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FISCAL IMPACT REPORT

SPONSOR	<u>Ferrary</u>	LAST UPDATED	<u>03/13/2025</u>
		ORIGINAL DATE	<u>02/03/2024</u>
		BILL	<u>House Bill</u>
SHORT TITLE	<u>Death of Protected Person or Guardian</u>	NUMBER	<u>124/aHJC</u>
		ANALYST	<u>Chilton</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*

(dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
DDC	No fiscal impact	\$89.0	\$89.0	\$178.0	Recurring	General Fund

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Relates to House Bill 125, House Bill 149

Sources of Information

LFC Files

Agency Analysis Received From

Administrative Office of the Courts (AOC)

New Mexico Attorney General (NMAG)

Governor's Commission on Disability (GCD)

Developmental Disability Council (DDC)

SUMMARY

Synopsis of HJC Amendment to House Bill 124

The House Judiciary Committee amendment makes two changes:

1. On page 5, a sentence is deleted with the effect that termination of a conservator's guardianship after the death of a protected person would terminate the guardian's liability for prior acts and the obligation to account for the protected person's assets and funds.
2. On page 12, language is added to deal again with the conservator's liability after the death of the protected person. The conservator's liability for prior acts and obligation to account for the protected person's assets and funds is not affected unless the procedures of Section 45-5-429 are followed. Section 45-5-429 establishes when conservators are individually liable.

Synopsis of House Bill 124

House Bill 124 (HB124) makes several changes in Section 45-5-306 NMSA 1978 and Section 45-5-412 NMSA 1978 concerning guardians—those qualified to provide for the care, custody, or control of a minor or incapacitated person—and conservators—those appointed by a court to manage the property or financial affairs or both of a protected person.

The bill specifies a guardianship or conservatorship terminates on the death of the guardian or conservator, and the court may appoint a new guardian or conservator. If the protected person dies, the guardian or conservator is to notify the court within three days. Unless a personal representative is named in a will or other document, the guardian or conservator may become the personal representative of the deceased protected person, making arrangements for the disposal of that person's estate. If both a conservator and guardian wish to be appointed personal representative, the court shall decide, giving precedence to the conservator. Forty-five days after the death, the appointed personal representative will provide a report to the court on disposal of assets, and the guardianship or conservatorship or both will be dissolved.

The bill would replace “incapacitated person” in the two sections of existing statute with the term “protected person.”

The effective date of this bill is July 1, 2025.

FISCAL IMPLICATIONS

There is no appropriation in HB124.

Although this bill will have an uncertain effect in increasing or decreasing court work, the Developmental Disabilities Council (DDC) indicates that it would incur costs due to prolongation of the term of guardians after the death of their clients. DDC's calculation is as follows:

The proposed language places additional burdens and obligations on guardians after the death of a Protected Person. For NM Office of Guardianship (OOG) cases, the vast majority do not have property or an estate to distribute, nor a will, and therefore administering the estate is not likely to involve much additional work. But the proposed language will require an additional hearing in every case upon the death of a Protected Person. Currently, OOG pays its professional guardians \$500 upon the filing of a “Final Guardian Report.” If a hearing is required in addition to filing the report; and if guardians are required to document and demonstrate the distribution of a Protected Person's assets upon death, this represents an increase in the amount of work to be completed after the person's death. Since the reports are to be submitted and the final hearing conducted within 45 days of the person's death, this likely will mean an additional two months of work from each professional guardian. In FY24, there were 100 deaths among OOG's Protected People. Two additional months of work, at \$445 per month, totals \$89 thousand paid to professional guardians annually to wrap up the death of a protected person. No additional appropriations are requested or required to implement the additional duties outlined in the proposed bill.

SIGNIFICANT ISSUES

The Administrative Office of the Courts (AOC) notes the provisions of this bill are a response to the recommendations of the interdisciplinary Working Interdisciplinary Network of Guardianship Stakeholders (WINGS), which considered issues in conservatorship and guardianship at length and recommended the following actions, contained within this bill:

- Continue guardianship or conservatorship after the protected person's death to allow for obtaining a death certificate and arranging and paying for funeral expenses;

- Allow for appointing conservator or guardian as personal representative, giving preference to a conservator;
- Provide a process to review a conservator's or guardian's final report after the death of the protected person and ascertain that any estate is delivered to the appointed personal representative.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB124 relates to House Bill 125, allowing liability waivers for conservators, and House Bill 149, creating a Supported Decision-Making Act to allow for agreements between individuals in which the supporter would provide information but not have decision-making authority.

TECHNICAL ISSUES

The New Mexico Attorney General (NMAG) suggests two changes:

- Currently Section 45-5-415 is cross referenced in Section 45-5-101 “Definitions and use of terms” wherein a “‘limited conservatorship’ means that an incapacitated person is subject to a conservator’s exercise of some but not all of the powers enumerated in Sections 45-5-424 and 45-5-425 NMSA 1978[.]” If those duties that were moved from section 45-5-425(E) are intended to remain with a limited conservatorship, then the new section created by Section 3 may need to be added to the definition in Section 45-5-101.
- In both section 1 and 3, upon the death of the protected person, HB124 imposes a duty to the guardian or conservator to notify the court of the death within three days of “learning of the death.” In contrast, those sections impose a duty on the guardian or conservator to file a final report within forty-five days of the protected person’s death. For consistency, similar language from the notification of death may be considered for the final report timeline, either “forty-five days after learning of the protected person’s death” or “forty-five days after notifying the court of the protected person’s death.”

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