

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 **ORIGINAL DATE** 1/26/21  
**LAST UPDATED** \_\_\_\_\_ **HB** 94  
**SHORT TITLE** Supported Decision Making Task Force **SB** \_\_\_\_\_  
**ANALYST** Klundt

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY21	FY22		
	\$35.0	Nonrecurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to Appropriation in the General Appropriation Act

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Developmental Disabilities Planning Council (DDPC)

### SUMMARY

#### Synopsis of Bill

House Bill 94 appropriates \$35 thousand from the general fund to the Developmental Disabilities Planning Council (DDPC) to form a task force to study and report on supported decision making in New Mexico as an alternative to guardianship.

### FISCAL IMPLICATIONS

The appropriation of \$35 thousand contained in this bill is a nonrecurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY22 shall revert to the general fund.

The LFC recommendation for special appropriations contained \$15 thousand from the general fund to fund a taskforce to develop and recommend legislation around supported decision making.

DDPC reported the cost of \$35 thousand contained in this bill to form the task force is based on hiring a contractor to schedule, manage, and host the task force meetings, research information

on supported decision making for the task force to review and analyze, take notes during task force meetings, and draft a report for DDPC's final review and approval. DDPC anticipates the task force may need to break out into subgroups to accomplish its work, since a broad range of stakeholders will be invited to ensure diverse interests are represented. DDPC also anticipated the task force should meet beginning in July and anticipate submitting a report by November so any legislation that may be proposed will be ready for the 2022 legislative session.

## SIGNIFICANT ISSUES

DDPC Office of Guardianship intends to form a task force to study supported decision making (SDM) as an alternative to guardianship in New Mexico. The department reported the primary barrier in forming the task force is a lack of resources. DDPC also reported without additional funding, DDPC will not have the resources to form this much-needed task force. The department believes a task force is necessary to bring together important stakeholders, including the courts, to recommend SDM legislation.

DDPC also reported without the establishment of an alternatives to guardianship such as SDM, the rise in guardianship requests may overwhelm the system. Pandemic issues and a very rapidly aging population will require more and more support for people living with disabilities who need guardianship assistance according to the department. DDPC reported the rising cost of guardianship and long waitlists for guardianship services mean that DDPC must continue requesting additional recurring funding or risk leaving some of the most vulnerable populations without 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 decisionmaker. 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 decisionmakers 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 decisionmaker.

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 decisionmaker.
  - 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.”