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FISCAL IMPACT REPORT

SPONSOR <u>Correa Hemphill</u>	LAST UPDATED <u>2/2/23</u> ORIGINAL DATE <u>1/26/23</u>
SHORT TITLE <u>Supported Decision-Making Act</u>	BILL NUMBER <u>Senate Bill 89/aSHPAC</u>
ANALYST <u>Klundt</u>	

APPROPRIATION* (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY23	FY24		
	\$289.0	Recurring	General Fund

Parentheses () indicate expenditure decreases.
 *Amounts reflect most recent version of this legislation.

Sources of Information

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 New Mexico Attorney General (NMAG)
 Department of Health (DOH)
 Developmental Disabilities Council (DDC)

SUMMARY

Synopsis of SHPAC Amendment

The Senate House and Public Affairs Committee amendment to Senate Bill 89 (SB89) increases the appropriation by \$100 thousand and clarifies the responsibilities of the Supported Decision-Making Program.

Synopsis of Original Senate Bill 89

Senate Bill 89 (SB89) creates the Supported Decision-Making Act, provides requirements for Supported Decision-Making agreements, and creates a Supported Decision-Making Program within the Office of Guardianship (Developmental Disabilities Council). SB89 makes an appropriation of \$189 thousand to the Office of Guardianship in FY24 to carry out the provisions of the act and to hire two full-time employee and contract support to create and administer this new program. This bill includes definitions for “adult,” “supported decision-maker,” “supported decision-making agreement,” and “supporter.”

A supported decision-maker may voluntarily, without undue influence or coercion, enter into a supported decision-making agreement with one or more supporters. A supported decision-maker may be authorized by a supporter to do any of all of the following:

1. Provide assistance in understanding the options, responsibilities, and consequences of the supported decision-maker's life decisions, without making those decisions on behalf of the supported decision-maker;
2. Assist the supported decision-maker in accessing, collecting, and obtaining information that is relevant to a given life decision, including medical, psychological, financial, educational or treatment records;
3. Assist the supported decision-maker in understanding the information described in this act; and
4. Assist the supported decision-maker in communicating the supported decision-maker's decisions to appropriate people.

SB89 states that a supported decision-making (SDM) agreement may be in any form but shall

1. Be in writing;
2. Be dated;
3. Be signed voluntarily, without coercion or undue influence, by the supported decision-maker and the supporter;
4. Designate a supporter;
5. List the types of decisions with which the supporter is authorized to assist the supported decision-maker;
6. List the types of decisions, if any, with which the supporter is not authorized to assist the supported decision-maker; and
7. Contain a consent signed by the supporter indicating the supporter's (a) relationship to the supported decision-maker, (b) willingness to act as a supporter, and (c) acknowledgment of the duties of a supporter.

SB89 does not contain an effective date and would be effective on June 16, 2023, 90 days following adjournment of the Legislature, if signed into law.

FISCAL IMPLICATIONS

The appropriation of \$289 thousand contained in the SHPSC-amended bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY24 would revert to the general fund.

SIGNIFICANT ISSUES

The Legislature appropriated \$15 thousand to DDC in FY22 for a SDM task force to study SDM across the country and make recommendations on how to implement the program in New Mexico. DDC reported the task force concluded legislation was necessary to implement SDM in the state. DDC stated codifying SDM would clarify how the model works and create a uniform process and form.

About 6,000 New Mexicans are under guardianship or conservatorship. The Office of Guardianship at DDC processes 125-175 new cases a year and can have a waiting list. DDC reported the rate of guardianship applications has doubled in the past two to three years.

DDC anticipates a reduction in the number of guardianships requested and filed if SDM is implemented and has widespread use.

OTHER SUBSTANTIVE ISSUES

Supported Decision-Making Task Force Findings

The SDM Task Force reviewed existing SDM models and solicited key stakeholder input to develop a strategy for implementing SDM in New Mexico, including any necessary legislation, outreach, and education. The 25 task force members included

- Protected persons subject to guardianship
- Persons relying on alternatives to guardianship
- Persons with disabilities
- Family members of persons with disabilities
- Professional guardians/conservators
- Legal services organizations
- Disability advocates
- Service providers
- Policy experts
- Attorneys
- Judiciary

The SDM Task Force made the following findings:

- Guardianship is often the “go-to” intervention for individuals with disabilities, even when it is not necessary.
- Guardianships in the state are sometimes ordered with insufficient medical justification or exploration of least restrictive alternatives.
- Least restrictive alternatives to guardianship are often not identified or considered when they could have been feasible.
- Guardianship proceedings are often colored by assumptions that people with disabilities lack capacity.
- Pipelines to guardianship include:
 - o Schools
 - o Foster care
 - o Medical facilities
 - o Criminal justice system
 - o Unhoused individuals
- SDM is a valuable mechanism:
 - o For maximizing the autonomy, agency, and civil rights of New Mexicans living with disabilities;
 - o As an alternative to unnecessary guardianships;
 - o As an accommodation to help people with disabilities exercise legal capacity in a manner equal to others.
- SDM represents a paradigm shift that challenges paternalistic ideas about the inability of individuals with disabilities to direct their own lives, and about the need to prioritize their protection versus their autonomy. Adoption of SDM will require buy-in from stakeholders and a significant cultural shift.