

LFC Requester:

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AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

SECTION I: GENERAL INFORMATION

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

Date Prepared: 1/30/2025

Check all that apply:

Bill Number: HB149

Original Correction
Amendment Substitute

Sponsor: Rep. Michelle Pauline Abeyta,
Rep. Joanne J. Ferrary, and
Rep. Charlotte Little

Agency Name and Code Number: 305 – New Mexico
Department of Justice

Person Writing

Short Title: Supported Decision-Making
Act

Analysis: Riley Masse, AAG

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(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						

(Parenthesis () Indicate Expenditure Decreases)

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

SECTION III: NARRATIVE

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Synopsis:

HB149 would create a new “Supported Decision-Making Act.” Generally, this would allow an adult to enter into a supported decision-making agreement, in which they may appoint a supporter to assist the supported decision-maker in any or all of the following:

- Understanding the options, responsibilities, and consequences of life decisions without making those decisions on the supported decision-maker’s behalf;
- Accessing, collecting, and obtaining information relevant to the life decision, including medical, psychological, financial, educational, or treatment records from any person;
- Understanding any of the above information; and
- Communicating the supported decision-maker’s decisions to appropriate persons.

The bill would also create a new “supported decision-making program” within the Office of Guardianship (the Office) in the Developmental Disabilities Council (DDC), which would provide information and other resources to adults interested in entering into supportive decision-making agreements.

Section 1 contains the short title of the newly created act, the Supported Decision-Making Act (the Act).

Section 2 contains definitions.

Section 3 covers the scope of agreements. This section permits an adult to enter into a supported decision-making agreement to assist in decision-making as outlined above.

Section 4 contains requirements for a supported decision-making agreement, including that the agreement shall be in writing, dated, signed voluntarily, designate a supporter, list the types of decisions the supporter is or is not authorized to assist with, and contain a consent signed by the supporter. Section 4 also requires that the agreement be signed in the presence of at least two witnesses or a notary public.

Section 5 creates a presumption of capacity for adults entering into supported decision-making agreements and states that a supported decision-making agreement may not be used as evidence

of capacity or incapacity in a civil or criminal proceeding.

Section 6 outlines the duties and prohibitions of a supporter. The duties include good faith, care, competence, diligence, and avoidance of self-dealing. The prohibitions include prohibition on making decisions for the supported decision-maker and obtaining or using information without consent.

Section 7 clarifies that a supporter is not a fiduciary agent of the supported decision-maker.

Section 8 would disqualify someone with a civil or criminal no-contact order with the supported decision-maker from acting as a supporter. It would further disqualify individuals placed in the state's employee abuse registry, individuals convicted of crimes involving violence or dishonesty within the preceding ten years, and individuals who are currently incarcerated from acting as supporters.

Section 9 states that if a supporter accesses or obtains information protected under the federal Health Insurance Portability and Accountability Act of 1996 or educational records under the federal Family Educational Rights and Privacy Act of 1974, they shall ensure that the information is kept privileged, confidential, and not subject to unauthorized access. Section 9(B) clarifies that the existence of a supported decision-making agreement does not preclude a supported decision-maker from seeking personal information without assistance.

Section 10 limits liability for third parties who rely in good faith on supported decision-making agreements or attempt to comply with provisions of the bill.

Section 11 states that a decision made under a supported decision-making agreement shall be recognized under any law as the decision of the supported decision-maker.

Section 12 provides that the term of a supported decision-making agreement shall extend until terminated or until otherwise provided in the agreement. Section 12(B) provides bases for termination of a supported decision-making agreement including if adult protective services finds that the supported decision-maker has been abused, neglected, or exploited by the supporter; if the supporter becomes disqualified under Section 8; if the supported decision-maker gives notice orally, in writing, or otherwise of intent to terminate the agreement; or if the supporter gives notice in writing of their resignation.

Section 13 provides for mandatory reporting if someone who receives a copy or is aware of the agreement has cause to believe the supported decision-maker is being abused, neglected, or exploited by the supporter. Such person shall report the alleged abuse, neglect, or exploitation to the aging and long-term services department's adult protective services division's statewide intake hotline.

Section 14 would create a "supported decision-making program" within the Office of the DDC. Under Section 14(B), this program may provide information to those interested in entering into a supported decision-making agreement, facilitate and monitor such agreements, and provide resources and assistance to supported decision-makers who believe their supporter is acting outside the scope of the agreement or to those seeking to report abuse, neglect, or exploitation of supported decision-makers.

Section 15 provides for an appropriation of \$289,000 to the DDC to carry out the provisions of the bill and to hire staff to create and administer the supported decision-making program.

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.

SIGNIFICANT ISSUES

Section 13 includes mandatory reporting that seems to extend to any person whatsoever, perhaps even children or others who may not be in a position to make such a report, and does not provide information regarding whether such reporting may be anonymous or what will be required of the reporter upon calling the identified hotline. The bill also does not set forth any consequence for failing to report.

Also, while the bill outlines prohibited actions on the part of designated supporters, it does not outline any specific consequences for engaging in a prohibited action.

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None found.

TECHNICAL ISSUES

None noted.

OTHER SUBSTANTIVE ISSUES

N/A

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

N/A