

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 and previously issued FIRs are available on the NM Legislative Website ([www.nmlegis.gov](http://www.nmlegis.gov)).

## FISCAL IMPACT REPORT

SPONSOR Ferrary/Thomson/ ORIGINAL DATE 1/27/2020  
Armstrong, D. LAST UPDATED \_\_\_\_\_ HM 23  
 SHORT TITLE Study Supported Decision Making SB \_\_\_\_\_  
 ANALYST Klundt

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY20	FY21	FY22	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		See Fiscal Impact			Nonrecurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to HB 67

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Aging and Long Term Services Department (ALTSD)

#### No Response Received

Developmental Disabilities Planning Council (DDPC)

### SUMMARY

#### Synopsis of Bill

House Memorial 23 (HM23) requests the Developmental Disabilities Planning Council (DDPC) to create and lead a task force, to study supported decision making as an alternative to guardianship and conservatorship in New Mexico. The taskforce is to include: the Arc of New Mexico; Disability Rights New Mexico; the Office of Guardianship; the Aging and Long-term Services Department; Parents Reaching Out; the Administrative Office of the Courts; a provider agency for individuals with a disability; self-advocates, including people with disabilities and the elderly, both with and without guardians; family guardians; the New Mexico Guardianship Association; and an advocacy agency for the elderly.

The taskforce is also requested develop a strategic plan to examine options to guardianships and conservatorships in New Mexico, including consideration of the effectiveness and existing barriers to those options, how those options are being implemented in other states and specific concerns related to guardianships and conservatorships in New Mexico.

The taskforce is further requested by November 1, 2020 to distribute the strategic plan and give a presentation to the Disabilities Concerns Subcommittee of the Legislative Health and Human Services Committee with recommendations as to legislative actions that might be needed.

## **FISCAL IMPLICATIONS**

Personnel from a number of state government agencies or other publically funded organizations are requested to participate in this taskforce resulting in a fiscal impact for staff time and resources, which will need to be absorbed by the existing operating budget.

## **SIGNIFICANT ISSUES**

According to DDPC on similar proposed legislation, many New Mexicans need additional support when making major decisions, such as medical and financial decisions, but are not appropriate for guardianship. Guardianship restricts and removes a person’s legal rights and should be a last resort reserved solely for people who are truly incapacitated and require substitute decision makers. For many New Mexicans, especially those who do not have access to DD waiver services, supported decision-making can be an effective tool to assist them in making important decisions and allows them to retain control over their lives. Supported decision-making is generally a written agreement—the supported decision making agreement (SDMA)—between an individual and their chosen supporters that authorizes their supporters to acquire information on their behalf and assist them in making certain kinds of decisions. In some states, SDMA are statutory; in other states, SDMA can be authorized by the courts as an alternative to guardianship. Many New Mexicans who need assistance are currently falling through the cracks. Studying how SDMA can work in New Mexico is a major step toward providing that needed assistance.

According to the American Bar Association:

“Supported decision-making is gaining national recognition as an alternative to guardianship, potentially affecting thousands of Americans and their families. Four states this year have passed laws that define supported decision-making agreements as legally enforceable arrangements. They join five other states since 2015 to enact such laws. In a supported decision-making model, individuals with disabilities--whose decision-making autonomy might otherwise be limited or removed--make and communicate their own decisions in any number of informal arrangements, with support from trusted family and friends. A growing number of advocacy groups, social services organizations, and state agencies assist with implementing supported decision-making arrangements by documenting and formalizing the process with supported decision-making agreements.

Indiana, North Dakota, Nevada, and Rhode Island are the latest states to pass supported decision-making agreement laws in 2019. They follow Texas, Delaware, the District of Columbia, Alaska, and Wisconsin. [1] State laws vary widely on requirements for supported decision-making agreements, including who may serve as a supporter, the role of third parties, and the scope of agreements.

Supported decision-making is often defined as supports and services that help an adult with a disability make his or her own decisions by relying on trusted friends, family members, professionals, and others.[2] . While many individuals will continue to engage

in an informal supported decision-making arrangement, others are documenting various provisions in an agreement. These include the names and roles of supporters and details about the scope of their assistance, authority, and duties. Agreements may include whether the supporter has access to confidential information pertaining to the decision-maker. Agreements also typically outline the terms of revocation or termination.

There is no one-size-fits-all supported decision-making agreements law. States take different approaches to addressing the risk of exploitation or manipulation of decision-makers at the hands of supporters. For example, Texas, Wisconsin, Nevada, and North Dakota place no restrictions on who may act as a supporter. Some states, like Delaware, Alaska, the District of Columbia, and Rhode Island, restrict who may serve as a supporter: employers/employees, anyone against whom the decision-maker has a restraining order, or a person directly providing paid support services to the decision-maker.

Among the advantages of having legally recognized supported decision-making agreements in your state:

- They can specify the duties of supporters, prohibiting supporters from making decisions on behalf of the decision-maker.
- They can indemnify third parties such as financial and healthcare institutions from liability for relying on a supported decision-making agreement and require them to honor supported decision-making agreements.
- They can provide structure and accountability.

Conversely, there are concerns about supported decision-making agreement laws, including:

- Supporters could use an agreement to unduly influence or exploit a decision-maker.
- Supporters could use an agreement to justify their authority to a third party. For example, supporters could insist an agreement provides them with the authority to consent to medical care on behalf of decision-makers.
- These agreements may unnecessarily formalize a decision-making model that works better as an informal arrangement.

As supported decision-making agreement laws gain momentum, and recent state laws are likely to serve as models for future legislation, it is important to evaluate whether these laws are effective in promoting supported decision-making -- and supporting individuals with disabilities to make their own choices.”

### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

House Bill 67 (HB67) appropriates \$50 thousand from the general fund to the Developmental Disabilities Planning Council (DDPC) for the purpose of forming a task force to study and report on supported decision making in New Mexico as an alternative to guardianship.