



Duplicates/Conflicts with/Companion to/Relates to:  
Duplicates/Relates to Appropriation in the General Appropriation Act

### **SECTION III: NARRATIVE**

#### **BILL SUMMARY**

Synopsis: House Bill 149 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). HB 149 makes an appropriation of \$189,000 to the Office of Guardianship in FY 26 to carry out the provisions of the Act and to hire a full-time employee and a contract support to create and administer this new program. This bill includes definitions for “adult”, “supported decision-maker”, “supported decision-making agreement” and “supporter”.

According to the Administration for Community Living: Supported decision making (SDM) can be an alternative to guardianship. With SDM, individuals retain their right to make decisions for themselves, with the support of trusted friends and/or family members they choose. SDM allows a person to identify the type or types of help they need and how to go about getting that help and recognizes that different people need different kinds of help. For example, some people may need support making financial or health care decisions, whereas others may need help deciding on housing or transportation. Some people may need help with many types of decisions, and others may need help with only one or two. Some people need one-on-one support and discussion about the issue at hand but a team approach may work best for others. The SDM model can be tailored to help people find solutions for their specific needs. <https://acl.gov/programs/consumer-control/supported-decision-making-program>

HB 149 allows a supported decision-maker to voluntarily, without undue influence or coercion, enter into a supported decision-making (SDM) agreement with one or more supporters. A supported decision-maker may authorize 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 persons.

HB 149 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.

House Bill 149 does not contain an effective date and would be effective on June 20, 2025, 90 days following adjournment of the Legislature, if signed into law.

## **FISCAL IMPLICATIONS**

There will be a minimal administrative cost for the statewide update, distribution and documentation of statutory changes.

## **SIGNIFICANT ISSUES**

Supported Decision-Making, often referred to as “SDM”, is a process that is becoming more popular in the United States. See Kohn, Nina A., Jeremy A. Blumenthal, and Amy T. Campbell. "Supported decision-making: A viable alternative to guardianship." *Penn St. L. Rev.* 117 (2012). Twenty states, along with the District of Columbia, have enacted a Supported Decision-Making statute since Delaware became the first to pass SDM legislation in 2015. Currently, Alabama, Alaska, Arizona, California, Colorado, Delaware, District of Columbia, Florida, Illinois, Indiana, Louisiana, Maryland, Nevada, New Hampshire, New York, North Dakota, Rhode Island, Texas, Virginia, Washington and Wisconsin have passed SDM legislation.

A person with cognitive or intellectual disabilities who is unable to manage some or all of their personal, healthcare or financial affairs may have guardianship and/or conservatorship because financial, healthcare and/or educational organizations feel as though these individuals need a surrogate or “substituted” decision maker. A surrogate decision maker is someone that makes a decision *for* another adult. A court-appointed guardian or conservator is an example of a surrogate decision maker.

Since 2018, substantial legislative and judicial reforms have been enacted which allow an individual under guardianship or conservatorship in New Mexico to retain a variety of civil and human rights and to be consulted in decisions made on their behalf. Section 45-5-312(B)(5) NMSA 1978 states, “the guardian shall exercise the guardian's supervisory powers over the protected person in a manner that is least restrictive of the protected person's personal freedom and consistent with the need for supervision”.

A Power of Attorney is another tool that may prevent a person from having a guardian and/or conservator appointed but the agent under a Power of Attorney is another example of a surrogate decision maker. A Power of Attorney grants another person with the power and authority to act on your behalf, as your agent. An agent does not need to consult with you or include you in any decisions made on your behalf.

In 2021 the legislature passed HB 234, directing the Supreme Court to establish the Working Interdisciplinary Network of Guardianship Stakeholders (WINGS) to provide ongoing evaluation of New Mexico laws, services and practices related to adult guardianship and conservatorship. The Network is comprised of over 20 appointed members, representing a wide range of stakeholders, attorneys, judges and representatives from the executive and legislative branches. In 2023 and 2024, WINGS unanimously endorsed the Supported Decision-Making process any

legislation that seeks to formalize this in New Mexico statutes.

Many people with disabilities need and want assistance when making decisions about health care, life choices, and financial matters, but they do not necessarily need a guardian and/or conservator to make those decisions on their behalf. HB 149 provides an important framework that describes how any person may appoint a supported decision-maker to gather information and help the person better understand his or her options or choices. A supporter does not have the power or authority to make any decisions for the supported decision-maker. In addition, Section 7 of HB 149 specifically states that a “supporter is not a fiduciary agent of the supported decision-maker.”

HB 149 includes two important provisions, necessary for an SDM Act to be effective. First, this legislation specifically states that all supported decision-makers are “presumed to have capacity” and “to be capable of managing their affairs, unless determined by a court”. This language protects a person who chooses to use an SDM agreement from being categorized as not having capacity or unable to make their healthcare, personal or financial affairs.

In addition, HB 149 states that the “execution of a supported decision-making agreement may not be used as evidence of capacity or incapacity in any civil or criminal proceeding”. HB 149 also limits the liability of a third party that relies on an SDM agreement (Section 10) and directs a decision or request made by a supporter that is in conformity with the SDM ACT “shall be recognized for the purposes of any provision of law as the decision or request of the supported decision-maker” (Section 11). This language is especially helpful when dealing with financial, healthcare or educational systems that may hesitate to honor an SDM agreement.

**PERFORMANCE IMPLICATIONS** – none identified.

**ADMINISTRATIVE IMPLICATIONS** - the judiciary will need to provide training to judges that handle adult guardianship and conservatorship cases that an SDM 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 SDM are understood and followed.

**CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP** - none identified.

**TECHNICAL ISSUES** – none.

**OTHER SUBSTANTIVE ISSUES** - none identified.

**ALTERNATIVES** - none.

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL** – none.

**AMENDMENTS** – none.