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FISCAL IMPACT REPORT

ORIGINAL DATE 01/30/07

SPONSOR Taylor LAST UPDATED _____ HB _____

SHORT TITLE Alternatives to Guardianship of Disabled SB 147

ANALYST Geisler

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	\$200.0	Recurring	General

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Aging and Long-Term Services Department (ALTSD)
Developmental Disabilities Planning Council (DDPC)

SUMMARY

Synopsis of Bill

Senate Bill 147 bill creates a guardianship alternatives program within the Aging and Long-Term Services Department (ALTSD) that would provide training and assistance in finding alternatives to guardianship and also establish microboards of family members and friends who would be responsible for the care of persons with a disability who might otherwise require a guardianship.

FISCAL IMPLICATIONS

Senate Bill 147 contains a recurring \$200.0 appropriation for the guardianship alternatives program. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert. This appropriation is not contained in the executive or Legislative Finance Committee budget recommendations.

SIGNIFICANT ISSUES

ALTSD provided the following discussion:

SB 147 does not specify all the alternatives that could or should be pursued by this program, although it specifies the inclusion of microboards. There are legal implications to providing alternatives to guardianship. Defining what the alternatives are is a significant issue, e.g., case management, power of attorney, establishment of surrogates under the Uniform Health-Care Decisions Act. Establishing boundaries and expectations of those providing alternatives would be important.

Micro boards are a less restrictive alternative to guardianship that is being utilized to some extent in at least a few states (including Tennessee and Nevada) and across Canada. According to a Nevada 2003-2004 Legislative Report: "A microboard is a self-directed support corporation, which is a circle of support for an individual with a disability. A microboard allows the person to practice 'assisted competence' as he/she plans an independent life. microboards are often used in states where there are significant restrictions on Medicaid funds being used for self-directed services (like Nevada). A Microboard is usually comprised of up to nine family members and friends of a person with a disability, all of whom are interested in greater independence for him or her. The microboard forms a non-profit organization and becomes a provider for one person. Microboards have been very successful and cost-effective in several states and throughout Canada."

New Mexico has a strong commitment to self-direction and least restrictive alternatives in the provision of services, as evidenced by the development of the self-directed Medicaid Waiver (MiVia) program. The establishment of a model such as microboards would be consistent with the philosophical and programmatic direction New Mexico has taken in the provision of services to persons with disabilities.

ALTSD, through the Adult Protective Services (APS) program, may petition for the appointment of a guardian for a person who has been found to be abused, neglected or exploited and lacks decisional capacity and for whom less restrictive alternative arrangements are insufficient, inappropriate or unavailable. Thus, it is within the purview of APS to identify alternatives to guardianship in specific cases. In addition, publicly funded guardianship is currently under funded and, thus, more cost effective alternatives are desirable.

The Developmental Disability Planning Council (DDPC) operates the Office of Guardianship, which is responsible for providing public guardianship. The DDPC is also charged with providing training and information to interested persons on guardianship, including alternatives to guardianship. Thus, a conflict may be created by funding ALTSD to do the same.

ADMINISTRATIVE IMPLICATIONS

ALTSD notes that Microboards would be a new model for New Mexico and would require the establishment of guidelines and possibly regulations governing their operation. Training and educational outreach programs, for Microboards and other alternatives, would have to be developed in coordination with DDPC, the courts, attorneys, advocates, consumers and other stakeholders.

TECHNICAL ISSUES

ALTSD notes that the New Mexico Office of Guardianship in the Developmental Disabilities Planning Council is already charged with providing information and training on alternatives to

guardianship and, thus, may be a more appropriate agency to administer.

OTHER SUBSTANTIVE ISSUES

DDPC notes that any alternative to guardianship must provide the disabled person the needed care and rehabilitative services and the disabled person must enjoy the greatest amount of personal freedom and legal rights. DDPC suggests that the guardianship alternatives program should be considered a pilot project based upon the bill's broad and expansive language. DDPC suggests the following issues relating to microboards would need to be addressed:

- (1) Who appoints the members to the microboard? If the incapacitated person has the power to appoint, then he has capacity, therefore it would seem more like a power of attorney, which would allow the incapacitated person to override any decision the microboard might make.
- (2) Is there any due process for the incapacitated person? What authority would the microboard have to take away the civil rights of the person?
- (3) Is there a level of functioning that the incapacitated person must meet in order to qualify to have a microboard instead of a guardianship?
- (4) What training will be required for members of a microboard?
- (5) Who can fire the members of the microboard and what are allowable causes for firing?
- (6) What do microboards do that guardians would not do or do at a greater cost to the incapacitated individual?
- (7) Since the microboard would be independent of the courts, who would be responsible for the oversight to make sure that the decisions are in the best interest of the incapacitated ward?
- (8) What are the microboard's duties under the law (like fiduciary duties?)
- (9) What happens if there is a clash within the micro board – between the best interest of the ward and another member who wants to carry out the ward's wishes?
- 10) Do microboards rule by majority or expertise?