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## FISCAL IMPACT REPORT

<b>SPONSOR</b> <u>House Judiciary Committee</u>	<b>LAST UPDATED</b> _____
	<b>ORIGINAL DATE</b> <u>02/12/2025</u>
	<b>BILL</b> <u>CS/House Bill</u>
<b>SHORT TITLE</b> <u>Supported Decision-Making Act</u>	<b>NUMBER</b> <u>149/HJCS</u>
	<b>ANALYST</b> <u>Chilton</u>

### APPROPRIATION\* (dollars in thousands)

FY25	FY26	Recurring or Nonrecurring	Fund Affected
	\$289.0	Recurring	General Fund

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

Relates to House Bills 124 and 125

### 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 House Bill 149

The House Judiciary Committee substitute for House Bill 149 (HB149) 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 “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 themselves.

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).

HB149 appropriates \$249 thousand from the general fund to DDC to carry out the provisions of the Act.

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**

The appropriation of \$289 thousand contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY26 shall revert to the general fund.

Responding agencies do not see a need for additional funding.

## **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 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.

## **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.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

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

## **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.