

WE'RE WAITING, BUT MEANWHILE...

As we come closer to the (sigh) end of summer, we are waiting for two important announcements. The first is OPWDD confirmation of the successful applicant who, going forward, will take over our work and our facilitation model and offer facilitation services to anyone in the state with I/DD who wants them. We had expected a decision from OPWDD by June 30, but it hasn't come yet, so we're preparing to continue with all our current Decision-Makers through the end of September, if needed.

The second announcement, which we hear is coming any day, is adoption/publication in the official State Record of the Regulations ("the Regs") implementing our SDMA statute, Article 82 of the Mental Hygiene Law. You'll recall that the statute explicitly recognizes SDM as a "less restrictive alternative" to guardianship, which our courts have already accepted as governing law. Also, and of great importance to Decision-Makers and their families, Article 82 requires third parties, like health care providers, financial institutions, landlords, etc., to accept decisions of people with I/DD that are made pursuant to SDMA's created through our facilitation process.

We've been getting questions from families, and requests for materials they can use with health care providers who are concerned about or unwilling to accept "informed consent" from adult children with SDMA's. Unfortunately, the statute provides that it doesn't go into effect until 90 days after adoption (publication) of the implementing Regs. The statute was signed more than 3 years ago, on July 26, 2022. The Regs were drafted by OPWDD and went out for comment in the Fall of 2023. Once all the comments were received, changes were made based on those comments; to ensure that those changes were not so substantial as to require an additional comment period, they were subject to review by various governmental bodies, including the Governor's office. Once that process is complete, assuming no need for additional comments, the Regs are sent for publication.

We understand that there are no longer any barriers to publication, which should be happening very soon. Ninety days later (around Thanksgiving?), the statute will legally come into effect. Until then, however, while third parties certainly may accept decisions made with SDMA's, they are not legally required to do so, and they are not legally immune from civil and criminal liability, or professional discipline, if they accept consent from someone who is later determined to lack capacity (unlikely, but a consideration in our litigious times).

We understand how distressing this delay may feel, and we share the frustration, but the end is in sight, and as soon as it happens, we'll post it in our "News" section. Meanwhile, because we had been aiming for a September 1 transition, we have a slew of SDMA signings coming up at the end of the month, so there will be lots of Good News on Friday, August 29.

Until then, Good News will be taking what we think is a well-earned vacation. As well,

WE WISH YOU A VERY HAPPY END-OF-SUMMER!