



## **BILL SUMMARY**

### Synopsis:

House Bill 149 (HB 149) creates the Supported Decision-Making Act; provides requirements for Supported Decision-Making agreements and creates a Supported Decision-Making (SDM) Program within the Office of Guardianship (OOG) at the Developmental Disabilities Council (DDC). HB 149 makes an appropriation of \$289,000 to OOG in FY26 to carry out the provisions of the act and to hire full-time employees and contract support to create and administer this new program. This bill includes definitions for “adult,” “supported decision-maker,” “supported decision-making agreement,” and “supporter.”

A supported decision-maker may voluntarily, without undue influence or coercion, enter into a supported decision-making agreement with one or more supporters. A supported decision-maker may be authorized by a supporter to do any of all of the following:

1. Provide assistance in understanding the options, responsibilities, and consequences of the supported decision-maker’s life decisions, without making those decisions on behalf of the supported decision-maker;
2. Assist the supported decision-maker in accessing, collecting, and obtaining information that is relevant to a given life decision, including medical, psychological, financial, educational, or treatment records;
3. Assist the supported decision-maker in understanding the information described in this act; and
4. Assist the supported decision-maker in communicating the supported decision-maker’s decisions to appropriate people.

HB 149 states that a SDM agreement may be in any form but shall:

1. Be in writing;
2. Be dated;
3. Be signed voluntarily, without coercion or undue influence, by the supported decision-maker and the supporter;
4. Designate a supporter;
5. List the types of decisions with which the supporter is authorized to assist the supported decision-maker;
6. List the types of decisions, if any, with which the supporter is not authorized to assist the supported decision-maker; and
7. Contain a consent signed by the supporter indicating the supporter’s (a) relationship to the supported decision-maker, (b) willingness to act as a supporter, and (c) acknowledgment of the duties of a supporter.

## FISCAL IMPLICATIONS

There are no known fiscal implications for the Aging and Long-Term Services Department (ALTSD).

## SIGNIFICANT ISSUES

Research has repeatedly shown that individuals with disabilities and older adults who regularly make their own decisions and maintain greater self-determination experience greater well-being.<sup>1</sup> Further, there has been extensive research which has found that individuals with disabilities who are more self-determined are more likely to recognize and avoid abuse.<sup>2</sup> Several states across the country have enacted various types of SDM statutes.<sup>3</sup> The New Mexico Legislature appropriated \$15,000 to DDC in FY22 for an SDM task force to study SDM across the country and make recommendations on how to implement the program in New Mexico. The SDM Task Force reviewed existing SDM models and solicited key stakeholder input to develop a strategy for implementing SDM in New Mexico, including any necessary legislation, outreach, and education. DDC indicated that codifying SDM would clarify how the model works and create a uniform process and form.<sup>4</sup> HB149 embodies the recommendations that came out of the SDM Task Force.

About 6,000 New Mexicans are under guardianship or conservatorship. OOG typically processes approximately 125 new cases a year and often times has a waitlist. DDC has seen a drastic increase of requests for guardianship services in the past 4-5 years, causing the agency to submit 20-25% budget increases year over year. DDC reported the rate of guardianship applications has doubled in the past several years. If HB 149 is passed, it may reduce the number of guardianship applications submitted to OOG.

One of the divisions within ALTSD is Adult Protective Services (APS), which is statutorily tasked with the detection, correction, and elimination of abuse, neglect, or exploitation through short-term services for adults in need of protective services. APS evaluates all cases from a person-centered and least restrictive perspective when considering services for clients. In certain necessary circumstances, APS makes referrals to OOG for individuals in need of guardianship. APS also receives case referrals with concerns related to whether a current guardianship is necessary and if the guardian is acting in the protected person's best interest. If HB 149 were passed, it would give APS an additional resource for certain clients to allow individuals autonomy and independent decision-making.

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<sup>1</sup> e.g., Shogren, K., et al. (2012). Relationships between self-determination and postschool outcomes for youth with disabilities, *J. Special Educ.* 4. 256 (2015); Powers, L., et al. (2012). My life: Effects of a longitudinal, randomized study of self-determination enhancement on the transition outcomes of youth in foster care and special education, *Child. & Youth Services Rev.* 34, 2179; McDougall, J, et al. (2010). The importance of self-determination to perceived quality of life for youth and young adults with chronic conditions and disabilities, *Remedial & Special Educ.* 31, 252.

<sup>2</sup> e.g., Shogren, K., et al. (2012). Relationships between self-determination and postschool outcomes for youth with disabilities, *J. Special Educ.* 4. 256 (2015); Powers, L., et al. (2012). My life: Effects of a longitudinal, randomized study of self-determination enhancement on the transition outcomes of youth in foster care and special education, *Child. & Youth Services Rev.* 34, 2179; McDougall, J, et al. (2010). The importance of self-determination to perceived quality of life for youth and young adults with chronic conditions and disabilities, *Remedial & Special Educ.* 31, 252.

<sup>3</sup> <https://supporteddecisions.org/resources-on-sdm/state-supported-decision-making-laws-and-court-decisions/>

<sup>4</sup> <https://www.nmddpc.com/media/files/SDM%20TASK%20FORCE%20REPORT.pdf>

## **PERFORMANCE IMPLICATIONS**

## **ADMINISTRATIVE IMPLICATIONS**

OOG within the DDC will oversee the Supported Decision-Making Program and may need to coordinate with APS and legal aid organizations for development support.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

## **TECHNICAL ISSUES**

While this proposed legislation may impact the guardianship system, SDM would not replace either guardianship or conservatorship. If successful, the bill could reduce reliance on guardianship and increase self-determination for individuals with disabilities by providing an alternative and allowing more accessibility to decision-making support.

The effectiveness of the bill will depend on outreach efforts to educate individuals with disabilities, families, and service providers.

## **OTHER SUBSTANTIVE ISSUES**

## **ALTERNATIVES**

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Individuals with disabilities and older adults who have capacity may have limited alternatives to guardianship, or conservatorship which ultimately reduces autonomy and general well-being. Further, if this HB149 is not passed there maybe increased legal and administrative costs associated with unnecessary guardianship petitions both in the public and private sectors. Additionally, without a formal legal framework, SDM may occur informally, potentially leading to exploitation or legal challenges.

## **AMENDMENTS**