

LFC Requester:	Rachel Mercer-Garcia
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AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO

AgencyAnalysis.nmlegis.gov and email to billanalysis@dfa.nm.gov

(Analysis must be uploaded as a PDF)

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: 01/28/2025 *Check all that apply:*
Bill Number: HB 124 Original Correction
 Amendment Substitute

Sponsor: Joanne J. Ferrary **Agency Name and Code** Developmental Disabilities Council
Short Title: Death of a Protected Person **Number:** _____
Title: _____ **Person Writing** Joseph Turk
Phone: (505) 318-9773 **Email** Joe.Turk@ddc.nm.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
\$0	\$0		

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
\$0	\$0			

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	\$0	\$89.0	\$89.0	\$267.0	Recurring	General

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: HB 124 proposes to make two changes to statutes in the Uniform Probate Code, Section 45-4-306 and 45-5-307. First, in 45-5-307, it replaces the antiquated term “incapacitated person” with “protected person” throughout. This change will have no financial effect and brings the statute up to date with accepted contemporary terminology describing people with disabilities who have guardians.

The second change is to redraft 45-5-306, “Death of Protected Person or Guardian,” to give the guardian additional authority and obligations upon the death of the Protected Person. The guardian is entitled to a copy of the death certificate, which they currently cannot obtain. The guardian also can request a hearing, to be held within seven days, for the Court to direct burial, cremation, or funeral arrangements, and for the services to be paid for from the Protected Person’s estate. If the Protected Person has a will, the guardian shall deposit it with the court for safekeeping, and inform the personal representative or beneficiary named therein. The guardian must retain the Protected Person’s estate for delivery to a duly appointed personal representative, and if no such representative has been appointed within 40 days of the person’s death, the guardian may apply to exercise the powers and duties of a personal representative and administer and distribute the estate. A “Final Guardian Report” shall be filed within 45 days of the person’s death. Upon receipt of the “Final Guardian Report,” the court shall hold a hearing to confirm the estate was administered. After the hearing, the Court shall issue an Order terminating the guardianship.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

The proposed language places additional burdens and obligations on guardians after the death of a Protected Person. For NM Office of Guardianship (“OOG”) cases, the vast majority do not have property or an estate to distribute, nor a will, and therefore administering the estate is not likely to involve much additional work. But the proposed language will require an additional hearing in every case upon the death of a Protected Person. Currently, OOG pays its professional guardians \$500 upon the filing of a “Final Guardian Report.” If a hearing is required in addition to filing the report; and if guardians are required to document and demonstrate the distribution of a Protected Person’s assets upon death, this represents an increase in the amount of work to be completed after the person’s death. Since the reports are to be submitted and the final hearing conducted within 45 days of the person’s death, this likely will mean an additional two months of work from each professional guardian. In FY24, there were 100 deaths among OOG’s Protected People. Two additional months of work, at \$445 per month, totals \$89,000 paid to professional guardians annually to wrap up the dead of a protected person. No additional appropriations are requested or required to implement the additional duties outlined in the proposed bill.

SIGNIFICANT ISSUES

Making death certificates available to guardians is a welcome change to current law. Currently guardians are not entitled to such documents, which presents a hurdle to resolve the estate and making final arrangements. The additional work expected of guardians is an increase in expectations placed upon them, but this can be compensated for and addressed in the Scope of Work that guardianship agencies sign when they contract with OOG.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS