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FISCAL IMPACT REPORT

SPONSOR	<u>House Judiciary Committee</u>	LAST UPDATED	<u>3/21/2025</u>
		ORIGINAL DATE	<u>2/12/2025</u>
SHORT TITLE	<u>Supported Decision-Making Act</u>	BILL	<u>CS/House Bill</u>
		NUMBER	<u>149/HJCS/aHAFC/aSJC/aSFI#1</u>
		ANALYST	<u>Chilton/Sanchez</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	\$289.0	\$289.0	\$578.0	Recurring	General Fund
DOH/NMBHI	No fiscal impact	Indeterminate but possibly substantial	Indeterminate but possibly substantial	Indeterminate but possibly substantial	Recurring	General Fund
HCA	No fiscal impact	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Recurring	General Fund
Total	No fiscal impact	At least \$289.0	At least \$289.0	At least \$578.0	Recurring	General Fund

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Relates to House Bills 124 and 125 and Senate Bill 166

Sources of Information

LFC Files

Agency Analysis Received From

Health Care Authority (HCA)

Administrative Office of the Courts (AOC)

Aging and Long-Term Services Department (ALTSD)

Governor's Commission on Disability (GCD)

Developmental Disabilities Council (DDC)

SUMMARY

Synopsis of SFI#1 Amendment to HJC Substitute for House Bill 149

Senate Floor amendment #1 to the House Judiciary Committee substitute for House Bill 149 (HB149) amends Sections 43-1-3 and 43-1B-2 NMSA 1978, the Mental Health and Developmental Disabilities Code, and the Assisted Outpatient Treatment Act by refining the definitions of "harm to self" and "harm to others."

"Harm to self" would be defined as an individual's inability to meet their basic needs for nourishment, medical care, shelter, or self-protection, with a likelihood of death, serious bodily injury, or severe physical or mental debilitation if treatment is not provided.

"Harm to others" would apply to individuals who have recently inflicted or attempted to inflict serious bodily harm or created a substantial risk of such harm, with a high likelihood of recurrence.

The bill removes "extreme destruction of property" as a criterion for determining harm to others and clarifies the role of crisis triage centers as evaluation facilities for individuals requiring emergency mental health services.

Synopsis of SJC Amendment to HJC Substitute for House Bill 149

The Senate Judiciary Committee amendment to House Bill 149 (HB149):

- Tasks the Supreme Court with devising the form required for supported decision-making agreements.
- Requires two witness signatures on the support decision making agreement and a notary's acknowledgement.
- Would terminate a supported decision-making agreement on the determination by the primary care physician and one other experienced health professional that the decision-maker can no longer make their own decisions.
- Adds to requirements of supporters that they not be compensated for their support and that they stop serving as supporter if they judge the decision-maker incapable of making decisions.
- Adds to the list of prohibited supporter activities signing legal documents for the supported person and binding that person to legal agreements.
- Removes Section 7, which specifies that a supporter is not a fiduciary agent of the decision-maker.
- Removes Section 9A, which requires supporters to maintain the confidentiality of the supported person and retitles the section (previously 9B) specifying that a decision-maker may seek personal information without the supporter's help.
- Allows third parties to rely on supported decision-making agreements unless that third party suspects abuse, neglect, or exploitation and makes a report of this to the Aging and Long-Term Services Department (ALTSD).

Synopsis of HAFC Amendment to HJC Substitute for House Bill 149

The House Appropriations and Finance Committee amendment to the House Judiciary Committee substitute for House Bill 149 strips the appropriation from the bill.

Synopsis of House Bill 149

The House Judiciary Committee substitute for House Bill 149 creates the Supported Decision-Making Act.

Section 1 defines "decision-maker," as an "adult who seeks to enter, or has entered, into a supported decision-making agreement with one or more supporters," and "supporter" as an "adult who has entered into a supported decision-making agreement with a decision-maker." The bill also defines "decision-making support" as assistance in understanding options, responsibilities, and consequences of the decision-maker's decisions without making the

decisions themselves for the supported person, the “decision maker.”

Section 3 outlines the scope of supported decision-making agreements and discusses the role of the supporter in helping the supported person with understanding the options available to them at important turning points in their lives, in gathering and understanding the information needed to make an informed decision, and in communicating the decision to appropriate persons.

Section 4 sets requirements for supported decision-making agreements. Supported decision-making agreements are to be entered into without coercion and must be in writing and signed and dated by both parties and at least two adult witnesses. They must include a listing of the types of decisions with which the supporter may assist and those which are excluded from the supporter’s help.

Section 5 states that decision-makers are to be presumed to be capable of managing their affairs unless otherwise determined by a court. Mental illness, intellectual disability, developmental disability, or difficulty with communication should not be considered as causes for voiding a supported decision-making agreement, use of which would not preclude the possibility of the decision-maker representing themself.

Section 6 outlines the duties of a supporter, including not taking advantage of the supported person, acting in good faith, and not endeavoring to make decisions for that person.

The remaining Sections state that the supporter is not a fiduciary agent for the supported person (Section 7), disqualify various persons from acting as supporters, such as someone who has been convicted of a crime against the person (Section 8), require supporters maintain the confidentiality of the supported person (Section 9), require third parties to rely on the support decision-making agreement (Section 10), identify decisions or requests made with the assistance of a supporter as the decision of the decision-maker (Section 11), sets rules regarding the termination of a supported decision-making agreement (Section 12), require persons who believe a supported-person is subject to abuse, neglect, or exploitation of a supported person by their supporter to submit a report to the Aging and Long-term Services Department (Section 13), and establish the Supported Decision-Making Program within the Office of Guardianship in the Developmental Disabilities Council (DDC).

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns if enacted, or June 20, 2025.

FISCAL IMPLICATIONS

DDC indicated the following need:

DDC requests \$289,000 of general fund dollars to hire two full-time employee and contract support to implement supported decision-making effectively in this state. The Legislature appropriated \$15,000 for DDC in FY22 to form a SDM Task force to study SDM across the country and make recommendations on how to implement SDM in New Mexico.

DDC has not had the opportunity to comment again about the bill since the appropriation was stripped.

Other responding agencies do not see a need for additional funding.

The Senate floor amendment to HB149 does not add a direct appropriation; however, changes to the definitions of “harm to self” and “harm to others” in the Mental Health and Developmental Disabilities Code and the Assisted Outpatient Treatment Act may lead to increased demands on judicial, law enforcement, and behavioral health resources. By refining the legal criteria for involuntary commitment and assisted outpatient treatment, the bill may result in changes in the number of petitions filed, court hearings held, and services required for individuals who meet the updated standards. The Administrative Office of the Courts’ (AOC) analysis of these changes indicated the fiscal impact is uncertain, but additional petitions for involuntary commitment could increase caseloads and require additional courtroom resources.

Law enforcement agencies may experience expanded responsibilities related to transporting and managing individuals who meet the new commitment criteria. The Department of Public Safety (DPS) and local law enforcement agencies have not provided cost estimates related to potential increases in transport costs or the costs of increased interactions with individuals experiencing mental health crises. The Department of Health’s (DOH) analysis of the original bill indicated that the bill may result in more referrals to the New Mexico Behavioral Health Institute, where the state general fund covers a significant portion of patient costs. The Health Care Authority’s (HCA) analysis of the original bill noted that implementing the bill’s provisions may require updates to administrative regulations and staff training, but the agency has not quantified the potential fiscal impact. Due to the uncertainty surrounding how many individuals would become eligible for commitment or outpatient treatment under the revised definitions, the total fiscal impact of HB149 remains undetermined but potentially substantial.

SIGNIFICANT ISSUES

DDC notes that “DDC has seen a drastic increase of requests for guardianship services in the past 4-5 years, causing the agency to submit 20-25% budget increases year over year. This bill will allow DDC to establish a system of support for individuals with disabilities who end up in the guardianship system because they do not have access to a less restrictive alternative to guardianship.”

DDC continues:

One of the greatest challenges DDC faces is providing support and assistance to those who either are not eligible for guardianship but need more support than they currently have, or default into guardianship unnecessarily because they have no other way to receive critical support they need. DDC is then forced to decide whether to leave a person unassisted or take away their legal and civil rights in order provide them with the only avenue of assistance available under the law.

Currently, about 6,000 New Mexicans are under guardianship or conservatorship. Office of Guardianship processes 125-175 new cases a year and sometimes has a waitlist of almost 200 people at the highest point in a year. The rate of guardianship applications has doubled in the past 2-3 years. Due to the drastic increase of requests for guardianship services in the past 3-4 years, DDC has been forced to submit 20-25% budget increases year over year.

Supported decision making is universally recognized by national judicial experts, national developmental disabilities experts, and national health experts as the most effective model for supporting self-determination of people with disabilities, increasing life span and quality of life, and avoiding/terminating adult guardianships. In a 2022 meeting of the Supreme Court’s Working Interdisciplinary Network of Guardianship Stakeholders (WINGS), the national judicial expert identified supported decision making as the top guardianship alternative model in the country. WINGS members unanimously endorsed the Supported Decision-Making Act in 2024

The Health Care Authority Notes:

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 considered as a last resort for people who are incapacitated and require substitute decision makers. For many New Mexicans, especially those who do not have access to Developmental Disabilities Medicaid waiver services, supported decision making can be an effective tool to assist in making important decisions, allowing them to retain control over their lives.

According to the Center for Public Representation, supported decision making:

Allows individuals with disabilities to make choices about their own lives with support from a team of people they choose. Individuals with disabilities choose people they know and trust to be part of a support network to help with decision-making. Supported decision-making is an alternative to guardianship. Instead of having a guardian make a decision *for* the person with the disability, supported decision-making allows the person with the disability to make his or her own decisions.

According to the Administrative Office of the Courts (AOC), “Twenty states, along with the District of Columbia, have enacted a supported decision-making statute since Delaware became the first to pass supported decision-making legislation in 2015.”

According to the Aging and Long-Term Services Department (ALTSD):

Research has repeatedly shown that individuals with disabilities and older adults who regularly make their own decisions and maintain greater self-determination experience greater well-being. Further, there has been extensive research which has found that individuals with disabilities who are more self-determined are more likely to recognize and avoid abuse. Several states across the country have enacted various types of supported decision-making statutes. The New Mexico Legislature appropriated \$15 thousand to DDC in FY22 for the Supported Decision-Making Task Force to study supported decision-making across the country and make recommendations on how to implement the program in New Mexico. The Supported Decision-Making Task Force reviewed existing supported decision-making models and solicited key stakeholder input to develop a strategy for implementing supported decision-making in New Mexico, including any necessary legislation, outreach, and education. DDC indicated that codifying supported decision-making would clarify how the model works and create a uniform process and form. HB149 embodies the recommendations that came out of the Supported Decision-Making Task Force.

About 6,000 New Mexicans are under guardianship or conservatorship. The Office of Guardianship typically processes approximately 125 new cases a year and often times has

a waitlist. DDC has seen a drastic increase in requests for guardianship services in the past 4-5 years, causing the agency to submit 20-25% budget increases year over year. DDC reports that the rate of guardianship applications has doubled in the past several years. If HB149 is passed, it may reduce the number of guardianship applications submitted to the Office of Guardianship.

While this proposed legislation may impact the guardianship system, supported decision-making would not replace either guardianship or conservatorship. If successful, the bill could reduce reliance on guardianship and increase self-determination for individuals with disabilities by providing an alternative and allowing more accessibility to decision-making support.

The Governor's Commission on Disability (GCD) agrees, stating that:

The Supported Decision-Making Act is an important step towards providing support in decisions about one's life for people with disabilities who can independently decide for themselves what they want but need a supportive adult to understand the choices they make. This doesn't replace the guardianship program, but it offers an alternative for those who can and want to retain the right to make decisions for themselves with trusted friends/or family members they choose.

Under the Senate floor amendments to HB149, the revised definition of "harm to self" would require a demonstration that an individual is unable to meet their basic needs for nourishment, medical care, shelter, or self-protection, with a likelihood of death, serious bodily injury, or severe physical or mental debilitation if treatment is not provided. The amendments offered in the bill remove explicit references to suicide risk as a factor in determining harm to self, which could affect how eligibility for commitment is assessed. The definition of "harm to others" would now specify that the individual must have recently inflicted or attempted to inflict serious bodily harm or acted in a way that creates a substantial risk of such harm, with a high likelihood of recurrence. The bill removes references to extreme destruction of property as a criterion for determining harm to others.

The bill clarifies the role of crisis triage centers as evaluation facilities for individuals requiring emergency mental health services. State agencies, including HCA and DOH, have indicated that administrative rule changes may be necessary to align agency policies with the bill's provisions. AOC's analysis of the original bill noted that the revised definitions may lead to an increase in petitions for involuntary commitment or assisted outpatient treatment. However, the extent of this impact is uncertain. DPS' analysis of the original bill indicated that changes to commitment criteria may lead to an increased number of interactions between officers and individuals experiencing mental health crises. Behavioral health stakeholders have raised questions about whether the removal of explicit suicide references could affect clinical assessments of risk and whether additional training or guidance may be required to ensure consistency in implementation.

ADMINISTRATIVE IMPLICATIONS

AOC notes:

The judiciary will need to provide training to judges that handle adult guardianship and conservatorship cases that a supported decision-making agreement is a least restrictive option and may be an alternative to guardianship/conservatorship proceedings. External

systems such as financial, healthcare and educational may be hesitant to provide a supporter with information and will likely require much more education and training to ensure the provisions of the supported decision-making are understood and followed.

The SJC amendment appears to have addressed this concern.

Under the Senate floor amendments to HB149, HCA, DOH, and AOC may need to update policies, procedures, and training programs to align with the revised definitions of “harm to self” and “harm to others.” The bill may require state agencies to develop administrative rules to ensure consistent implementation of the new commitment criteria. AOC may also need to provide training to judges and court personnel on how to apply the revised definitions in commitment proceedings. Law enforcement agencies may need to revise crisis intervention training to ensure officers understand the updated criteria for determining when an individual qualifies for involuntary commitment.

The bill does not include a specific appropriation to support administrative changes, and agencies have not provided estimates of the costs associated with updating policies and training personnel. The timeline for implementing these changes is not specified in the bill, and state agencies have not indicated when administrative updates would be completed.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Related to House Bill 124, Death of Protected Person or Guardian, and House Bill 125, Liability Waivers for Conservators. Parts of HB149 duplicate SB166.

OTHER SUBSTANTIVE ISSUES

DDC points out that:

The biggest concern DDC has heard about supported decision making is the fear of bad actors using supported decision-making agreements to abuse, neglect, or exploit individuals with disabilities. Those unsure about supported decision making are worried that supported decision making does not have enough built-in oversight. Historically, individuals with powers of attorney, guardianship, and other substitute decision makers experience abuse, neglect, or exploitation because the substitute decision maker has full control and power over decisions, even though those systems have far more oversight. In supported decision making, the decision-making power remains with the individual. Individuals with disabilities can and should direct their own lives as much as possible and avoid situations such as guardianship in which they lose control of their lives. supported decision making teaches and empowers individuals to identify toxic, abusive, or exploitive behavior rather than rely on others to make those determinations. Additionally, supported decision making agreements must state that supporters do not have decision making authority and that third parties relying on the agreement must report any perceived abuse, neglect, or exploitation. That language and, most importantly, the lack of decision-making power will do more to deter bad actors than any amount of oversight provided to guardianship and other substitute decision making schemes.

It would appear that the SJC amendment addresses these concerns in various ways.