



COMMISSIONER
Jon Weizenbaum

March 23, 2016

To: Adult Foster Care Providers
 Assisted Living Facilities
 Community Attendant Services Providers
 Community Living Assistance and Support Services Providers
 Consumer Managed Personal Attendant Services Providers
 Day Activity and Health Services Providers
 Deaf Blind with Multiple Disabilities Providers
 Emergency Response Services Providers
 Family Care Providers
 Financial Management Services Agencies
 Home and Community-based Services Program Providers
 Home Delivered Meals Services Providers
 Hospice Services Providers
 Intermediate Care Facility for Individuals with an Intellectual Disability or
 Related Conditions Program Providers
 Local Intellectual and Developmental Disability Authorities
 Medically Dependent Children Program Providers
 Nursing Facility Providers
 Primary Home Care Providers
 Programs of All-Inclusive Care for the Elderly Providers
 Residential Care Providers
 Special Services to Persons with Disabilities Providers
 Texas Home Living Program Providers
 Transition Assistance Services Providers

Subject: Information Letter No. 16-13
 Supported Decision-Making Agreement Act

This letter informs providers of the Supported Decision-Making Agreement Act (“Act”), and to encourage its implementation. The Texas Legislature amended the Estates Code through House Bill (H.B.) 39 and Senate Bill (S.B.) 1881, (84th Legislature, Regular Session, 2015) by adding the Supported Decision-Making Agreement Act.

The Act provides adults with disabilities who need assistance with understanding choices to make their own decisions an option that is less restrictive than guardianship. With the help of a “supporter”, an individual can make an informed decision about where and with whom to live, where to work, and what services, supports or medical and mental care they want.

Who is an adult with a disability?

Under this law, an adult with a disability is:

- an individual 18 years old or older, or an individual under 18 years old who the law considers to be an adult; and
- who has a physical or mental impairment that substantially limits one or more major life activities.

Who is a supporter?

A supporter is a person who has made a “supported decision-making agreement” with an adult with a disability to help the adult gather information and communicate their life decisions. A person cannot be a supporter if the State of Texas decides the person has abused, neglected or exploited the adult. A supporter can decide to stop being a supporter at any time. The adult can choose a different supporter at any time.

What is a supported decision-making agreement?

The law allows an adult with a disability and a supporter to have a supported decision-making agreement that states how the supporter will help the adult communicate life decisions. Although there is no mandated form, the Act requires the adult and supporter to sign the agreement in the presence of:

- a) two witnesses who are at least 14 years old and who also sign the agreement; or
- b) a notary public.

What does a provider need to know if an adult has a supporter?

A supporter is different from a legal guardian appointed by a court. A supporter cannot force an adult with a disability to make a decision or make a decision on behalf of an adult with a disability. A supporter can only help an individual gather information, consider options, and communicate the decision. The person with a disability retains the exclusive right to make these decisions.

When an individual has chosen a supporter and has a supported decision-making agreement, the individual may give a copy of the agreement to the provider if the individual wants the supporter involved in making decisions related to any services provided by the provider.

If a supporter is gathering information for an adult, the supporter must have the adult’s written consent to get the information. For example, a provider may have confidential information about an individual such as medical information, school records, and Medicaid case records. A supporter may have access to this information only with written consent of the individual. In providing a supporter with access to confidential information, a provider should follow its usual practice for releasing an individual’s confidential information to another person. For information on confidential personal health information and the Health Insurance and Portability

Accountability Act, a provider may visit the Texas Department of Aging and Disability Services (DADS) website at: <http://www.dads.state.tx.us/providers/hipaa/>.

A supporter must ensure that the information from the provider is kept confidential and cannot release the information to anyone without the consent of the adult with a disability. A supported decision-making agreement does not prevent an adult with a disability from seeking confidential information on his or her own without the assistance of the supporter.

If the provider has knowledge of a supported decision making agreement in which the adult with a disability states he or she wants the supporter to assist him or her with decisions about services, the provider must ask the individual if he or she wants the supporter invited to service-planning meetings or other meetings that are convened by the provider. The individual may include in the agreement that the supporter will attend such meetings.

DADS has developed an explanation of supported decision-making that is attached to this information letter. DADS encourages providers and service coordinators to provide a written copy of the explanation to each individual served. Also attached is a template for a Supported Decision-Making Agreement to provide to an individual who is interested in establishing an agreement.

As a reminder, if a provider suspects any person, including a supporter, is abusing an individual the provider must report it by calling the Texas Department of Family and Protective Services at 1-800-252-5400 or report it online at www.txabusehotline.org. If the person with a disability is living in a nursing home or receives services from a Home and Community Support Services Agency (HCSSA), the call is made to 1-800-458-9858. A complaint can also be made using DADS [complaint website](#). Providers may use the [self-reporting website](#).

Sincerely,

[signature on file]

S. Michelle Martin
Director
Center for Policy and Innovation

[signature on file]

Elisa J. Garza
Assistant Commissioner
Access and Intake

- Attachment 1: Letter to Individuals
- Attachment 2: Supported Decision-Making Agreement Template
- Attachment 3: Letter to Individuals - Spanish
- Attachment 4: Supported Decision-Making Agreement Template - Spanish

How to Get Help with Decision-Making

1. Do you need or want help making big life decisions?

If you do, there is a new law that may help. The Supported Decision-Making Agreement Act lets a person, known as a “supporter”, help you understand and communicate important decisions such as:

- where you live,
- who you live with,
- where you work, or
- what services, supports or medical and mental health care you want.

The new law is for an adult with a disability. This means:

- a. a person 18 years old or older, or a person under 18 years old who the law considers to be an adult; and
- b. who has a physical or mental impairment that substantially limits one or more major life activities.

2. What is a supporter and what do they do?

A supporter is someone who can help you:

- get information,
- understand your choices,
- understand the responsibilities and consequences of your decisions, and
- tell others what you decide.

A supporter is different from a guardian, who is chosen by a judge. A supporter has no legal power to tell you what to do. That means a supporter cannot decide for you or force you to make a decision. A supporter is a volunteer and does not get paid money to help you. You may change your supporter at any time. You can decide at any time you no longer need the help of a supporter. A supporter also can decide to stop helping you at any time.

3. Who can be a supporter?

A supporter is the person you choose and who agrees to help you get information so you can make life decisions. A supporter should be an adult you trust. A person can never be a supporter if he or she has abused, neglected or exploited a person with a disability.

4. What do I do after I pick a supporter?

You can sign a supported decision-making agreement to include the kinds of decisions your supporter will help with, based on what you want and need. The agreement should describe how your supporter would help you. For example, if you want your supporter to attend meetings with a provider, include that in the supported decision-making agreement. Your provider can give you a sample supported decision-making agreement if

needed. You can use the sample or one like it to make your own supported decision-making agreement.

5. What do I do after I have a written supported decision-making agreement?

- Sign the written agreement along with your supporter in front of either a) two people who are at least 14 years old, or b) a notary public. Notaries are people who witness the signing of legal papers and work at a variety of places, such as banks.
- Make sure to give your provider a signed copy of your supported decision-making agreement.
- You must sign a form called consent if you want your supporter to be able to see personal information needed to help you make a decision. That information can be medical records, school records, or other information. For example, if you want your supporter to get your health or school information, you may need to sign a form called “consent to release information” so your supporter can get this information. You can write ‘yes’ or ‘no’ on the supported decision-making agreement to share these records with your supporter. If you are receiving Medicaid, a Medicaid provider may need your written permission to give information to your supporter.

6. Is there anything else I should know?

If a supporter abuses, neglects or exploits you in any way, immediately report it to the state by calling the Texas Department of Family and Protective Services at 1-800-252-5400.

7. Who can I contact if I have more questions?

For more information, contact Disability Rights Texas at **1-800-252-9108** or a lawyer of your own choosing.

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: _____

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:

1. Help me get the information I need to make medical, psychological, financial, or educational decisions;
2. Help me understand my choices so I can make the best decision for me; or
3. 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)

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.

(Witness 1 Signature)

(Printed Name of Witness 1)

(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 Adult with a Disability) (Name of Supporter)

(Signature of Notary)

(Printed Name of Notary)

(Seal, if any, of notary)

My commission expires: _____

Attention: Protection for an 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 Texas Department of Family and Protective Services by calling the Abuse Hotline at 1-800-252-5400 or online at 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

Cómo recibir ayuda con la toma de decisiones

1. ¿Necesita o quiere ayuda para tomar las decisiones importantes en la vida?

Si es así, hay una nueva ley que le puede ayudar. La Ley de acuerdos para la toma de decisiones con apoyo permite que una persona llamada "defensor", le ayude a comprender y comunicar las decisiones importantes, como:

- dónde vive,
- con quién vive,
- dónde trabaja o
- qué servicios, ayudas o atención médica y de salud mental desea.

La nueva ley es para un adulto con una discapacidad. Esto quiere decir:

- a. una persona de 18 años o más, o una persona menor de 18 años a quien la ley considera un adulto y
- b. que tiene un impedimento físico o mental que limita significativamente una o más de las actividades principales de la vida.

2. ¿Qué es y qué hace un defensor?

El defensor es alguien que puede ayudarle a:

- obtener información,
- entender sus opciones,
- comprender las responsabilidades y las consecuencias de sus decisiones y
- decirles a otras personas lo que usted decide.

El defensor es diferente de un tutor, el cual es elegido por un juez. El defensor no tiene ningún poder legal para decirle qué hacer. Eso quiere decir que el defensor no puede decidir por usted ni puede obligarlo a tomar una decisión. El defensor es un voluntario y no le pagan dinero por ayudarle. Usted puede cambiar de defensor en cualquier momento. Puede decidir en cualquier momento que ya no necesita la ayuda de un defensor. El defensor también puede decidir dejar de ayudarle en cualquier momento.

3. ¿Quién puede ser un defensor?

El defensor es una persona que usted escoge y que se compromete a ayudarle a conseguir información para que pueda tomar decisiones en su vida. El defensor debe ser un adulto de confianza. Una persona nunca puede ser un defensor si ha abusado, maltratado, descuidado o explotado a una persona con una discapacidad.

4. ¿Qué hago después de escoger al defensor?

Puede firmar un acuerdo para la toma de decisiones que incluya los tipos de decisiones con que ayudará su defensor, según lo que usted quiera y necesite. El acuerdo debe describir cómo le ayudará su defensor. Por ejemplo, si desea que el defensor asista a

4 de marzo de 2016

Carta de información Núm. 16-13

Ley de acuerdos para la toma de decisiones con apoyo

Anexo 1

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reuniones con un proveedor, incluya eso en el acuerdo para la toma de decisiones con apoyo. Su proveedor puede darle un ejemplo del acuerdo para la toma de decisiones con apoyo si lo necesita. Puede usar el ejemplo o uno parecido para hacer su propio acuerdo para la toma de decisiones con apoyo.

5. ¿Qué hago después de escribir el acuerdo para la toma de decisiones con apoyo?

- Firme el acuerdo junto con su defensor delante de a) dos personas que tengan por lo menos 14 años de edad, o b) un notary public. Un notary public es una persona que presencia la firma de documentos legales y trabaja en una variedad de lugares, como los bancos.
- Asegúrese de dar a su proveedor una copia firmada de su acuerdo para la toma de decisiones con apoyo.
- Usted tiene que firmar una forma llamada "consentimiento" si desea que su defensor vea cualquier información personal necesaria para ayudarlo a tomar una decisión. Esa información podría ser expedientes médicos, expedientes académicos u otra información. Por ejemplo, si desea que su defensor vea la información sobre su salud o la escuela, deberá firmar una forma llamada "consentimiento para divulgar información" para que su defensor pueda obtener esta información. Usted puede escribir "sí" o "no" en el acuerdo para la toma de decisiones con apoyo para compartir estos expedientes con su defensor. Si recibe Medicaid, un proveedor de Medicaid quizás necesite su autorización escrita para dar información al defensor.

6. ¿Hay algo más que debo saber?

Si un defensor lo abusa, maltrata, descuida o explota de cualquier manera, repórtelo inmediatamente al estado llamando al Departamento de Servicios para la Familia y de Protección de Texas al 1-800-252-5400.

7. ¿A quién puedo contactar si tengo más preguntas?

Para más información, llame a Disability Rights Texas al **1-800-252-9108** o a un abogado de su propia elección.

Acuerdo para la toma de decisiones con apoyo

Este acuerdo se rige por la Ley de acuerdos para la toma de decisiones con apoyo, Capítulo 1357 del Código de Propiedad Testamentaria de Texas. Este acuerdo para la toma de decisiones con apoyo es para apoyar y acomodar a una persona con una discapacidad para que tome las decisiones en su vida, incluso las decisiones relacionadas con dónde y con quién desea vivir; los servicios y atención médica que quiere recibir, y dónde quiere trabajar, sin impedir la autodeterminación de la persona con una discapacidad. Este acuerdo puede ser revocado por la persona con la discapacidad o su defensor en cualquier momento. Si la persona con la discapacidad o su defensor tiene cualquier duda sobre el acuerdo, debe hablar con un abogado antes de firmar el acuerdo para la toma de decisiones con apoyo.

Nombramiento del defensor:

Yo (Nombre del adulto con la discapacidad), _____ firmo este acuerdo voluntariamente.

Escojo a (Nombre del defensor) _____ como mi defensor.

Dirección del defensor: _____

Teléfono: _____

Correo electrónico: _____

Mi defensor puede ayudarme con las decisiones de la vida relacionadas con:

Sí ___ No___ obtener comida, ropa y un lugar para vivir

Sí ___ No___ mi salud física

Sí ___ No___ mi salud mental

Sí ___ No___ administración de mi dinero o propiedad

Sí ___ No___ conseguir educación u otro tipo de capacitación

Sí ___ No___ escoger y mantener mis servicios y apoyos

Sí ___ No___ encontrar empleo

Sí ___ No___ Otra decisión: _____

Mi defensor no toma las decisiones por mí. Para ayudarme a tomar decisiones, mi defensor puede:

1. Ayudarme a conseguir la información que necesito para tomar decisiones médicas, psicológicas, financieras o educativas;
2. Ayudarme a entender mis opciones para que pueda tomar la mejor decisión para mí; o
3. Ayudarme a comunicar mi decisión a las personas apropiadas.

Sí___ No___ Mi defensor puede ver mi información médica privada bajo la Ley de Responsabilidad y Transferibilidad de Seguros Médicos de 1996. Presentaré un consentimiento firmado.

Sí___ No___ Mi defensor puede ver mis expedientes académicos bajo la Ley de Confidencialidad y Derechos de Educación de la Familia de 1974 (20 U.S.C., Sección 1232g). Presentaré un consentimiento firmado.

Este acuerdo comienza cuando se firme y continuará hasta el ___ (fecha) o hasta que mi defensor o yo, o la ley, termine el acuerdo.

Firmado este _____ (día) de _____ (mes) de _____ (año)

(Firma del adulto con la discapacidad)
con la discapacidad)

(Nombre en letra de molde del adulto)

Consentimiento del defensor

Yo (Nombre del defensor), _____ acepto ser un defensor bajo este acuerdo.

(Firma del defensor)

(Nombre del defensor en letra de molde)

Este acuerdo debe ser firmado ante dos testigos o un notary public.

(Firma del testigo 1)

(Nombre en letra de molde del testigo 1)

(Firma del testigo 2)

(Nombre en letra de molde del testigo 2)

O

Notary Public

Estado de _____

Condado de _____

Este documento fue reconocido ante mí el _____ (fecha)

Por _____ y _____
(Nombre del adulto con la discapacidad) (Nombre del defensor)

(Firma del notary public)

(Nombre del notary public)

(Sello del notary public, si tiene): Mi comisión se vence: _____

Atención: Protección de un adulto con una discapacidad

Si una persona que recibe una copia de este acuerdo o sabe de la existencia de este acuerdo tiene motivo para creer que el adulto con la discapacidad es víctima de abuso, maltrato, descuido o explotación por parte del defensor, la persona debe reportar el presunto abuso, maltrato, descuido o explotación al Departamento de Servicios para la Familia y de Protección de Texas llamando a la Línea Directa contra el Abuso o Maltrato al **1-800-252-5400** o en línea en **www.txabusehotline.org**.

Deber de ciertas personas con respecto al acuerdo

Una persona que recibe el original o una copia de un acuerdo para la toma de decisiones con apoyo tiene que basarse en el acuerdo. Si una persona realiza una acción u omisión de buena fe y con el respaldo de un acuerdo para la toma de decisiones con apoyo, la persona no está sujeta a responsabilidad penal ni civil y no ha participado en mala conducta profesional.