



# Helping Family and Loved Ones Make Decisions

Presented by  
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# Legal Disclaimer:

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The contents of this program is for informational purposes only and does not constitute legal advice. This information is not intended to create, and the presentation does not constitute, a lawyer-client relationship.

# Helping Family and Loved Ones Make Decisions

- Discussion on helping family members and caregivers recognize when their family members may need assistance in making decisions and carrying out activities related to daily living activities, health care, and their finances;
- Information for understanding the options for decision-making assistance in Delaware and how to access those options; and how to plan forward and talk to your loved ones about decision-making support.

## No Impairment of Capacity

No restriction on decision-making.

Understands the nature and intent of documents and can execute legal documents such as AHCD, DPOA, will, and contracts.

Understands simple and complex fact presentations and is able to process information.

Can make decisions without assistance or choose to have assistance.

## Some Impairment of Capacity

No restrictions on decision making.

May still execute documents including AHCD, POA, DPOA, contracts, a will, and a supported decision-making agreement, if the adult understands the nature and intent of the document at the time of execution.

Needs assistance with processing information and making simple or complex decisions.

## Significant Impairment of Capacity

Needs support in making decisions, or alternate decision maker.

May still execute legal documents if the adult understands the nature and intent of the document at the time of signing.

May not understand or process information enough to make simple or complex decisions. Doctor or care team may look to alternate decision maker.

## Lacks Decision Making Capacity

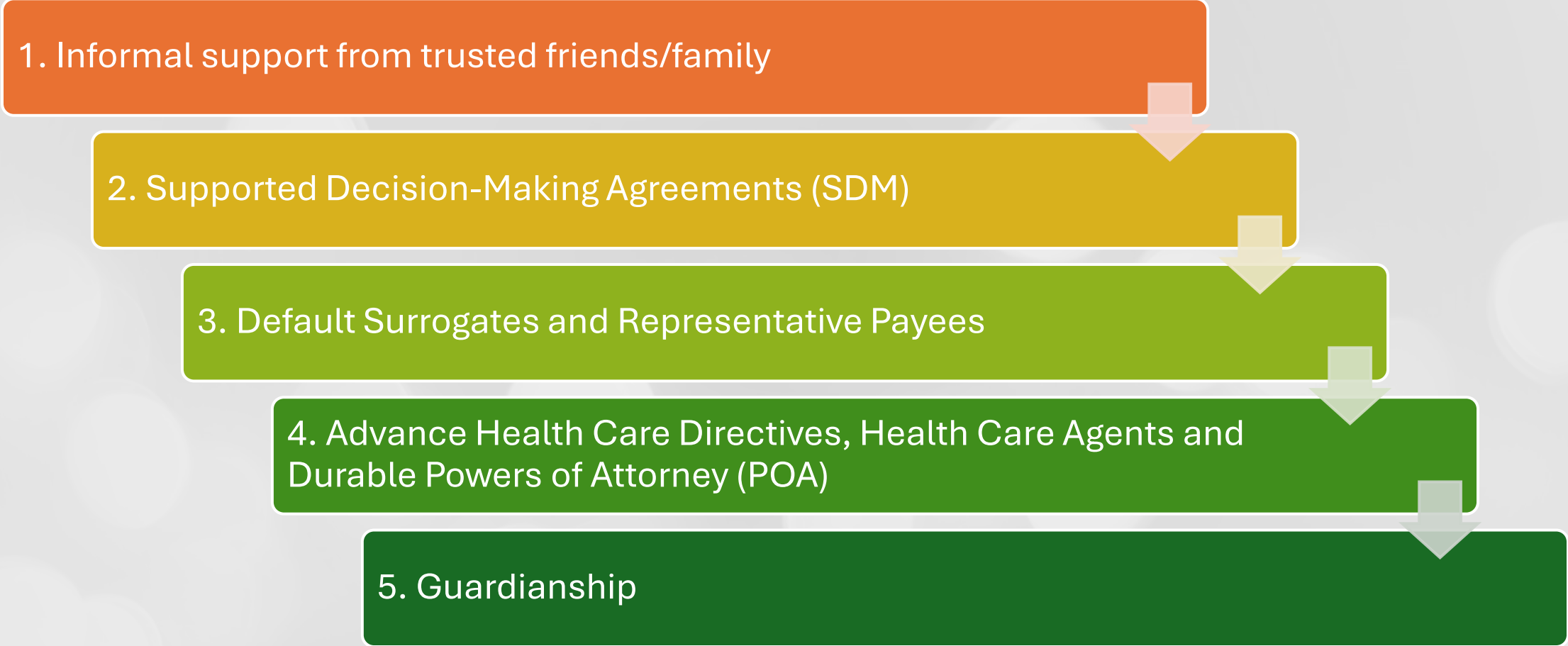
Is not able to execute legal documents.  
Is not able to understand or process information to make simple or complex decisions.

Care teams or financial institutions will question abilities and look for an alternate decision maker.

NOTE: A person has capacity until the Court of Chancery determines they do not have capacity. Once capacity is questioned, must be resolved.

# The Toolbox

1. Informal support from trusted friends/family



2. Supported Decision-Making Agreements (SDM)

3. Default Surrogates and Representative Payees

4. Advance Health Care Directives, Health Care Agents and  
Durable Powers of Attorney (POA)

5. Guardianship



# Supported Decision- Making in Delaware

- A legal alternative to guardianship (16 Del. C. § 9401A et seq.)
- - The person chooses supporters to help them understand and communicate decisions
- - Person retains all decision-making rights
- - Use for medical, financial, and life decisions
- - Agreements must be written, signed, and witnessed
- - Ideal for people who need assistance but want to stay in control



# Surrogate Decision- Maker

- A Surrogate Decision Maker is an individual identified by the person or by the medical professionals to make health care decisions for the person in the event of their incapacity.
- No forms are required.
- Recognizes family, cohabitants, and individuals who are close with the person.
- It provides additional options to address disagreements among default surrogates who have equal priority.
- Includes the ability to apply for health insurance for a patient who does not have another fiduciary to do so.



# Representative Payee/Social Security Benefits

- A Representative Payee is a person or organization appointed by the Social Security Administration (Social Security or “SSA”) to receive benefits for anyone who can’t manage or direct the management of his/her benefits.
  - Benefits must be used for the beneficiary’s current or future needs, or record and account for expenditures.
  - Social Security presumes an adult is capable of managing his/her benefits. The party interested in acting as Representative Payee must provide sufficient evidence to Social Security for them to decide a payee is needed, or SSA may investigate independently.
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# Advanced Directives and Power of Attorney



Durable POA: manages finances if capacity is lost



- Advance Health Care Directive:  
Healthcare Power of Attorney



- Should be completed early—  
before capacity becomes  
questionable

# Advanced Health Care Directives, and Durable Powers of Attorney

- These options should be explored prior to obtaining a guardianship to make healthcare and financial decisions for who needs assistance.
- Delaware law establishes that testamentary capacity is sufficient to validly execute a Power of Attorney and an Advanced Health Care Directive.
- In this context, the level of capacity necessary to execute these documents is: That one must, at the time of execution, be capable of exercising thought, reflection, and judgment, and must understand the nature and effect of the document.
- Execution of the Power of Attorney may also require consideration that the individual understands disposition of property is possible.

# Advanced Health Care Directive

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You have the right to give instructions about your own health care. You also have the right to name someone else to make health-care decisions for you.

This form lets you do either or both of these things. It also lets you express your wishes regarding anatomical gifts and the designation of your primary physician. If you use this form, you may complete or modify all or any part of it. You are free to use a different form.

# Durable Power of Attorney

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A Durable Personal Power of Attorney is durable because it is designed to survive the incapacity of the principal. It is personal because it relates only to personal assets and interests, not routine business matters that are specific event targeted and short lived, and it is a power of attorney because it allows one person, the principal, to give authority to another person, the agent, to act on the principal's behalf.



It relates only to financial matters; it does not relate to health care decisions.



It may either take effect immediately, or only take effect upon the principal's incapacity as documented by a doctor.

# If Guardianship is Necessary

Used when a person is  
unable to make  
decisions AND no  
alternatives are in  
place



- Requires filing a  
petition with the Court  
of Chancery



- Court evaluates  
capacity and appoints  
a guardian (person,  
property, or both)

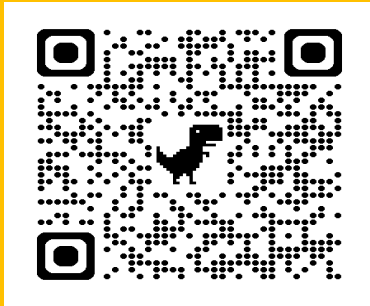
# Talking to your loved one about support...

|             |                                                    |
|-------------|----------------------------------------------------|
| Engage      | - Use calm, respectful language                    |
| Emphasize   | - Emphasize safety and shared decision-making      |
| Avoid       | - Avoid forcing; offer choices                     |
| Involve     | - Involve them in planning as much as possible     |
| Acknowledge | - Acknowledge fears about independence and dignity |

## RESOURCES:

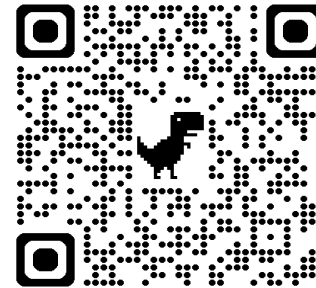
- Office of the Public Guardian: Resource Page  
<https://courts.delaware.gov/publicguardian/resources.aspx>
- Department of Health and Social Services:
  - ACHD - <https://dhss.delaware.gov/dsaapd/advance/>
  - POA - <https://dhss.delaware.gov/dhcq/poa/>
  - Supported Decision – Making - [https://dhss.delaware.gov/dsaapd/supported\\_decision\\_making/](https://dhss.delaware.gov/dsaapd/supported_decision_making/)
  - Court of Chancery – Guardianship <https://courts.delaware.gov/chancery/guardianship/index.aspx>
- Court of Chancery:
  - AHCD: <https://courts.delaware.gov/help/poa.aspx>
  - Guardianship: <https://courts.delaware.gov/chancery/guardianship/index.aspx>

## Office of the Public Guardian:

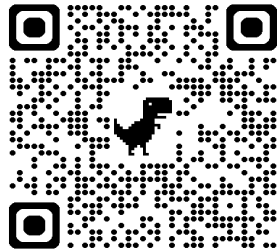


## Department of Health and Social Services

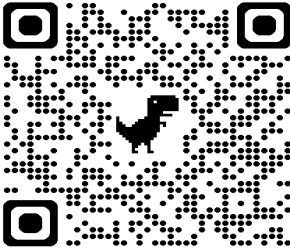
- Supported Decision Making:



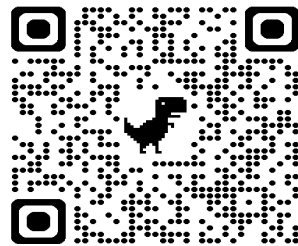




- Delaware Courts -
- [courts.delaware.gov](https://courts.delaware.gov) –
- Advanced HCD/Living Will/POA for health care



- Department of Health and Social Services
- <https://dhss.delaware.gov/dsaapd/advance1/>
- Advanced Health Care Directive



- Department of Health and Social Services
- <https://dhss.delaware.gov/dhcq/poa/>
- Power of Attorney