

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

ORIGINAL DATE 02/08/09

SPONSOR Maestas LAST UPDATED _____ HB 361

SHORT TITLE Oversight of Guardianship Office SB _____

ANALYST Hanika-Ortiz

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$0.1			Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Veterans' Services (DVS)
 Administrative Office of the Courts (AOC)
 Developmental Disabilities Planning Council (DDPC)
 Aging and Long-Term Services Department (ALTSD)
 Human Services Department (HSD)
 Health Policy Commission (HPC)

SUMMARY

Synopsis of Bill

House Bill 361 amends Section 28-16B-6 NMSA 1978 to further clarify the process for resolution of complaints regarding an adult guardianship. The bill requires that HSD adopt procedures for conducting complaints against the Office of Guardianship, refer such complaints to other agencies for investigation or prosecution, and report any findings to the Developmental Disabilities Planning Council (DDPC) and the Governor. The bill also requires the Office of Guardianship and its staff members to cooperate fully in any investigation.

FISCAL IMPLICATIONS

HSD oversees Medicaid, food stamps, temporary financial assistance, general assistance, low income home energy assistance, and the emergency food assistance programs. If HSD provides these services to the same clients for whom they are guardian, it may be seen as undue influence and not in the best interest of the client.

SIGNIFICANT ISSUES

HSD is required to investigate complaints against the Office of Guardianship under current law. The bill provides guidance as to how those investigations are to occur.

PERFORMANCE IMPLICATIONS

AOC notes that current law grants DDPC and HSD concurrent authority to resolve complaints about the Office of Guardianship or its staff. Under the bill, DDPC would not be prohibited from self-policing its operations; however, HSD would have primary authority to resolve any complaints.

ADMINISTRATIVE IMPLICATIONS

DDPC is a small office and cannot match the resources in HSD’s general counsel offices. AOC cautions that HSD may be put in the position of investigating a complaint against DDPC regarding how the Department is administering a contract.

CONFLICT,

May conflict with HB 161; Guardian of Protected Person Responsibility. This bill implements the recommendations of the Guardianship Task Force and further clarifies the role and authority of guardians and protected persons in statute. The proposed amendments in both bills deal with the same section of law.

TECHNICAL ISSUES

Existing law provides that complaints brought against staff members be investigated by HSD. The Office of Guardianship reports that its employees are governed by the New Mexico Personnel Board Rules and Regulations.

OTHER SUBSTANTIVE ISSUES

DVS serves as fiduciary payee for 25 disabled veterans unable to handle their finances. Of these 25 clients, DVS contracts for guardianship of 6 clients.

ALTERNATIVES

The Office of Guardianship would like to remove any perceived “conflict of interest” by replacing HSD’s role in oversight, as the Department is providing services to the same clients for whom they are guardian. The Office of the Attorney General and the State Auditor’s core functions are to review fiscal compliance. AOC believes these two state entities would have complete independence, and may be a better choice to assure the soundness of the guardianship program.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

HSD will not be required to have specific procedures in place for conducting investigations of the Office of Guardianship.