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## FISCAL IMPACT REPORT



SPONSOR: Carraro DATE TYPED: 02/09/02 HB \_\_\_\_\_

SHORT TITLE: Guardianship Services SB 350

ANALYST: Sandoval

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY02	FY03	FY02	FY03		
	NFI				

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Relates to Appropriation in The General Appropriation Act HB 350 relates to appropriation language being proposed in the General Appropriation Act for the Guardianship Services Program under the Attorney General.

### SOURCES OF INFORMATION

LFC files

#### Responses Received

Attorney General

State Agency on Aging

Department of Health (DOH)

### SUMMARY

#### Synopsis of Bill

Senate Bill 350 amends Section 8-5-16 NMSA, which establishes the Office of Guardianship Services within the Attorney General's Office (AGO). This bill requires that all administrative and guardianship services be contracted out to community service providers. Sub-sections are added to this bill that provide for quality assurance and shared investigation duties between the AGO and the State Agency on Aging. This bill also requires the administrator is to provide quarterly reports to the AGO, State Agency on Aging, the Legislative Finance Committee and any other appropriate Legislative interim committee.

Significant Issues

A guardian is defined in Section 45-1-201 NMSA 1978 as a person who has qualified to provide for the care, custody or control of the person of a minor or incapacitated person pursuant to testamentary or court appointment. An incapacitated person is defined in Section 38-4-14 NMSA 1978 as any person who demonstrates over time either partial or complete functional impairment by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication or other cause, except minority, to the extent that he is unable to manage his personal care or he is unable to manage his property and financial affairs. House Bill 350 is an attempt to help insure the quality of services being provided by the Office of Guardianship Services for incapacitated persons.

The definition of an incapacitated person explains why the Guardianship Program has been passed around from one state agency to another and why so many agencies share a concern of the quality of the services this program offers. The coordination and inclusion of those state agencies that have the expertise to insure quality contractual services and beneficial complaint investigations for this program will alleviate a good deal of the oversight and investigative service that the AGO must provide to insure quality guardianship services and at the same time, increase the quality of these service currently being provided.

**FISCAL IMPLICATIONS**

The State Agency on Aging investigates long-term care complaints and can absorb the cost associated with long-term care complaint investigations.

**ADMINISTRATIVE IMPLICATIONS**

According to the Attorney General's Office, "Additional FTE and funding would be needed to implement Subsections A and B. In particular, Subsection B would require quality assurance of an additional entity, the administrative contractor, and subcontractors and participants (clients) in the guardianship program. Currently, the Attorney General's Office does not have sufficient funding or FTE to implement such an extensive quality assurance program."

**CONFLICT/DUPLICATION/COMPANIONSHIP/RELATIONSHIP**

Language being proposed in the General Appropriation Act for the Guardianship Services Program:

The general fund appropriation to the guardianship services program of the attorney general in the contractual services category includes one million eight hundred sixty seven thousand dollars (\$1,867,000) to be used to contract out all duties, including management and oversight, necessary to insure that quality guardianship services are provided. All contracts issued under this program are contingent upon the approval of joint protocol, pursuant to the provisions of Section 24-1-5 NMSA 1978. Quarterly reports, to be defined by contract, will be provided to all interested parties.

**OTHER SUBSTANTIVE ISSUES**

1. The Attorney General's Office recommends, "...Subsections C and D be stricken in their entirety. In Subsection C, there is no language that offers any kind of protection to guardianship clients and their right to confidentiality. The State Agency on Aging and other entities (public and private) currently share complaint and investigation information with the Attorney General's Office. Granting the State Agency on Aging, or any other public or private entity, access to all information could seriously compromise client confidentiality and potentially violate clients' civil rights."
2. According to the State Agency on Aging, "This bill focuses on the protection of the rights, wishes and best interests of their Wards in accordance with the National Guardianship Association Ethics and Standards. This bill mandates a quality assurance and complaint investigation component, which does not currently exist in the guardianship services program."
3. According to the Department of Health, "If SB 350 is intended to achieve greater accountability for the funds New Mexico spends on obtaining guardianship services; this could be better achieved through legislation that sets out specific monitoring and reporting requirements for the AGO and by requiring greater cooperation among the AGO, the Administrative office of the Courts, the guardianship services contractors, Children, Youth and Families Department, Department of Health, Human Services Department and the State Agency on Aging."

#### POSSIBLE QUESTIONS

1. Does an individual's rights to confidentiality outweigh all other civil rights that an individual is entitled to have?
2. Is there a way to assure that proper investigative duties are allocated to the appropriate authorities while protecting the individual's confidentiality rights?
3. How would the participation of several state agencies improve the quality of guardianship services?
4. Does the Attorney General's Office currently have the resources necessary to assure the concerns of those receiving guardianship services are addressed and that the program's funds are being spent in a prudent manner?
5. Why are there only two contractors offering guardianship services?
6. If New Mexico has no other alternative than the two contractors that currently offer guardianship services, how are we as a state going to assure that these two contractors provide the kind of service that the people in the program deserve?
7. Is there any reason that the various state agencies, that share a concern in the care offered to those individuals in the guardianship program, cannot work together to improve the operation of this vital program?
8. Wouldn't a "meeting of the minds" improve the contracts issued for guardianship services and wouldn't shared investigation duties alleviate the workload that the Attorney General's Office must provide to insure quality guardianship services?