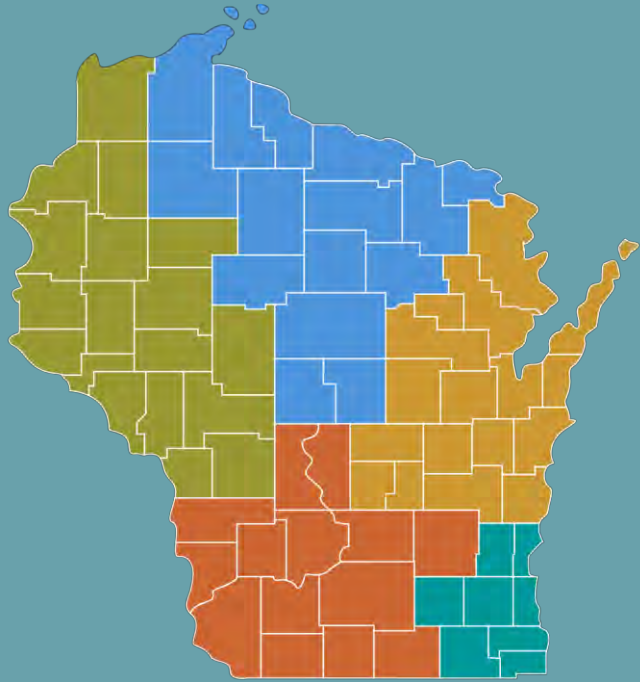


# CONSIDERATIONS FOR SUPPORTED DECISION- MAKING

March 2020

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# CYSHCN Regional Centers



**Need some help?**

Wisconsin has five Regional Centers dedicated to supporting families with children and youth with special health care needs and the providers who serve them.

**Call us!**

**¿Necesita algún tipo de ayuda?**

Wisconsin tiene cinco centros regionales dedicados a apoyar a las familias de niños y jóvenes con necesidades especiales de atención médica y a los proveedores que los atienden.

**¡Háblanos!**

# Making Decisions is a Learned Skill



- Families do the best they can to raise & support their children
- Typical families and children have access to everyday experiences that prepare them for self-determined lives.
- Families and children with disabilities have fewer opportunities to have self advocacy experiences.
- Families who have children with disabilities may need help teaching decision-making skills.
- Families and youth need information and experiential opportunities develop these skills.
- Families and youth vary in their tolerance for risk

# What Happens at Age 18?



- Any person in Wisconsin over the age of 18 is legally an adult:
  - *is presumed to be able to manage his or her own affairs,*
  - *choose where to live, consent to medical treatment, vote, make contracts, marry, manage finances*
  - *exercise his or her own legal rights as an adult.*
- This presumption does not change because a person has a disability.
- When a person is unable to do some or all of these, some form of supported decision making is needed.

# Families Need Information



- Start a conversation well in advance of 18
- Talk together about the need for decision making supports
- Seek information
- Connect to learning opportunities
- Explore decision-making skills and skill-building opportunities
- Ask about:
  - Access to typical experiences
  - Impact of growth & development
  - Self-advocacy skills

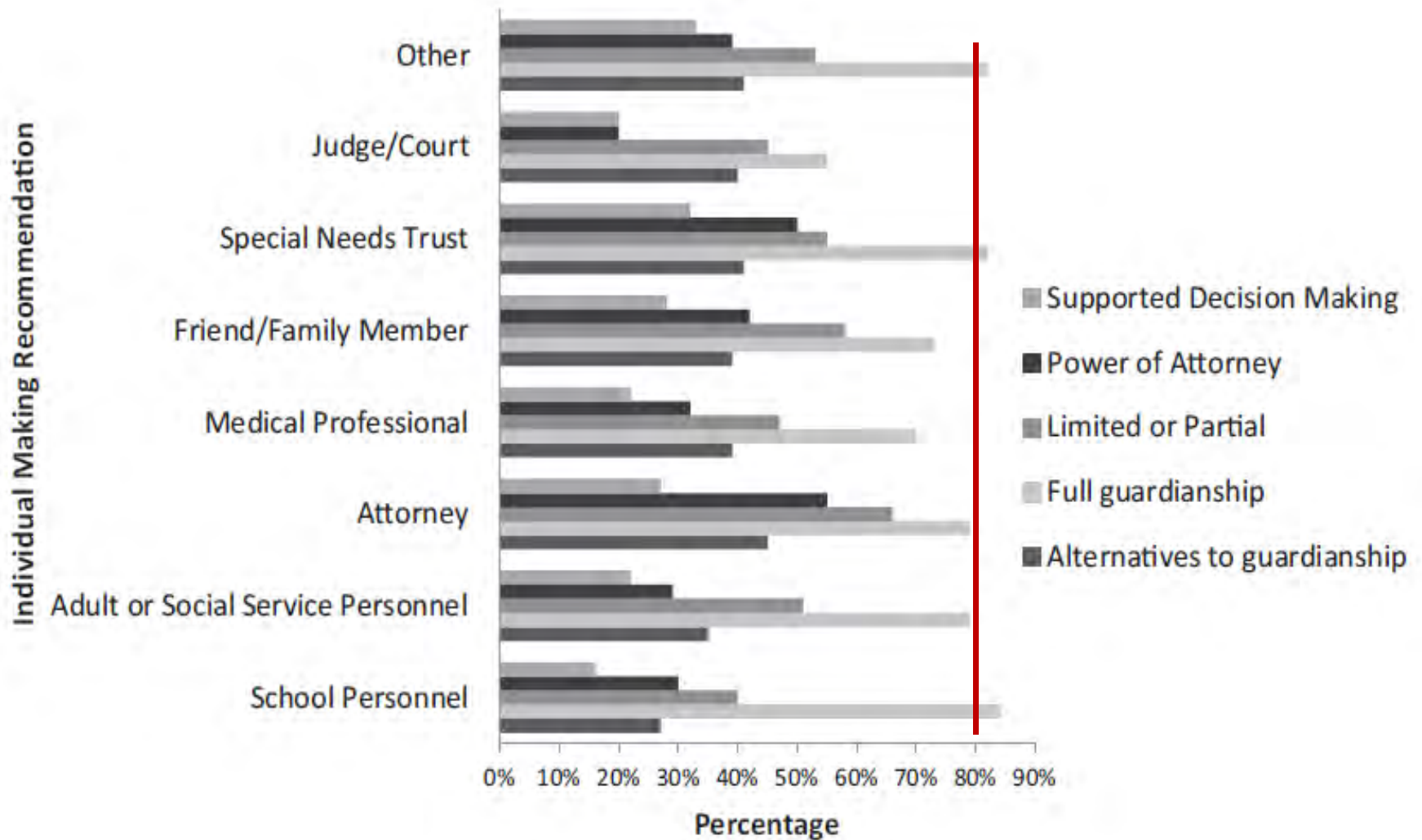
# Why are we Talking About Supported Decision-Making?

- The number of adults under guardianship has tripled since 1995 with ~ 90% being full guardianship
- Our constitution protects the rights to liberty, to the pursuit of happiness, and to control our own property for all adult citizen of the United States.
- Concern that guardianship restricts those rights and labels the person as someone who does not have the full rights of other adults.





# How do Families Hear About Supported Decision-Making?



# What is Supported Decision-Making (SDM)?



- Supported Decision-Making, a series of relationships, practices, arrangements and agreements designed to assist an individual with a disability to make and communicate to others decisions about their life.
- “an alternative to guardianship through which people use friends, family members and professionals to help them understand situations and choices they face, so they may make their own decisions without the “need” for guardianship.” Blanck & Martinis, 2015



# Tools for Decision- Making Support

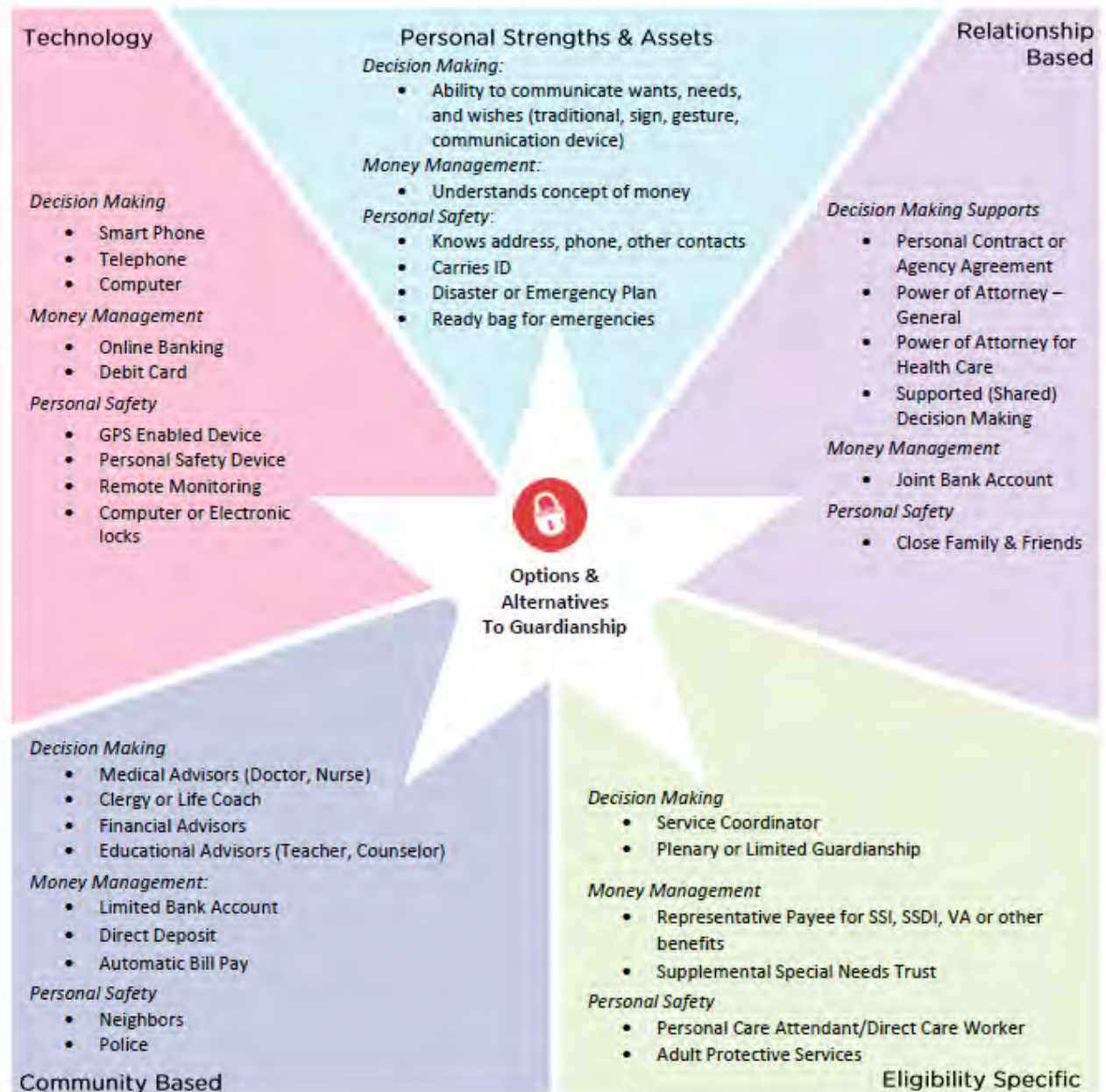


- Release of information/consent
- Power of Attorney for healthcare, finances or education
- Representative Payee
- Trustee
- Restricted Bank Accounts
- Limited or Full Guardianship of the person and/or estate
- Supported Decision-Making Agreements

# We All Make Decisions

- How do you make decisions?
- Who do you go to for help?
- Have you ever made a bad decision?
- What did you learn?

## Person-Centered Planning



# SDM Agreements



- WI formalized the concept of Supported Decision-Making into law
- Individual with functional impairment completes
- Names a Supporter
- Supporter can assist with obtaining information, communicating their decisions, and in understanding the information and options
- Agreements are flexible and can be updated easily

# SDM Agreement

Supporter cannot make decisions, sign legal documents or bind the adult to legal agreements.

Supporter's authority is limited to what is given to them

Not evidence of incompetency or incapacity

Must be in writing, voluntary, signed and dated

Witnessed by two adult witnesses or a notary

Can be used in conjunction with full or limited guardianship and/or POAs

Can be revoked at any time

# What is Included in SDM Agreements

For the following everyday life decisions, if I have checked “Yes,” my supporter may help me with that type of decision, but if I have checked “No,” my supporter may not help me with that type of decision:

Obtaining food, clothing, and shelter — Yes  No

Taking care of my physical health — Yes  No

Managing my financial affairs — Yes  No

Taking care of my mental health — Yes  No

Applying for public benefits — Yes  No

Assistance with seeking vocational rehabilitation services and other  
vocational supports — Yes  No

The following are other decisions I have specifically identified that I would like assistance with:

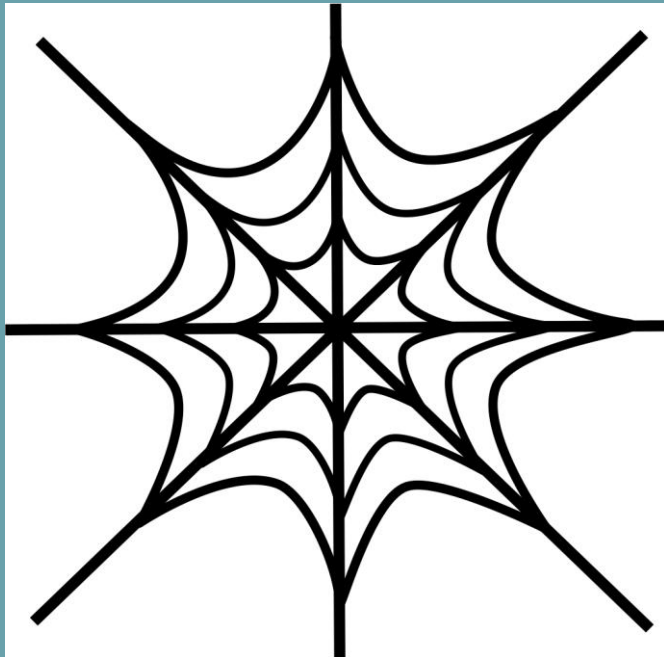
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If I have not checked either “Yes” or “No” or specifically identified and listed a decision immediately above, my supporter may not help me with that type of decision.

# SDM and Other Legal Arrangements



- Supported Decision-Making—both the concept and formal SDM agreements--can be used in combination with other legal arrangements such as a powers of attorney for health care or finances or limited or full guardianships.
- These options are not mutually exclusive and can be used to complement each other.



# Guardianship

*The rights to liberty, to the pursuit of happiness, and to control our own property are central to our idea of what it means to be an adult citizen of the United States.*

Guardianship is a legal process where a court decides if:

- A person lacks “capacity” to make decisions for themselves AND
- There are no less-restrictive alternatives than guardianship
- It may be temporary or permanent
- Guardian of the person: when the guardian has custody and control of decisions made for the “ward”
- Guardian of the estate: when the guardian is responsible for managing the “wards” money and property

# Guardianship and Incompetence

“We have to reject the very idea of incompetence. We need to replace it with the idea of ‘assisted competence’. This will include a range of supports that will enable individuals with cognitive disabilities to receive assistance in decision-making that will preserve their rights...”

Thomas Nerney

“A central issue for the court is the impact of the impairment on the person’s functional ability to make decisions that are important to his or her health and safety. Guardianship is based not on the quality of the decisions the person makes, but on the process by which he or she makes and communicates the decision.”



# Consequences of Guardianship



- Making decisions the person is unable to make for himself or herself, and giving consent the person is not able to give
- Exercising rights on behalf of the adult that the adult is unable to exercise for himself or herself
- Acting as an advocate for the adult's best interests
- Taking action to protect the adult from abuse, neglect, self-neglect, financial exploitation and violation of rights

# Consequences of Guardianship



- Determination of “incompetent” can be a painful process
- The person may feel labeled as a second-class citizen
- Other people may assume that the person is incapable or incapacitated
- The right to take risks is an opportunity to learn
- A person who is unaware of his or her basic rights and of how to assert them, is at greater risk of abuse and exploitation by others
- If we want the person to be able to say “no” to others, we must accept the inconvenient fact that they will sometimes say “no” to us.
- A person who is used to having decisions made by someone else can lose self-confidence and see themselves as incapable





**WAISMAN CENTER**  
UNIVERSITY OF WISCONSIN-MADISON  
University Center for Excellence in Developmental Disabilities

# ISSUE BRIEF 2019

## Making the Case for Supported Decision-Making



### **What is Supported Decision-Making?**

*Supported Decision-Making (SDM) is a way to help individuals with intellectual and developmental disabilities (IDD) make decisions with the assistance of friends, family and trusted allies. Supported Decision-Making can be used by someone who makes their own decisions as well as by those who may have legal structures such as guardianship that identifies someone else to make decisions.*

The Waisman Center along with the Wisconsin Board for People with Developmental Disabilities and Disability Rights Wisconsin have been working together to explore and advance the understanding of supported decision-making for people

### **Issue Statement**

Individuals with IDD are considered equal under the law, which includes the right to choose where to live, agree to medical treatment, vote, enter into contracts, marry, manage finances, and exercise legal rights just like any other adult. Some individuals with IDD may need support exercising these rights. SDM is one way of supporting an individual with a disability by using friends, family members, and professionals to help the person

# Resources

- [Family Voices of WI - FACT SHEET: Supported Decision Making for Transition Age Youth](#)
- [National Resource Center for Supported Decision Making](#)
- [Got Transition-Guardianship and Alternatives for Decision Making Support](#)
- [Wisconsin Guardianship Support Center](#)
- WI DHS [Advance Directives and POA Forms](#)
- WI DHS [Supported Decision-Making Agreements Form](#)