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FISCAL IMPACT REPORT

SPONSOR Ferrary LAST UPDATED _____
ORIGINAL DATE 02/03/2024
BILL
SHORT TITLE Death of Protected Person or Guardian NUMBER House Bill 124
ANALYST Chilton

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	No fiscal impact	No fiscal impact	No fiscal impact	No fiscal impact		

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Relates to House Bill 125, House Bill 149

Sources of Information

LFC Files

Agency Analysis Received From
Administrative Office of the Courts (AOC)
New Mexico Attorney General (NMAG)

SUMMARY

Synopsis of House Bill 124

House Bill 124 (HB124) makes several changes in Section 45-5-306 NMSA 1978 and Section 45-5-412 NMSA 1978 concerning guardians—those qualified to provide for the care, custody, or control of a minor or incapacitated person—and conservators—those appointed by a court to manage the property or financial affairs or both of a protected person.

The bill specifies a guardianship or conservatorship terminates on the death of the guardian or conservator, and the court may appoint a new guardian or conservator. If the protected person dies, the guardian or conservator is to notify the court within three days. Unless a personal representative is named in a will or other document, the guardian or conservator may become the personal representative of the deceased protected person, making arrangements for the disposal of that person’s estate. If both a conservator and guardian wish to be appointed personal representative, the court shall decide, giving precedence to the conservator. Forty-five days after the death, the appointed personal representative will provide a report to the court on disposal of assets, and the guardianship or conservatorship or both will be dissolved.

The bill would replace “incapacitated person” in the two sections of existing statute with the term “protected person.”

The effective date of this bill is July 1, 2025.

FISCAL IMPLICATIONS

There is no appropriation in House Bill 124. No fiscal implications are identified, although the possibility of saving court time and effort may accrue from clarifications in this bill.

SIGNIFICANT ISSUES

AOC notes the provisions of this bill are a response to the recommendations of the interdisciplinary Working Interdisciplinary Network of Guardianship Stakeholders (WINGS), which considered issues in conservatorship and guardianship at length and recommended the following actions, contained within this bill:

- Continue guardianship or conservatorship after the protected person’s death to allow for obtaining a death certificate and arranging and paying for funeral expenses;
- Allow for appointing conservator or guardian as personal representative, giving preference to a conservator;
- Provide a process to review a conservator’s or guardian’s final report after the death of the protected person and ascertain that any estate is delivered to the appointed personal representative.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB124 relates to House Bill 125, allowing liability waivers for conservators, and House Bill 149, creating a Supported Decision-Making Act to allow for agreements between individuals in which the supporter would provide information but not have decision-making authority.

TECHNICAL ISSUES

NMAG suggests two changes:

- Currently Section 45-5-415 is cross referenced in Section 45-5-101 “Definitions and use of terms” wherein a “‘limited conservatorship’ means that an incapacitated person is subject to a conservator’s exercise of some but not all of the powers enumerated in Sections 45-5-424 and 45-5-425 NMSA 1978[.]” If those duties that were moved from section 45-5-425(E) are intended to remain with a limited conservatorship, then the new section created by Section 3 may need to be added to the definition in Section 45-5-101.
- In both section 1 and 3, upon the death of the protected person, HB124 imposes a duty to the guardian or conservator to notify the court of the death within three days of “learning of the death.” In contrast, those sections impose a duty on the guardian or conservator to file a final report within forty-five days of the protected person’s death. For consistency, similar language from the notification of death may be considered for the final report timeline, either “forty-five days after learning of the protected person’s death” or “forty-five days after notifying the court of the protected person’s death.”