

Department of Planning and Budget 2020 Fiscal Impact Statement

1. Bill Number: HB1321

House of Origin Introduced Substitute Engrossed
Second House In Committee Substitute Enrolled

2. Patron: Kory

3. Committee: Health, Welfare and Institutions

4. Title: Guardianship; supported decision making.

5. Summary: Creates the Supported Decision-Making Act, which allows an adult with an intellectual or developmental disability to enter into an agreement with another person, called a "supporter," for the purposes of having the supporter assist the adult in making decisions to manage his affairs, giving adults who need assistance a less restrictive means of receiving such assistance than being appointed a guardian or conservator by a court.

The bill further requires a guardian ad litem in a proceeding for the appointment of a guardian or conservator to consider whether a less restrictive alternative, including the use of an advance directive or durable power of attorney, is available to provide assistance to the respondent, and it requires the guardian ad litem to include in his report to the court information as to whether a supported decision-making agreement is a viable option in lieu of guardianship or conservatorship.

The bill also provides that if the respondent to a guardianship or conservatorship petition is between 17 and a half and 21 years of age and has an Individualized Education Plan (IEP), the guardian ad litem appointed to represent the respondent shall review the IEP and include the results of his review in the report required to be submitted to the court, and it requires the Superintendent of Public Instruction to prepare transitional materials, including information about supported decision-making agreements and guardianship to be provided to students and parents during the student's annual IEP meeting.

The bill requires the court, upon appointment of a guardian or conservator, to inform such person of his duties and that the respondent should be encouraged to participate in decisions, act on his own behalf, and develop or maintain the capacity to manage his personal affairs if he retains any decision-making rights. Finally, the bill sets out specific language to be included in all orders of appointment of a guardian.

This bill is a recommendation of the Joint Commission on Health Care.

6. Budget Amendment Necessary: No.

7. Fiscal Impact Estimates: See Item 8 below.

8. Fiscal Implications: This legislation would create an alternative to traditional guardianship in the form of Supported Decision Making. To accommodate this legislation, the Department of Behavioral Health and Developmental Services would need to develop a form by which an individual with an intellectual or developmental disability could enter into a supported decision making agreement with a “supporter”. Should this legislation pass, DBHDS will coordinate with The Virginia Board for People with Disabilities to inform individuals with ID/DD diagnoses. The Board for Behavioral Health and Developmental Services will also need to write new regulations around supported decision making. Existing staff can absorb all of these activities.

Additionally, a modification to the DBHDS’ Medicaid Waiver Management System (WaMS) to recognize a “supporter” as a representative contact will be necessary. According to the WaMS administrator, this will cost DBHDS anywhere between \$1,500 and \$4,000. It is assumed that DBHDS can absorb this expense.

9. Specific Agency or Political Subdivisions Affected: Department of Behavioral Health and Developmental Services

10. Technical Amendment Necessary: No.

11. Other Comments: None.