

New Law

Effective as of September 10, 2012, Ohio law (O.R.C. Section 5126.043) sets out a new three-tier approach to decision-making in the DD system—that is, in the services and programs offered through County Boards of Developmental Disabilities and the Ohio Department of Developmental Disabilities (DODD).



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DECISION MAKING IN THE DD SYSTEM

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Strengthened Presumption of Competency

First, if there is no guardian then—in light of the “presumption of competency”—the individual himself “shall be permitted to make the decision.” The individual may seek and obtain advice, support and guidance from an adult family member or another person without giving up the right to make the decision himself. Although this is not a change in the law, it is the first time the law has so clearly stated that individuals can make their own decisions.



Choosing a Substitute Decision-Maker

Second, an individual may now choose someone else to make a decision on his behalf. This is a major change to Ohio law; but it must be remembered that it only applies in situations involving DD services and programs. It does not change the law in Ohio dealing with guardianships or any services and programs provided by agencies outside the DD System.

This authorization must be in writing. Although the DODD has developed a form for such authorizations—which will have the advantage of being easily recognized—the law does not limit a written authorization to this form. If the individual expresses an intent to revoke the authorization, it should be considered to be revoked.



A “chosen representative” appointed pursuant to this written authorization must be an adult. He or she cannot have any financial interest in the decision relating to the service or program. For example, a provider cannot serve as an authorized representative and sign the person up to receive services from the agency he works for. Also, chosen representatives may not admit the person they represent into Developmental Centers.

Guardianship Unchanged

Third, if there is a guardian, then the guardian shall make the decision. This is not a change in the law. It is important to note there is no requirement that a guardian be appointed. Further, not all guardians have the authority to make decisions about programs and services for their wards. For example, a limited guardian for medical purposes only, can only make decisions about DD services and programs that are medically-related.

Motivation: Values and Philosophy Behind the Changes

The final paragraph of Section 5126.043 includes two powerful statements that reflect important beliefs about people with disabilities as well as values embodied in the Ohio DD Bill of Rights (O.R.C. 5123.62), especially subsections (A), (Q) and (R).

The first statement, found in existing law, states that individuals with developmental disabilities, including those who have guardians, “have the right to participate in decisions that affect their lives and to have their needs, desires and preferences considered.”

The second statement (new) indicates that the chosen representative or guardian who makes a decision about DD services and programs for someone with a developmental disability “shall make a decision that is in the best interests of the individual on whose behalf the decision is made AND that it is consistent with the needs, desires and preferences of that individual.”

