

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

ORIGINAL DATE 02/23/11

SPONSOR O'Neill LAST UPDATED _____ HB 271

SHORT TITLE Protected Person Death & Guardianship Powers SB _____

ANALYST Esquibel

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	FY12		
	N/A		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Aging and Long-Term Services Department (ALTSD)

Human Services Department (HSD)

Developmental Disabilities Planning Council (DDPC)

SUMMARY

Synopsis of Bill

House Bill 271 proposes to amend the probate code (45-5-306 NMSA 1978) to give court-appointed guardians more responsibility and authority at the time of and beyond the death of the protected person they were appointed to assist.

Specifically, HB271 proposes that court appointed guardians be required to provide notice to the appointing court and to any relatives of the protected person at the time of the protected person's death. Further, the guardian would also have authority for one year after the protected person's death or until the appointment of a personal representative to be exercised in accordance with the preferences of the protected person if known to the guardian to 1) arrange and pay for funeral expenses and consent to cremation, 2) request and receive medical and financial records of the protected person, 3) request and obtain results of an autopsy of the protected person, 4) make and file an accounting of the protected person's financial affairs, and 5) create a full accounting to the appointing court of the closure of the guardianship.

FISCAL IMPLICATIONS

The Developmental Disabilities Planning Council (DDPC) indicates HB271 will have no adverse impact its Office of Guardianship budget or personnel.

SIGNIFICANT ISSUES

Under the current NM Probate Code § 45-5-306, the authority and responsibility of a guardian terminates upon the death of the protected person. This results in dilemmas for funeral arrangements, consent to cremation; obtaining medical, financial or other records; requesting an autopsy, and other authority required incidental to the closing of the guardianship.

TECHNICAL ISSUES

HB271 does not appear to specifically define how the extended guardianship powers would be recognized by the courts, by insurance agencies and by other state and federal agencies. Also, to maintain the intent of the proposed roles and responsibilities of a guardian in HB271, it may be beneficial to indicate whether there would be any specific training to guide guardians through the process after the protected person has died. For example, the language “submit notice,” and “any relatives,” as well as item B(5) on page 2, lines 22-25 could be further clarified.

To provide some further clarification, DOH proposes that Page 1, Line 25 through Page 2, Line 1 “shall submit notice to the appointing court and to any relatives of the protected person known to the guardian” be re-worded to “shall submit reasonable notice to the appointing court and to next of kin of the protected person known to the guardian.”

ALTERNATIVES

DOH indicates a possible alternative to HB271 would be to expand and define the role of the guardian in estate planning and in developing the final wishes of the protected person, which may include family and/or friends- prior to the protected person’s death.

RAE/bym