

works through the current court system, is expensive, time consuming, and limited in scope.

Synopsis of Original Bill

Senate Bill 500 appropriates \$200 thousand from the general fund to the Children, Youth and Families Department (CYFD) for the purpose of funding the guardianship alternatives program. This program will provide assistance in the establishment of alternatives to guardianship for the care of disabled persons, including the establishment of boards of family members and friends responsible for the care of disabled persons; and training assistance to communities regarding alternatives to guardianship for care of disabled persons.

DDPC indicates the bill allows CYFD to provide assistance in creating alternatives to guardianship, in particular, permitting a disabled person to set up voluntarily a “microboards” or a group of individuals such as family members and friends who would take responsibility for certain decisions in the subject of the guardianship.

FISCAL IMPLICATIONS

The appropriation of \$200 thousand contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY07 shall not revert to the general fund.

DDPC notes 5 percent of allocation will cover administrative costs of this program, which will include the development and monitoring of the contract and all oversight of all financial activities. Additionally, DDPC indicates this could be a less costly alternative to guardianship for an individual with less liability as an alternative to guardianship, depending upon how many people are on a microboard and how much they are paid each year for their services.

SIGNIFICANT ISSUES

DDPC indicates any alternative to guardianship must provide the disabled person the needed care and rehabilitative services and the disabled person must enjoy the greatest amount of personal freedom and legal rights.

TECHNICAL ISSUES

HPC notes the bill does not define “disabled”. It is not clear whether the “guardianship alternatives program” would benefit all disabled persons or only those with certain types of disability such as mental disability.

OTHER SUBSTANTIVE ISSUES

HPC research indicates, according to the Department of Health, a disability is any limitation of a person’s physical or mental abilities which substantially limits one or more major life activities such as self-care, language use, learning, mobility, independent living and economic self-sufficiency.

A developmental disability is a severe mental or physical disability which appears before the age of 22; is likely to continue indefinitely; causes substantial limitations in three or more major life activities; and requires services on a long-term basis.

Additionally, in 2003, according to the Henry J. Kaiser Family Foundation, approximately 18.1 percent of adult New Mexicans had some type of disability - limited in any activities because of physical, mental, or emotional problems. The number of disabled children in New Mexico is not available at this time.

HPC notes the Office of Disability and Health (ODH) is one of the top 6 of 16 programs in the country funded by the Centers for Disease Control and Prevention (CDC) to address the health issues of people with disabilities. As part of that top tier, the ODH is available to mentor the other 10 programs as they begin their work in disability and health. The ODH partners with the University of New Mexico Center for Development and Disability (CDD) to accomplish these goals. The ODH is guided in its activities by the Disability and Health Advisory Council. The goals of ODH are to estimate and assess the prevalence of disability, to prevent secondary conditions (medical, social, emotional, family or community problems that a person with a disabling condition likely experiences) and to promote wellness for people with disabilities in New Mexico.

ALTERNATIVES

DDPC suggests the funding should be moved from CYFD to DDPC's Office of Guardianship.

POSSIBLE QUESTIONS

DDPC suggests this bill should be considered a pilot project based upon this bill's broad and expansive language. Looking at this as a pilot project the following issues would need to be addressed:

- (1) Who appoints the members to the microboard? If the incapacitated person has the power to appoint, then it would seem more like a power of attorney, which would allow the incapacitated person to override any decision the microboard might make.
- (2) Is there any due-process for the incapacitated person?
- (3) Is there a level of functioning that the incapacitated person must meet in order to qualify to have a microboard instead of a guardianship?
- (4) Training on how to be a member of a microboard?
- (5) Who can fire the members of the microboard?
- (6) For what reasons can a member of the microboard be fired? (Not just because the incapacitated person doesn't like the surrogate decision.)
- (7) What do microboards do that guardians would not do or do at a greater cost to the incapacitated individual?
- (8) Since the microboard would be independent of the courts would be responsible for the oversight to make sure that the decisions are in the best interest of the incapacitated ward?
- (9) What are the microboards duties under the law (like fiduciary duties?)
- (10) What happens if there is a clash within the micro board – between the best interest of the ward and another member who wants to carry out the ward's wishes?
- (11) Do microboards rule by majority or expertise?