Washington ARC Webinar 10/15/2020

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Ivanova Smith: Welcome, everyone to the conversations with Ivanova Supported Decision Making discussion. A couple housekeeping announcements. This webinar is captioned, just press the "enable captions" button on the bottom toolbar. If there are technical issues with the captioning you can access the transcript by going to the TypeWell website in the chat. That's unlikely to happen, but just in case, there's that option. Also, if you want to ask a question, there are several ways to do that.

If you look at the little toolbar at the bottom of the screen, you should see a chatbox. You can ask a question using the chatbox. If you can't use the chatbox and prefer to use your voice, go to participants and use the "raise hand" emoji. I will see your little hand and allow you to ask your question.

First, let's introduce our epic advocate and Disability Rights attorney and policy person, David Lord. Welcome, David. Tell us a little about who you are and what you do? Then I'll go to our first question.

David Lord: Thank you, Ivanova. I'm pleased to talk to you with a bit of an audience this time rather than just chatting. I'm the Public Policy Director at Disability Rights Washington. I've done that for a long time, and I'm going to retire at the end of the month. I'll still be around working for Disability Rights Washington on a part time basis and we'll have a new policy director, Daria Farivar. If you don't know what Disability Rights Washington is, go to our website, Disability Rights Washington and you'll find it. Pleased to be here.

Ivanova Smith: Thank you. It's good for you to be here. Let's get into it. My first question is, what is Supported Decision Making? Summarize it for everyone.

David Lord: Whenever I talk about something involving the law, I'm a lawyer, but this information I'm giving you is not legal advice, legal advice is specifically tailored to an individual. I'm not doing that today, I'm giving you general information. I don't want you to go out and act based on what I said and think that's enough. You need to take a look at it yourself, if necessary and if you need a lawyer, go see a lawyer.

That's my little warning there.

What's Supported Decision Making? It's a process that's now part of Washington law that allows a person to set up an agreement and that agreement should be

recognized by people that they have set up for how they're going to make decisions. It can be really useful for people who have some challenges to their ability to make decisions. They have what they call "capacity challenges." People can set up this agreement. It's not a guardianship. I'll talk about the difference between the two later. It's where you get together with people you trust, they're called supporters, you make an agreement about what you want them to do to help you make decisions.

You can specify whether it's financial, medical, or another kind of decision. I'll talk later about what a supporter's job is, but that's the basic idea.

This started in the law in Texas in 2015. It spread around. There were 7 or 8 States that adopted it before Washington. The law will be effective a year from this New Year's, January 1, 2022. That's when the law goes into effect, but you can make an agreement now.

Ivanova Smith: Tell me more about the difference between Supported Decision Making and guardianship.

David Lord: In a guardianship, a person loses some of their rights, the guardian will have the rights, or it's your rights, but they make sure they're paid attention to and make decisions on your interests. In Supported Decision Making, you don't lose any rights. You keep your rights. No one else gets the rights to do anything. You're still the decision maker after you make a Supported Decision Making agreement.

Another difference, is that in terms of legal capacity, that's a court finding that the judge would decide you lack the capacity to make certain decisions. That doesn't happen with Supported Decision Making. You need enough ability to make decisions if you have enough support to make them. It's like that.

That's a big change. Another difference is you have a court involved when you set up a guardianship. You don't have that with Supported Decision Making. There's no court involved. That's just with guardianship. Also, you can change a Supported Decision Making agreement whenever you want. You can revoke. It's not like that with guardianship. The court needs to make that decision. You can see there's a lot of differences. Also, you need to make regular reports to a court with a guardianship. You don't need that with Supported Decision Making. That can be good or bad, it can mean there's more accountability if the judges are paying attention or it's a good process, but that's not there with Supported Decision Making.

Another important thing, guardianship right now, before they set up a guardianship you are supposed to look at whether there are less restrictive alternatives, things like a power of attorney, a trust, etc. That's a requirement in the law. The law has changed now to include Supported Decision Making agreements. It says in the law,

the court needs to decide that Supported Decision Making is not enough to take care of your need. They need to take a serious look at it before making a guardianship.

That starts in 2022. Those are some differences that come to mind.

Ivanova Smith: Thank you. Who makes the decisions in a Supported Decision Making scenario?

David Lord: It's made by the person with the disability. Think of it like this, some people have had person-centered planning and know how it works, but the idea is you have a meeting and get the people together or it could be just one person, you decide who is going to be your supporters. They get together and you think

about . . . first, you need to have the agreement that you need help with the decision making and the supporters agree to it in writing that they're going to help you with whatever it is. Then there's a process where you formally sign the agreement, agreeing to help, then you notarize that. You need a couple signatures for that agreement, but through all that process I just described, the person making the decisions is the person with the disability. It's not the supporter I just described. You are going to keep making the decision and they're going to help you find the information you need and so forth, but you make the decisions.

That's really important. Some people ask about power of attorney, that's kind of like this, but with a power of attorney, you're giving someone else the authority to act for you. That's not true with Supported Decision Making. You are still making the decisions.

Ivanova Smith: I was muted. Sorry. Next question will be just so that everyone can hear, try to speak loudly and project.

David Lord: OK.

Ivanova Smith: Getting closer to the mic helps too.

David Lord: OK. I'm also trying to slow it down too. I talk fast.

Ivanova Smith: What's the role of a supporter in a Supported Decision Making situation?

David Lord: The supporters' role is to understand the options and make sure you understand what your options are when making the decisions and the consequences of your decisions, the responsibilities you're taking on, etc. That kind of thing. They also help you get the information you need to make a decision. So if you're making a

medical decision for instance, the doctor may use language you won't understand unless you have a medical degree, the supporter will help you understand what that means or get the doctor to slow down or speak in plain language. A supporter can also assist someone else in understanding and respecting your decision, understanding what your decision is and understand. So if the doctor is able to listen to you and understand your decision, that's good. But sometimes that doesn't happen. A supporter can help make clear to the doctor what you can understand and make the doctor pay more attention and you can still maintain your ability to make the decision.

A supporter can also help make sure you get accommodations that you need for your disability. This is also something I have heard about from talking to people in other states where they're doing Supported Decision Making, there are other techniques a supporter will use so the person understands what's at stake and what the decision is. They might do role-playing, they might use examples, they might speak slower and in plain language, they might do repetition, they might take enough time for you to have the the time to ask the questions you need to ask and understand the decision. That might require more meetings and time, but that's what happens. In order to do that, the supporter is responsible for knowing the person they agreed to help and how that person works and communicates. They need to give the person the time they need.

Ivanova Smith: Great. Looks like we have some questions. I'm going to ask Courtney to ask her question. You can ask away, Courtney.

Participant: I don't really have a question, but I do make a decision about something and my dad doesn't like it. He supports me a lot and I am getting married. I wanted to . . . I have this backup plan and my dad doesn't like it. It's my decision of what I want to do. That's why I brought this up because I want to go to a different hospital. My dad doesn't like that whatsoever and doesn't respect it.

David Lord: Thanks for that comment. As I said before, I don't give legal advice on what people should or shouldn't do but thanks for the comment. It illustrates the concerns people have to with things where you have one plan and people in your life that support you might feel differently.

Ivanova Smith: Thanks for the comment. It's really an important perspective. Here's another question. You said you need a notarized agreement, do you need that to be drafted by an attorney like a power of attorney agreement?

David Lord: Not necessarily. You might want a lawyer involved. This is really new,

so the lawyer may not know that much about it. You don't have to have a lawyer every time you want to do the things people commonly use lawyers for. A lot of times when there's a lot of money involved people will want a lawyer involved in drafting a power of attorney agreement, but you don't need that here necessarily. There's a form that was put into the law that's really easy to fill out. Northwest Justice has more information and we will show that in a slide later on. That was a longwinded way of saying, no you don't need a lawyer to draft it.

Ivanova Smith: Thank you for the question, Luke, we got another question from Parent to Parent King County, can you talk about how someone is a good candidate for Supported Decision Making?

David Lord: The law is so new it's too early to say. Right now, when someone decides they want to setup a guardianship, they will petition the court for a guardianship. They will appoint someone who is not a guardian but a guardian ad litem who is an investigator for the court who is going to try to figure out whether this person really needs to have a guardian and they will also look at whether alternatives will work better. They will now look at whether Supported Decision Making will work. It's not clear how the people doing that, they used to be called guardians ad litem, now they're called visitors. They meet with the person and make a decision about whether some of the other alternatives will work.

I want to make sure that those visitors understand what Supported Decision Making is. I am going to be providing trainings and getting information out there so they will understand it. It's another longwinded saying that the visitors who make the representations to the court will get trained on that.

Ivanova Smith: Awesome. Another question from the chat from Benjamin Moore. What are the differences between guardianship and having a power of attorney?

David Lord: Thanks. That's an excellent question. People can make the power of attorney say all kinds of things and have a really good sized plan. You can do something like a Supported Decision Making plan in your power of attorney. That's not what people generally do and I'm not aware of forms that support that, but the big difference is that when I setup a power of attorney, I am giving someone else authority over me, they can make decisions on my behalf. You don't have that with Supported Decision Making. That's the big difference. You keep the decision making authority.

When they're also actually applied they don't involve all the stuff I was talking about with meeting and developing a big plan. It could happen, but it doesn't generally

happen. People usually just fill out a form on power of attorney and send that in. Ivanova Smith: Good. Any more questions here? Doesn't look like there are.

David Lord: Can I mention something about supporters? I forgot to mention this. There are people under the law who can't be supporters. This is something that was put in to protect against exploitation or abuse or doing self-dealing, they want to protect against that. The people who can't be a supporter are a person who employs you or is one of your employees. If you are a person with a disability who employs or is employed by someone, they can't have a supporter unless they're in your immediate family, parents and siblings can still do it. Another person who can't do it is someone who's paid to provide you support services, like in an adult home, again unless they're an immediate family member. Also, if you have a vulnerable adult protection order, they can't be either. It's obvious why that is.

Ivanova Smith: Are there any times where it's not a good idea?

David Lord: Yes. One of them I mentioned is if there are people who are trying to exploit a person and people will try any way to do that. People have been exploitee through guardianship and power of attorney, and we need to be vigilant to make sure that doesn't happen with Supported Decision Making. That's not a good idea in that circumstance. There're protections as I mentioned, you have an obligation under the law to report it if you know someone is exploiting someone else like that. Also, if at any time the subject or the person who created the agreement can get rid of it.

Another time it's not a good idea is when the person really doesn't have capacity to make the decision. A lot of time, you can learn to make a decision, but some times you're just not able to do it. In that circumstance, you can't create one of these agreements. There you go.

Ivanova Smith: Sorry. My mute was not working. It looks like we have another question. This is from Mike. How does Supported Decision Making work when a person has limited ability to coordinate care needs? This appears to be for people who have a lot of unpaid support.

David Lord: I think Supported Decision Making can be useful for people in a lot of different circumstances. A few I would say is that I mentioned earlier about Supported Decision Making is something we learn to do. We all do. Some people need some support in learning to make decisions and a great way to do it is through Supported Decision Making. It's a good tool for people in that transition age. It would be great for schools to adopt and use in that transition age for students to make decisions and to be involved in their treatment plans.

It's one of those things where you need some capacity to make decisions to be able to use this. I think it's a good tool for that, for as people learn to do more decision making and then also when people are trying to get others to pay attention to what they have to say.

Ivanova Smith: Luka asked a great question. What are ways to evaluate capacity for decision making?

David Lord: That's a great but long question. I'll say a few things about that. One of the ways people evaluate capacity to make decisions is they do it through experience. An individual gets some experience making decisions and they learn.

From that you can get some sense of what their capacity is. One of the problems is that, sometimes this is a fallacy in evaluating whether someone has capacity, but people will look at IQ or supposed mental age.

Ivanova Smith: That's awful.

David Lord: It is. But it is sometimes used in things like guardianship where you look at report from a professional who has done some evaluations and it's based on those kinds of criteria. Ways to evaluate capacity really is through experience and having that individual learn from that experience and build capacity. Having said that, there are legal definitions of capacity in certain circumstances. Medical decisions for example, in order to make medical decisions legally it's based on whether you understand the risks and benefits of whatever it is in the doctor wants to do. Can you give informed consent? It's hard to evaluate that for someone if you're speaking a language they can't really understand. A better way to evaluate it is to have someone to make sure the doctor explains it in plain English. Not to pick on doctors here, but you get an explanation where you might not understand everything, but you don't need to feed it back to the doctor to show you understand. Sometimes doctors will assume that a person with a disability may wonder if the person understands everything. You think the best way to see is to give the person a chance.

Ivanova Smith: Let's see if we have more questions in the chat. Looks like we don't. What if someone wants to end a Supported Decision Making agreement? How are they able to do that? Is it easy to get out of?

David Lord: It's really easy. Basically, you just need to revoke it. You can revoke it in writing by saying you don't want it anymore. You may want to change it rather than revoking it. You don't need the permission of the supporter to revoke it. You

need to give them notice so they understand, but you don't need their consent. But if you want to change it, you need the supporter's consent because they're agreeing to do something and they need to understand what they is. This is a circumstance where the supporter will be signing and have that signature witnessed that they agree to the change.

Ivanova Smith: Another question from our epic audience, what if someone wants to get out of a guardianship and start using Supported Decision Making, how can they do that?

David Lord: Excellent question. One thing I'm hoping for is that as we move ahead with Supported Decision Making and as it gets more recognized and does good for people, is that in providing information to guardians about it, the guardians will see it as a way to move people out into more independence. As it stands under guardianship, whatever the guardians responsible for whether it's a full guardianship or a medical guardianship, whatever it is, guardianship is not one size fits all. Pieces of guardianship a person can not have a guardian for anymore. If a person learns how to take care of their money, they may no longer need that and can just have a Supported Decision Making agreement. The guardian would work with the court to do that. I know from talking to my acquaintances in Texas they've had it where people have moved out of guardianship that way.

I have a friend in Everett who worked with a family on guardianship and tried Supported Decision Making and it's been working. This is a case where they avoided having a guardianship. That would be something in order to make that happen the guardian would need to understand Supported Decision Making and want to try it. Or you would need to convince the judge to make that happen and you can do that and ask the judge about it.

Ivanova Smith: Awesome. Thank you for answering that. What's required to create an agreement? What do you need to have?

David Lord: The big thing you need is at least 1 supporter. That can be the hardest thing to get, someone you really trust who will agree to helping you make decisions and get what you want. There's a form you can fill out that was created with the new statute. It requires you to fill out something comparable to the form, not necessarily exact but close, and you can add things to the form, but it says that you're doing it of your own free will, no one is coercing you, then you can say what you want the supporter to assist you with, and they list different things like food and clothing, health, money, etc. In the agreement you state that understand that the supporter is not going to make the decision, but can help you get information about it and

communicate with others about it. There's also a provision saying that if you want to you can provide a release so that the supporter can have access to your medical records. That's a medical requirement. People can't look at your medical records without a release.

It has to be signed by you and the supporter. Two witnesses have to sign it. Then you need someone to notarize it. That's all that's required. There's a warning saying that if you are aware that someone's being abused or that the agreement is being used by someone who's exploiting the person that you need to report that, but that's it.

Ivanova Smith: Awesome. Where can people find more information about Supported Decision Making?

David Lord: You can find information in the form I mentioned. It's easy to fill out and print. And just basically a little guide to answer some basic questions from Washington Law Help. There's a little slide that is on here that gives the weblink. [On screen.] Because it's a big website, if you type in Supported Decision Making in the search it will pop right up and you can get the information. I worked with the person who put that together. She did a great job. Ivanova and I have presented with her before and she does a great job.

I'm not going to be at Disability Rights Washington anymore, but I'm easy to find. If you have questions, email me. I can't provide specific advice, but I'm happy to answer questions.

Ivanova Smith: How can a person get Supported Decision Making? That was a question in the chat.

David Lord: I hope that in the coming month there will be more trainings and I hope Ivanova will be there as well.

Ivanova Smith: I'll be there.

David Lord: We ought to talk to people at places like the Division of Developmental Disabilities or other providers about how to support that. But for now, the law hasn't gone into effect yet. You can still make one and I would suggest using the form so it will be effective when the law goes into effect. Also, about resources, there is a good website from the National Resource Center on Supported Decision Making. Just search for it on Google. They have videos and tell you different things in other contexts. That's a good resource too.

Ivanova Smith: We have another comment. Theresa, thank you. Theresa said we are excellent at presenting the information. Thank you very much. Any closing remarks or any members of the audience, do you have anything to add? Speak now or forever hold your piece.

David Lord: If we have time, a couple minutes, and then maybe people will spring up with other things.

Ivanova Smith: Go ahead.

David Lord: I have been working in guardianship for years trying to make things better in the law, that's fine. I don't think that's bad to do to make guardianship more respectful of people's rights. There are guardians that do a great job respecting people's rights and I'm not saying that it's something that shouldn't be there, but a lot of people who have guardianship don't really need it in my view. If there is a way for people to look at other options where they can be supported and make their own decisions, let's do it. I'm excited that the Legislature has decided to make a law saying look at this first. I'm hoping we'll put some resources in this. I know that this is where I want to put my time in supporting people who want to do this kind of decision making.

I mentioned earlier, often people turn 18 and there's a pressure families feel to get a guardianship for a loved one like it's a responsibility. There are reasons why maybe that would need to happen, but I know that often people are told by schools that they need a guardianship. That's just not true. It's in the law that you can get a power of attorney. And this is another option that fits really well in the school curriculum and otherwise. I know that there are advocates in Texas who are doing this for people who are getting older and losing some capacity. They've started that process and maybe that's a way to go to. I hope to hear more from people.

Ivanova Smith: We have some comments. Parent to Parent King County said they learned so much. Rachel Mulhauser is also here. Good to see you. Benjamin Moore said thank you for all the work you both do in the disability world. This is great. We have a comment. Another question is whether it's possible to see what was adopted into law in Washington. Can you email it to Theresa? We can definitely send you that information about the law.

David Lord: We can certainly do that. Also it's available on the Washington State website. Go to 11.130.700 is the statute. It's available online and it's not long and easy to read. Hopefully, we'll get a website up about it.

Ivanova Smith: It also it looks like Courtney would like to speak.

Participant: I joined this webinar to give my dad this information, so he can support me with making my decisions. I'm getting married and I want to do this. I want to do Supported Decision Making. I want my dad's support of me losing some of my benefits. He's not letting me. I want to have that.

Ivanova Smith: Awesome. Congratulations on your engagement. Participant: We're not engaged yet. We will be in 2 months.

Ivanova Smith. Awesome. Congratulans.

David Lord: And know that there's a website where you can get the information as well.

Participant: I want to get more about it from the legislators.

David Lord: This was senator Peterson who was the sponsor of this legalisation. Ivanova Smith: Thank you, Senator Peterson

David Lord: And another senator would have done it, as well. I think she's retiring though.

Ivanova Smith: Yeah. Thank you for this David. This was great. We have a few more minutes, but I don't see more questions. I'm really executed about this legislation. I hope it will allow more people with disabilities to have a say with decision making. It's always good to try. This allows a healthy dignity of risk and allows people to try to have some power they may not have had before. This is a very powerful policy. I really hope that it will be able to help a lot of people. I hope that it changes people's prescriptives on the ideas of who can and can't make decisions. I want it to get out to our youth with intellectual and developmental disabilities. I think it's really good to encourage our youth to make their own decisions and feel that empowerment. I'm really excited about this. Thank you, David Lord. Thank you to the amazing audience for your amazing questions.

This has been Conversations With Ivanova. This webinar will be recorded and posted on social media. So if you think someone needs to see that, it's possible. I will look at the posts for those. If people asked questions that I didn't get to answer

here, I'll figure out a way to answer them in the comments on social media, especially for those who were not able to attend today.

This has been really cool. Now we're going to say goodbye. Thank you, David, again. Let's have a wonderful October.

[End of webinar]

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