

FISCAL NOTE
LEGISLATIVE FISCAL ANALYST ESTIMATE

ESTIMATE OF FISCAL IMPACT – STATE AGENCIES (See narrative for political subdivision estimates)				
	FY 2024-25		FY 2025-26	
	EXPENDITURES	REVENUE	EXPENDITURES	REVENUE
GENERAL FUNDS				
CASH FUNDS				
FEDERAL FUNDS				
OTHER FUNDS				
TOTAL FUNDS				

Any Fiscal Notes received from state agencies and political subdivisions are attached following the Legislative Fiscal Analyst Estimate.

LB 1168 is the Uniform Health-Care Decisions Act.

Section 2 provides definitions and terms for the Act.

Section 3 states that an individual is considered to have the capacity for making health-care decisions if they can communicate a decision independently or with assistance, and understand the nature and consequences of health-care decisions, instructions, or the appointment of an agent.

Section 4 allows an individual that's presumed to have the capacity to make or revoke health-care decisions unless proven otherwise. It states that the capacity may be rebutted by a finding from a qualified health professional. Certain individuals, like family members or surrogates, are prohibited from making this determination. If an individual's condition changes or a health professional believes they have regained capacity, the presumption of capacity is restored unless a court decides otherwise.

Section 5 outlines the procedure following finding of lack of capacity. Section 6 states that if an individual is found to lack capacity, various parties can petition the court to legally determine the individual's capacity. The court will appoint legal counsel for the individual and conduct a hearing to make a determination.

Section 7 allow an individual to create instructions detailing their preferences for future health care. It states that health-care professionals must document any instructions given to them in the individual's medical records.

Section 8 states that when creating a Power of Attorney, an individual can appoint an agent to make health-care decisions, but certain individuals, such as those working in the individual's care facility, are disqualified from acting as an agent unless they are family or close relations, and the power of attorney must be properly recorded and signed by both the individual and a qualified witness.

Under Section 9, an individual is empowered to create an advance health-care directive specifically tailored for mental health care, encompassing their general philosophy, specific goals, preferences, and detailed instructions for various mental health care scenarios. Importantly, this directive can include provisions that prevent its revocation during certain psychiatric or psychological events.

Section 10, states that in situations where there are conflicting mental health-care directives, the most recent directive takes precedence and revokes any earlier conflicting ones to the extent of the conflict. However, it's important to note that appointing an agent for mental health care decisions does not inherently nullify any previous appointments for other health-care decisions, unless this is explicitly stated in the directive.

Section 12 & 14 allows for a default surrogate is authorized to make health-care decisions for an individual who lacks capacity and does not have an appointed agent or guardian available. In this role, the surrogate may be required by a health-care professional to provide a sworn declaration, affirming their authority to act, thus ensuring that the decisions made are based on substantiated facts and within their rights.

Sections 15-18 of the document establish crucial guidelines for decision-making by default surrogates in health-care settings. Decisions made by a surrogate are recognized as effective without needing judicial approval, as stated in Section 15. In situations where disagreements arise among surrogate members, the majority's decision prevails, provided it is in line with their duties, as outlined in Section 16. However, if the surrogates are deadlocked and unable to resolve their differences, the decision-making reverts to state laws concerning the treatment of individuals lacking capacity, a scenario covered in Section 17. Furthermore, Section 18 permits an individual to disqualify a default surrogate, a provision that remains valid even if the disqualifying individual lacks the capacity to create

an advance directive. Finally, Section 19 specifies the criteria for disqualifying a potential default surrogate, including circumstances where they pose a risk to the individual's well-being or have associations with the individual's care facility, except in cases where they are family members or closely related.

Expenditures:

The Supreme Court states that setting up agents for health-care decisions could likely decrease the number of guardianship-related court cases. The process outlined in Section 6 might lead to a higher demand on the judicial system and increase revenue through filing fees. The overall impact is indeterminable at this time.

The appointment of counsel outlined in LB1168 would be an expense on the county.

ADMINISTRATIVE SERVICES STATE BUDGET DIVISION: REVIEW OF AGENCY & POLT. SUB. RESPONSE		
LB: 1168	AM:	AGENCY/POLT. SUB: Nebraska Department of Health and Human Services (025)
REVIEWED BY: Joe Wilcox	DATE: 01/26/2024	PHONE: (402) 471-4178
COMMENTS: No disagreement with the Nebraska Department of Health and Human Services (DHHS) estimate of No Fiscal Impact to the Agency from LB 1168.		

ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION

State Agency or Political Subdivision Name:(2) Department of Health and Human Services

Prepared by: (3) John Meals

Date Prepared 1-26-2024

Phone: (5) 471-6719

	<u>FY 2024-2025</u>		<u>FY 2025-2026</u>	
	<u>EXPENDITURES</u>	<u>REVENUE</u>	<u>EXPENDITURES</u>	<u>REVENUE</u>
GENERAL FUNDS				
CASH FUNDS				
FEDERAL FUNDS				
OTHER FUNDS				
TOTAL FUNDS	\$0	\$0	\$0	\$0

Return by date specified or 72 hours prior to public hearing, whichever is earlier.

Explanation of Estimate:

There is no fiscal impact to the Department of Health and Human Services.

MAJOR OBJECTS OF EXPENDITURE

PERSONAL SERVICES:	POSITION TITLE	NUMBER OF POSITIONS		2024-2025	2025-2026
		24-25	25-26	EXPENDITURES	EXPENDITURES
Benefits.....					
Operating.....					
Travel.....					
Capital Outlay.....					
Aid.....					
Capital Improvements.....					
TOTAL.....				\$0	\$0

Please complete ALL (5) blanks in the first three lines.

2024

LB⁽¹⁾ 1168

FISCAL NOTE

State Agency OR Political Subdivision Name: ⁽²⁾ 05 Supreme Court

Prepared by: ⁽³⁾ Eric Asboe Date Prepared: ⁽⁴⁾ 1/27/2024 Phone: ⁽⁵⁾ 402-326-9215

ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION

	<u>FY 2024-25</u>		<u>FY 2025-26</u>	
	<u>EXPENDITURES</u>	<u>REVENUE</u>	<u>EXPENDITURES</u>	<u>REVENUE</u>
GENERAL FUNDS	_____	_____	_____	_____
CASH FUNDS	_____	_____	_____	_____
FEDERAL FUNDS	_____	_____	_____	_____
OTHER FUNDS	_____	_____	_____	_____
TOTAL FUNDS	=====	=====	=====	=====

Explanation of Estimate:

LB1168 allows individuals to appoint agents or authorize individuals for health care decisions. Section 6 allows certain individuals to petition the county court to determine if a person lacks capacity. The court, in turn, is to appoint legal counsel if the person does not have counsel. The court is to make a determination regarding capacity no later than seven days after a hearing.

Establishing agents has the potential of reducing court cases involving guardianships. However, Section 6 creates a court process that has the potential to increase judicial workload and increase revenue from filing fees. A reasonable estimate of the overall impact cannot be determined. No additional resources required at this time. Note: appointment of counsel would be a county expense.

BREAKDOWN BY MAJOR OBJECTS OF EXPENDITURE

Personal Services:

<u>POSITION TITLE</u>	<u>NUMBER OF POSITIONS</u>		<u>2024-25</u>	<u>2025-26</u>
	<u>24-25</u>	<u>25-26</u>	<u>EXPENDITURES</u>	<u>EXPENDITURES</u>
Benefits.....	_____	_____	_____	_____
Operating.....	_____	_____	_____	_____
Travel.....	_____	_____	_____	_____
Capital outlay.....	_____	_____	_____	_____
Aid.....	_____	_____	_____	_____
Capital improvements.....	_____	_____	_____	_____
TOTAL.....	_____	_____	_____	_____