

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 and previously issued FIRs are available on the NM Legislative Website (www.nmlegis.gov).

FISCAL IMPACT REPORT

SPONSOR Ferrary/Lopez/
Thomson/Trujillo, C/
Stapleton ORIGINAL DATE 1/23/2020 LAST UPDATED 1/24/2020 HB 67
 SHORT TITLE Supported Decision Making Task Force SB _____
 ANALYST Klundt

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY20	FY21		
	\$50.0	Nonrecurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Response Received

Developmental Disabilities Planning Council (DDPC)

SUMMARY

Synopsis of Bill

House Bill 67 (HB67) appropriates \$50 thousand from the general fund to the Developmental Disabilities Planning Council (DDPC) for the purpose of forming a task force to study and report on supported decision making in New Mexico as an alternative to guardianship.

FISCAL IMPLICATIONS

The appropriation of \$50 thousand contained in this bill is a nonrecurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY21 shall revert to the general fund.

SIGNIFICANT ISSUES

According to DDPC, 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 a last resort reserved solely for people who are truly incapacitated and require substitute decision makers. For many New Mexicans, especially those who do not have access to DD waiver services, supported

decision making can be an effective tool to assist them in making important decisions and allows them to retain control over their lives. Supported decision making is generally a written agreement—the supported decision making agreement (SDMA)—between an individual and their chosen supporters that authorizes their supporters to acquire information on their behalf and assist them in making certain kinds of decisions. In some states, SDMA are statutory; in other states, SDMA can be authorized by the courts as an alternative to guardianship. Many New Mexicans who need assistance are currently falling through the cracks. Studying how SDMA can work in New Mexico is a major step toward providing that needed assistance.

According to the American Bar Association:

“Supported decision-making is gaining national recognition as an alternative to guardianship, potentially affecting thousands of Americans and their families. Four states this year have passed laws that define supported decision-making agreements as legally enforceable arrangements. They join five other states since 2015 to enact such laws. In a supported decision-making model, individuals with disabilities--whose decision-making autonomy might otherwise be limited or removed--make and communicate their own decisions in any number of informal arrangements, with support from trusted family and friends. A growing number of advocacy groups, social services organizations, and state agencies assist with implementing supported decision-making arrangements by documenting and formalizing the process with supported decision-making agreements.

Indiana, North Dakota, Nevada, and Rhode Island are the latest states to pass supported decision-making agreement laws in 2019. They follow Texas, Delaware, the District of Columbia, Alaska, and Wisconsin. [1] State laws vary widely on requirements for supported decision-making agreements, including who may serve as a supporter, the role of third parties, and the scope of agreements.

Supported decision-making is often defined as supports and services that help an adult with a disability make his or her own decisions by relying on trusted friends, family members, professionals, and others.[2] . While many individuals will continue to engage in an informal supported decision-making arrangement, others are documenting various provisions in an agreement. These include the names and roles of supporters and details about the scope of their assistance, authority, and duties. Agreements may include whether the supporter has access to confidential information pertaining to the decision-maker. Agreements also typically outline the terms of revocation or termination.

There is no one-size-fits-all supported decision-making agreements law. States take different approaches to addressing the risk of exploitation or manipulation of decision-makers at the hands of supporters. For example, Texas, Wisconsin, Nevada, and North Dakota place no restrictions on who may act as a supporter. Some states, like Delaware, Alaska, the District of Columbia, and Rhode Island, restrict who may serve as a supporter: employers/employees, anyone against whom the decision-maker has a restraining order, or a person directly providing paid support services to the decision-maker.

Among the advantages of having legally recognized supported decision-making agreements in your state:

- They can specify the duties of supporters, prohibiting supporters from making decisions on behalf of the decision-maker.
- They can indemnify third parties such as financial and healthcare institutions from liability for relying on a supported decision-making agreement and require them to honor supported decision-making agreements.
- They can provide structure and accountability.

Conversely, there are concerns about supported decision-making agreement laws, including:

- Supporters could use an agreement to unduly influence or exploit a decision-maker.
- Supporters could use an agreement to justify their authority to a third party. For example, supporters could insist an agreement provides them with the authority to consent to medical care on behalf of decision-makers.
- These agreements may unnecessarily formalize a decision-making model that works better as an informal arrangement.

As supported decision-making agreement laws gain momentum, and recent state laws are likely to serve as models for future legislation, it is important to evaluate whether these laws are effective in promoting supported decision-making -- and supporting individuals with disabilities to make their own choices.”

ADMINISTRATIVE IMPLICATIONS

DDPC reports an effective SDMA process in New Mexico can provide much-needed assistance to New Mexicans who typically seek guardianship services, or who may find themselves in expensive and dire financial or medical situations due to lack of support. Guardianship services for income-eligible New Mexicans is a rapidly rising cost for the state as more people seek guardianship services because no alternative to guardianship exists. The availability of SDMA will reduce the need and costs for state-funded guardianship services.

KK/al/rl