

Dear Workgroup Members,

The use of supported decision-making (SDM) is being widely promoted in disability rights circles these days. The concept is often misunderstood, even by proponents. Many SDM advocates ignore or downplay the legal requirements and risks for this alternative to conservatorship.

Having said that, SDM should definitely be considered prior to or during a conservatorship proceeding. This set of reading materials is intended to give you information about SDM, its role in the capacity assessment process, and how SDM may be appropriate for some but not all seniors with cognitive challenges and adults with developmental or other cognitive and communications disabilities that make them potential targets for conservatorship proceedings.

The concept of capacity to make decisions is nuanced and multi-faceted. It is not an all or nothing matter. A person may have the capacity to make *independent* decisions on some matters but not others. He or she may have the capacity to make decisions, *with support*, on a variety of matters. Still others may lack capacity to make decisions, even with support, for some or all areas.

A capacity assessment professional will need to review the person's functional abilities to make decisions about residence, finances, medical care, marital status, educational needs, occupational issues, testamentary matters, social interactions, and sexual relations. Each area must be examined separately. In the process, the assessment professional will need to determine if, in any one of these areas, the individual could make decisions with the assistance from another person and thus eliminate the need for a conservator in that particular area of decision-making.

As these issues are being explored, the capacity assessment professional would have to determine what supports and services are geographically available. The assessment process is not just about a clinical examination of cognitive abilities and practical functioning, but includes research to determine what supports and services are available where the individual lives or what could be available if the individual were willing to relocate to another area that provides such services.

A thorough capacity assessment process not only involves the examination of SDM options from a medical, psychological, and legal perspective, but also involves a bit of social work to determine practical realities for the individual in question.

Please read these materials about SDM. As you do, think about how conservatorship proceedings should incorporate SDM into the capacity assessment process. If the less restrictive alternative mandate were truly implemented right now, new legislation would not be needed. But sometimes judges and attorneys require a legislative nudge to get them to do what they already should be doing.

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p.s. The statutory scheme for conservatorships under the Lanterman Petris Short Act for people who are “gravely disabled” and who may pose a danger to others incorporates the principles of supported decision-making into the capacity assessment process. Welfare and Institutions Code Section 5350 (e) (1) states that “a person is not ‘gravely disabled’ if that person can survive safely without involuntary detention with the help of responsible family, friends, or others who are both willing and able to help provide for the person’s basic personal needs for food, clothing, or shelter.” Subdivision (e) (2) clarifies that “unless they specifically indicate in writing their willingness and ability to help, family, friends, or others shall not be considered willing or able to provide this help.” Thus, in an LPS conservatorship proceeding, SDM principles are a part of the adjudication process in assessing a person’s capacity to safely function in society without the necessity of a civil commitment.

Materials for Your Consideration

Please review the PowerPoint, commentary, and report on found on this webpage.
<http://spectruminstitute.org/sdm/>

PowerPoint

Supported Decision-Making: Considering Safe and Legal Alternatives to Conservatorship

Commentary:

Supported Decision-Making: My Transformation from a Curious Sceptic to an Enthusiastic Advocate

Report:

Supported Decision-Making: A Critical Analysis