

LFC Requester:

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: 1/27/2025 *Check all that apply:*
Bill Number: H 149 Original x Correction
 Amendment Substitute

Sponsor: Michelle Paulene Abeyta **Agency Name** Developmental Disabilities Council
Joanne Ferrary **and Code** 647
Short Title: Supported Decision-Making Act **Number:** _____
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
0	289,000	Recurring	General

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
0	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						

(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 149 (Supported Decision-Making Act) will codify supported decision making (SDM), an effective alternative to guardianship with demonstrated success. The Act defines SDM agreements, which are documents in which supported decision makers identify supporters who can help the supported decision maker understand their options, obtain information relevant to their decisions, and communicate their decisions. The Act creates a SDM program within the Office of Guardianship at the Developmental Disabilities Council. HB 149 makes an appropriation of \$289,000 in FY26 to establish the SDM program.

FISCAL IMPLICATIONS

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. This bill will allow DDC to establish a system of support for individuals with disabilities who end up in the guardianship system because they do not have access to a less restrictive alternative to guardianship. Studies by national health experts show that supporting self-determination of people with disabilities increases life span and quality of life. The state can reduce or avoid high cost supports and services, such as guardianship and acute health care services, for individuals who have the type of support provided in this bill.

Guardianship is a court proceeding. Once a guardian is appointed, courts have continuing jurisdiction and mandated oversight activities they must conduct until a guardianship is terminated. SDM is a system that avoids guardianship and keeps individuals out of the court system, saving significant judicial time and resources. Even within the context of guardianship, practicing SDM follows the National Guardianship Association's standards of practice.

DDC requests \$289,000 of general fund dollars to hire two full-time employee and contract support to implement supported decision-making effectively in this state. The Legislature appropriated \$15,000 for DDC in FY22 to form a SDM Task force to study SDM across the country and make recommendations on how to implement SDM in New Mexico.

The SDM Task Force concluded that legislation was necessary to implement SDM in NM. Codifying SDM would clarify how the model works, create a uniform process and form, and institutionalize the necessary legitimacy for the model's acceptance by individuals, service providers, and institutions. The task force also recognized that the passage of legislation alone will be insufficient to ensure the successful, widespread use of SDM in New Mexico. Engagement of stakeholders, education and outreach, and the development of resources and infrastructure will also be critical components. DDC requests the appropriation in this bill to implement the intent of the Act.

SIGNIFICANT ISSUES

DDC Office of Guardianship Challenges

One of the greatest challenges DDC faces is providing support and assistance to those who either are not eligible for guardianship but need more support than they currently have, or default into guardianship unnecessarily because they have no other way to receive critical support they need. DDC is then forced to decide whether to leave a person unassisted or take away their legal and civil rights in order provide them the only avenue of assistance available under the law.

Currently, about 6,000 New Mexicans are under guardianship or conservatorship. Office of Guardianship processes 125-175 new cases a year and sometimes has a waitlist of almost 200 people at the highest point in a year. The rate of guardianship applications has doubled in the past 2-3 years. Due to the drastic increase of requests for guardianship services in the past 3-4 years, DDC has been forced to submit 20-25% budget increases year over year.

DDC anticipates a significant reduction in the number of guardianships requested and filed once SDM is institutionalized and has widespread use. Further, SDM will be a crucial tool to support young adults in foster care wraparound teams and DD waiver interdisciplinary teams when they turn 18, as well as an important resource for individuals receiving mental and behavioral health treatment seeking assistance with decision-making.

Supported Decision Making Task Force Findings

The SDM Task Force reviewed existing SDM models and solicited key stakeholder input in order to develop a strategy for implementing SDM in New Mexico, including any necessary legislation, outreach, and education. The 25 task force members included:

- Protected persons subject to guardianship
- Persons relying on alternatives to guardianship
- Persons with disabilities
- Family members of persons with disabilities
- Professional guardians/conservators
- Legal services organizations
- Disability advocates
- Service providers
- Policy experts
- Attorneys
- Judiciary

The SDM Task Force made the following findings:

- Guardianship is often the “go-to” intervention for individuals with disabilities, even when it is not necessary.
- Guardianships in the state are sometimes ordered with insufficient medical justification or exploration of least restrictive alternatives.
- Least restrictive alternatives to guardianship are often not identified or considered when they could have been feasible.
- Guardianship proceedings are often colored by assumptions that people with disabilities lack capacity.
- Pipelines to guardianship include:
 - o Schools
 - o Foster care
 - o Medical facilities
 - o Criminal justice system

- Unhoused individuals
- SDM is a valuable mechanism:
 - For maximizing the autonomy, agency, and civil rights of New Mexicans living with disabilities;
 - As an alternative to unnecessary guardianships;
 - As an accommodation to help people with disabilities exercise legal capacity in a manner equal to others.
- SDM represents a paradigm shift that challenges paternalistic ideas about the inability of individuals with disabilities to direct their own lives, and about the need to prioritize their protection versus their autonomy. Adoption of SDM will require buy-in from stakeholders and a significant cultural shift.

SDM is universally recognized by national judicial experts, national developmental disabilities experts, and national health experts as the most effective model for supporting self-determination of people with disabilities, increasing life span and quality of life, and avoiding/terminating adult guardianships. In a 2022 meeting of the Supreme Court’s Working Interdisciplinary Network of Guardianship Stakeholders (WINGS), the national judicial expert identified SDM as the top guardianship alternative model in the country. WINGS members unanimously endorsed the SDM Act in 2024.

SDM is necessary in NM to ensure people receive the assistance they need to live as autonomously as they can. SDM is the next critical step to recognizing that New Mexicans living with disabilities are people first, and not a disability to be managed.

PERFORMANCE IMPLICATIONS

Currently, about 6,000 New Mexicans are under guardianship or conservatorship. Office of Guardianship processed 200 new cases in FY24 and now has a waitlist of over 300 guardianship applicants. The rate of guardianship applications has more than doubled in the past 2-3 years.

DDC anticipates a significant reduction in the number of guardianships requested and filed once SDM is institutionalized and has widespread use. Further, SDM will be a crucial tool to support young adults in foster care wraparound teams and DD waiver interdisciplinary teams when they turn 18, as well as an important resource for individuals receiving mental and behavioral health treatment seeking assistance with decision-making.

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

The biggest concern DDC has heard about SDM is the fear of bad actors using SDM agreements to abuse, neglect, or exploit individuals with disabilities. Those unsure about SDM are worried that SDM does not have enough built-in oversight. Historically, individuals with powers of attorney, guardianship, and other substitute decision makers experience abuse, neglect, or exploitation because the substitute decision maker has full control and power over decisions, even though those systems have far more oversight. In SDM, the decision-making power

remains with the individual. Individuals with disabilities can and should direct their own lives as much as possible and avoid situations such as guardianship in which they lose control of their lives. SDM teaches and empowers individuals to identify toxic, abusive, or exploitive behavior rather than rely on others to make those determinations.

Additionally, SDM agreements must state that supporters do not have decision making authority and that third parties relying on the agreement must report any perceived abuse, neglect, or exploitation. That language and, most importantly, the lack of decision-making power will do more to deter bad actors than any amount of oversight provided to guardianship and other substitute decision making schemes.

To address this concern, some states have funded programs to facilitate the implementation of SDM agreements and provide supporter training, which serves as an additional layer of oversight. In HB 149, DDC Office of Guardianship will take on those functions, which will require 2 FTE and additional contractors.

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Without SDM, many New Mexicans living with disabilities seeking assistance with decision-making in their lives, and their families, face the terrible decision of either allowing the person to fall through the cracks in our state's paltry support system, or allowing their legal and civil rights to be stripped away. Once a guardianship is implemented, it is a very expensive, time-consuming, and difficult process to terminate. SDM is long overdue in New Mexico. Failure to enact this legislation means that New Mexico continues to have many missing rungs on the ladder of support for people with disabilities and essentially endorses the discriminatory assumption that people with disabilities should not have the same freedoms and rights as other citizens simply because they have a disability.

A multitude of studies show that not being allowed to make decisions, or having one's decisions ignored, leads to an increased likelihood of depression, anxiety, loneliness, and may worsen psychological symptoms, leading to rapid decline in physical and mental health. SDM is an important layer of protection for the rights of people with disabilities because the final decision remains solely with the individual and not with a substitute decision maker such as a guardian or even a power of attorney. SDM also empowers individuals to identify toxic, abusive, or exploitive behavior rather than rely on someone else to make those determinations.

The SDM Task Force concluded that legislation was necessary to implement SDM in NM. Codifying SDM would clarify how the model works and institutionalize the necessary legitimacy for the model's acceptance by individuals, service providers, and institutions.

AMENDMENTS