

NOTE: As provided in LFC policy, this report is intended only for use by the standing finance committees of the legislature. The Legislative Finance Committee does not assume responsibility for the accuracy of the information in this report when used for other purposes.

The most recent FIR version (in HTML & Adobe PDF formats) is available on the Legislative Website. The Adobe PDF version includes all attachments, whereas the HTML version does not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

SPONSOR: SFC DATE TYPED: 03/06/03 HB _____
 SHORT TITLE: Create Office of Guardianship SB 424/SFCS
 ANALYST: Wilson

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
			NFI		

Relates to Appropriation in the General Appropriation Act

SOURCES OF INFORMATION

LFC files

SUMMARY

Synopsis of Bill

The Senate Finance Committee Substitute for Senate Bill 424 moves the guardianship program out of the Attorney General’s Office (AGO) into the Developmental Disabilities Planning Council (DDPC).

SB 424/SFCS establishes the authority and responsibilities of the guardianship program, provides for the monitoring and oversight of contracts for guardianship services, establishes minimum requirements for all such contracts, requires the establishment of a procedure for investigating and resolving complaints about contractors, and transfers all assets and obligations of the current program to the new office.

Significant Issues

The AGO has administered contracts for state-funded guardianship services for income-eligible adults since 1995. Prior to 1995, such services were provided through various state agencies, including the Agency on Aging (AOA) and the Department of Health (DOH). Although the 1995 law had the advantage of consolidating state-funded guardianship services within a single agency, issues remain concerning whether the AGO is the proper place for such services. First, the AGO is not a social services agency and is not well equipped to assess the quality and appro-

priateness of social services programs. Second, the AGO, the AOA, and the DOH each have statutory authority to investigate, administer, or enforce different laws relating to the provision of services to vulnerable adults that may be in conflict with administering guardianship services.

The DDPC is already established under state and federal law. They encourage coordination in planning and services for persons with developmental disabilities and they advocate for the needs of persons with disabilities. They receive state and federal funds and are experienced in entering into contracts for services and in monitoring them.

TECHNICAL ISSUES

Currently the AGO is appropriated \$1,863.2 in the general appropriation act for guardianship services. It is likely the bill needs to provide for this appropriation to be transferred from the AGO's budget to the DDPC.

ADMINISTRATIVE IMPLICATIONS

The bill requires the DDPC to issue regulations to establish a process for the filing, investigation and resolution of complaints against guardianship contractors.

OTHER SUBSTANTIVE ISSUES

The DDPC has noted the following issues:

Unnecessarily restrictive types of guardianship must be avoided. There has been a trend in New Mexico for most persons with developmental disabilities who are deemed in need of a guardian to be appointed a plenary (general or full) guardian. In many cases, persons with developmental disabilities are able to make sound decisions about some areas of their life when information is provided clearly. For example, a person may be able to give informed consent for a medical procedure but is not able to maintain their finances without assistance. In cases like these, it is important that a special or partial guardian (for example, guardian of estate but not guardian of person) be appointed. In order to protect an individual's civil rights, an increased level of scrutiny must be paid by the office of guardianship services.

There must be full accountability on the part of the guardian. The office of guardianship must carefully examine the end-of-year report of each guardianship case. Reports from advocacy groups and individuals across the state indicate that guardianship is renewed with a "rubber stamp" without careful perusal as to whether the person or entity acting as guardian has completed all the responsibilities a guardian is required to cover, especially in the area of fiscal management. The proposed office of guardianship must have procedures in place to review guardianship terms carefully to determine whether the type of guardianship granted previously is still appropriate, and whether the guardian has fulfilled all of its responsibilities in an ethically and fiscally responsible manner.