the topic of Supported Decision Making on February 6th, 2023. This is available for viewing on the Kansas Legislature audio/video feed.

There are two bills introduced for the 2023 legislative session: HB 2250 / HB 2345

There is strong research available to support the use of Supported Decision-Making Agreements:

Piers Gooding (2017) A New Era for Mental Health Law and Policy: **Supported Decision-Making and the UN Convention on the Rights of Persons with Disabilities**, Cambridge University Press, Oct 13, 2017

Piers Gooding (2013) Supported Decision-Making: A Rights-Based Disability Concept and its Implications for Mental Health Law, Psychiatry, Psychology and Law, 20:3, 431-451, DOI: [10.1080/13218719.2012.711683](https://doi.org/10.1080/13218719.2012.711683)

"Supported Decision Making: A Concept at the Margins vs. Center of Autonomy?." *The American Journal of Bioethics*, 21(11), pp. 43–44