



Office of Children and Family Services

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Local Commissioners Memorandum

Transmittal:	23-OCFS-LCM-10
To:	Local Departments of Social Services Commissioners
Issuing Division/Office:	Division of Child Welfare and Community Services
Date:	June 20, 2023
Subject:	Intersection of Adult Protective Services and Supported Decision-Making
Contact Person(s):	See section IV.
Attachments:	None

I. Purpose

The purpose of this Local Commissioners Memorandum (LCM) is to provide clarification of the impact of the amendments to the New York State Mental Hygiene Law Chapter 27, Title E, Article 82 (also known as “Article 82”), regarding the requirements of supported decision-making agreements as it pertains to the provision of adult protective services (APS) in local departments of social services (LDSSs).

II. Background

On July 26, 2022, the New York State Mental Hygiene Law was amended to include provisions allowing for the existence of supported decision-making agreements. The amendment is intended to provide more autonomy in decision-making for people with intellectual, developmental, cognitive, and psychosocial disabilities. Supported decision-making agreements are intended to bridge the gap between total independence and court-appointed guardianships, allowing individuals who retain basic capacities to reduce the number of court-appointed guardianships.

The law allows an individual (the decision-maker) with the assistance of a trusted person or persons of their choice (the supporters) to make their own decisions. The decision-maker and supporter or supporters enter into a written agreement (supported decision-making agreement), which outlines the types and circumstances for which the decision-maker wants support.

The New York State Office for People With Developmental Disabilities (OPWDD) is required to publish regulations that outline the process, training, and qualifications required by professional facilitators by July 2023. The following interim guidance is developed to support LDSSs in understanding the intersection of supported decision-making in APS cases.

III. Program Implications

Section A: Eligibility

An established supported decision-making agreement executed in accordance with the requirements outlined in Article 82 of the Mental Hygiene Law does not preclude the decision-maker from being referred for investigation and/or assessment for APS eligibility.

To be considered eligible for APS, the referred individual must be

- 18 years old or older and have a physical or mental impairment; and due to that impairment,
- is unable to protect themselves from abuse, neglect, financial exploitation, or other harm; and
- there is no one available who is willing and able to responsibly assist them.

When a vulnerable adult with a decision-making agreement is referred to APS, the LDSS must not use the mere existence of a decision-making agreement as part of the APS eligibility determination. The existence of an executed supported decision-making agreement does not in and of itself verify the presence of another entity willing and able to responsibly assist the referred person. The LDSS must assess the circumstances of the referral regardless of the existence of the decision-making agreement.

Section B: Investigation and Assessment

When the LDSS becomes aware of the existence of a decision-making agreement, the LDSS must request a copy of the signed agreement to understand the categories and circumstances of decisions in which the supporter or supporters are authorized to assist.

The decision-making agreement is only valid if it is in writing, dated and signed by

- the decision maker, and
- any designated supporter(s), and
- two adult witnesses not listed as supporters or with the attestation of a notary public, or
- the facilitator or educator who assisted in the development process if subject to "Article 82.11.

The decision-making agreement must also contain

- a statement that the agreement was made in accordance with a recognized facilitator and/or education process; and
- an attestation by the decision-maker that a particular decision has been made in accordance with the support described in the supported decision-making agreement.

During the investigative assessment and services stages of an APS referral/case, the LDSS must follow the requirements of the decision-making agreement as requested by the referred adult decision-maker.

The LDSS is not obligated to include the supporter(s) in any component of the investigation, assessment, or services stage when

- the referred decision-maker indicates they do not want the supporter(s) included in discussions or in receipt of information related to the investigation, regardless of the content of the decision-making agreement (the LDSS should secure a written statement from the referred adult indicating which component[s] they do not want the supporter[s] to be involved in); or
- the executed decision-making agreement does not authorize the supporter to be included in discussions or in receipt of information.

Section C: Exceptions

The LDSS must honor the conditions of an executed decision-making agreement unless

- the decision will cause the decision-maker substantial and imminent physical or financial harm;
- the decision-maker has expressly stated they do not wish a particular decision listed in the agreement or the agreement itself to be followed; or
- there is substantial cause to believe the agreement has been revoked; or
- there is substantial cause to believe that the decision-maker is being abused, coerced, unduly influenced, or financially exploited by the supporter.

If the LDSS believes that any of the above-noted exceptions exist, they must follow the standard investigative/assessment procedures, which include clearly and concisely documenting needs and risks, seeking supervisory consultation, and reporting any suspected criminal actions against the decision-maker to law enforcement.

IV. Contacts

Any programmatic questions should be addressed to the appropriate Bureau of Adult Services representatives.

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