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FISCAL IMPACT REPORT

ORIGINAL DATE 03/12/13

SPONSOR Ortiz y Pino LAST UPDATED _____ HB _____

SHORT TITLE Guardian and Conservator Working Group SM 94

ANALYST Chavez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		NFI	NFI	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Development Disabilities Planning Council (DDPC)
 Administrative Office of the Courts (AOC)
 Aging and Long Term Services Department (ALTSD)

SUMMARY

Synopsis of Bill

Senate Memorial 94 (SM 94) requests that the Developmental Disabilities Planning Council convene a working group to recommend changes to the Uniform Probate Code to provide for greater transparency and accountability of guardians and conservators, and to require notice to and consultation with a protected person's family upon the death of a protected person under the supervision of a guardian or conservator.

The working group should include representatives from the Administrative Office of the Courts (AOC), the Office of the Attorney General (AGO), the office of guardianship of the Development Disabilities Planning Council (DDPC), the Aging and Long Term Services Department (ALTSD), and others mentioned in the memorial.

The working group should convene no later than August 1, 2013, and report its findings and recommendations to the Legislative Health and Human Services Committee and the appropriate interim legislative committee that studies courts and corrections by October 31, 2013.

SIGNIFICANT ISSUES

According to SM 94, conservatorship and guardianship are becoming more common. In New Mexico, there is limited regulation of what is known as “corporate guardianship”, which involves the appointment by a court of a for-profit or nonprofit entity to serve, with compensation, as the legal guardian of a protected person in New Mexico. The family of a protected person may not be in regular contact with the protected person and often experiences difficulty in acquiring information regarding the activities of the guardian or conservator.

The DDPS notes that greater oversight of both “corporate guardianship” and family guardians is essential; however, probate code guardianships are sequestered to protect the privacy of the protected person. Therefore, any changes should consider the protected person’s right to privacy weighed against the protected person’s right to protection by a more transparent system. Currently the probate code provides for some accountability in the filing of a 90 day and annual report to the Court.

The DDPS continues that the Office of Guardianship (OOG) has the authority to investigate complaints against its guardian contractors. However, because the OOG works closely with its guardian contractors, there is an inherent conflict of interest. Therefore, a change in the regulations should be considered. Furthermore, there is no specific mechanism for complaints (other than a complaint to Adult Protective Services which serves a much broader role for the State) against corporate guardians who are not contracted with the OOG.

The Aging and Long Term Services Department (ALTSD) remarks that when Adult Protective Services (APS) seeks a corporate guardian rather than selecting one of the involved family members, it is usually because there is either a substantiation of abuse, neglect, or exploitation, or there is level of family conflict so deep that any member of the family that may be recommended for guardian/conservator might have difficulty implementing the “best interests” of the incapacitated adult.

The ALTSD adds that since there may be differing perspectives on the best way to change the probate code to achieve greater transparency and oversight in guardianships and conservatorships, a working group might be able to address diverse points of view to provide a thorough exploration of the issues and possible solutions.

OTHER SUBSTANTIVE ISSUES

The DDPS states that the Memorial should include representatives from Forensic Intervention Consortium of Dona Ana County, from “corporate guardianship” entities from throughout the state rather than only Ayudando Guardians, from Senior Citizen’s Law Office, and from the New Mexico Working Interdisciplinary Networks of Guardianship Stakeholders (WINGS) if a New Mexico WINGS was successful in a request for proposal to the National Guardianship Network.

The DDPS also notes that, because guardians are protecting the most vulnerable of our population, certification of corporate guardians, such as through the Center for Guardianship Certification, should be mandatory.