

December 14, 2012

The Honorable Jack Hatch, Chair
Health and Human Services Appropriations Subcommittee

The Honorable David Heaton, Chair
Health and Human Services Appropriations Subcommittee

The Honorable Amanda Ragan, Vice-Chair
Health and Human Services Appropriations Subcommittee

The Honorable Mark Brandenburg, Vice-Chair
Health and Human Services Appropriations Subcommittee

The Honorable David Johnson, Ranking Member
Health and Human Services Appropriations Subcommittee

The Honorable Lisa Heddens, Ranking Member
Health and Human Services Appropriations Subcommittee

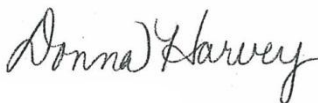
Dear Legislators:

Please accept the following report, submitted pursuant to Senate File 2336, which states, "The department shall develop recommendations for an implementation schedule, including funding projections, for the substitute decision maker program created pursuant to chapter 231E, and shall submit the recommendations to the individuals identified in this Act for submission of the reports by December 15, 2012."

Senate File 2336 further states that the report shall be submitted to the chairpersons and ranking members of the joint appropriations subcommittee on health and human services, the legislative services agency, and the legislative caucus staffers.

Please consider the submittal of this report as compliance with the mandates established in Senate File 2336.

Sincerely,



Donna K. Harvey, Director
Iowa Department on Aging

cc: Patty Funaro
Legislative Services Agency

Amy Wiatr-Rodriguez
United States Administration on Aging

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Legislative Services Agency

Kris Bell
Senate Democratic Caucus

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Senate Republican Caucus

Zeke Furlong
House Democratic Caucus

Carrie Kobrinetz
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Sandi Hurtado-Peters
Iowa Department of Management

The Honorable William Dotzler
Iowa Commission on Aging

The Honorable Mary Gaskill
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Dennis Zegarac, Executive Director
Southeast Iowa Area Agency on Aging

Richard Stone
Iowa Commission on Aging



Report Pursuant to SF 2336:

An Act Relating to Appropriations for Health and Human Services

The department shall develop recommendations for an implementation schedule, including funding projections, for the substitute decision maker program created pursuant to chapter 231E, and shall submit the recommendations to the individuals identified in this Act for submission of reports by December 15, 2012.

**Report Developed by:
The Iowa Department on Aging
December 14, 2012**

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Funding Projections

To Fully Implement Iowa Code 231E

State Office	\$ 403,187
Salaries	\$ 259,375
Office Administration.....	\$ 11,177
Travel.....	\$ 7,600
Volunteer Guardianship Monitoring Project	\$ 14,535
Education, Training, and Awareness.....	\$ 39,500
Legal	\$ 50,000
Case Management Database	\$ 20,000
Other	\$ 1,000
Sources of Revenue.....	\$ Unknown
6 Local Offices	\$1,847,460
Salaries	\$1,449,660
Office Administration.....	\$ 88,800
Travel.....	\$ 48,000
Other	\$ 3,000
Legal	\$ 258,000
Sources of Revenue.....	\$ Unknown
To Fully Implement 231E	\$2,250,646

Substitute Decision Maker

A substitute decision maker is a guardian, conservator, attorney-in-fact under a power of attorney document, or a representative payee who assists those with limited or no decision-making capabilities make personal care and financial decisions. The Office of Substitute Decision Maker will serve as the public substitute decision maker of *last resort*, acting only where there was no willing and responsible person available to serve as a private substitute decision maker or the adult is without adequate resources to compensate a private substitute decision maker (Iowa Code § 231E.2(1)(e)).

Background

For many years, the Iowa Department on Aging has been involved in issues of substitute decision-making. The first State Task Force on Substitute Decision Making was called together in January, 1990, at the request of an interdisciplinary team of health care providers that had been struggling with the problem of substitute decision-making. The task force identified gaps in the law, identified less restrictive alternatives to guardianship/conservatorship and developed criteria for determining who needs a public substitute decision maker. This task force disbanded around 1995.

In 1998, the Department on Aging was asked to spearhead a task force (State Substitute Decision Makers Task Force) to continue to look at the unresolved issues and concerns surrounding substitute decision-making. The department brought together a diverse group of individuals and agencies to identify concerns and frustrations with the system and to develop solutions and strategies for change. The task force began meeting in August of 1999 and by March of 2001 prepared the following recommendations to members of the Iowa Legislature:

- Establish a statewide guardianship program utilizing models of public, corporate, and volunteer guardianship programs;
- Increase education about the use of legal mechanisms available to designate decision makers prior to incapacity; and
- Review the current petition, evaluation and hearing process.

This task force disbanded in 2009.

In 2005, the Iowa General Assembly passed the Substitute Decision Maker Act, using language developed by the task force. The Act called for the creation of the Office of Substitute Decision Maker. The Office was charged with the establishment of a formal substitute decision makers program of last resort to administer a statewide network to provide services if other substitute decision makers are not available (Iowa Code § 231E.4(1)). To serve the growing population of Iowa adults (18+) who are unable to meet essential requirements to maintain their physical health or to manage essential aspects of their finances, the office would be available to provide information and assistance and to serve in the least restrictive manner. The office was intended to serve as: representative payee, attorney-in-fact, guardian, conservator, or personal representative (Iowa Code § 231E.3(22)).

The Act also mandated the development of a statewide network consisting of a local office in each of the planning and service areas¹ (Iowa Code § 231E.4(3)(a)). Each local office would provide substitute decision-making services to those adults who had no private substitute decision maker available (Iowa Code § 231E.5(2)(a) and (g)) and assist private and public substitute decision makers in securing services and ensuring expeditious handling of proceedings for wards, principals, clients, and personal representatives (Iowa Code § 231E.8(2)).

Due to limited state fiscal resources, the Office of Substitute Decision Maker did not immediately receive funding. An appropriation of \$250,000 was eventually approved in 2007 but was discontinued in 2009 because of budget reduction. In the brief time the Office was funded, a staff of 2.5 were able to develop training curriculum and public awareness materials; provide training; intervene in a limited number of guardianships and conservatorships under Iowa Code § 231E.7; and provide information and assistance to an average of forty Iowans each month. With limited funding, the Office of Substitute Decision Makers was *not* able to provide substitute decision-making service.

The work done in this two-year period proved that the model supported by the Iowa Legislature would, with sufficient funding, be successful in serving this specific vulnerable population of older and disabled adults who had no willing and responsible person available to serve as a substitute decision maker. Without appropriate funding, the office could not be fully implemented and was limited as to the duties required under Iowa Code § 231E. The chart below outlines the potential of a fully-funded Office of Substitute Decision Maker.

Duties Accomplished with Limited Funding Under 231E Fiscal Years 2008/2009 - with \$250,000 Appropriation
<ul style="list-style-type: none"> • Hired Administrator (Iowa Code § 231E.4(2)) • Hired Legal Assistant (Iowa Code § 231E.4(4)(c)) • Utilized a current employee in a part time (.5) capacity. • Provided information and referrals to the public regarding substitute decision-making services (Iowa Code § 231E.4(3)(g)) • Developed a substitute decision maker education and training program and offer the program to both public and private decision makers (Iowa Code § 231E.4(3)(j)) • Intervened in cases where an appointed guardian/conservator is not fulfilling prescribed duties or the best interests of the ward require the intervention (Iowa Code § 231E.7) <p>* All employees of the Office of Substitute Decision Maker were terminated with the 2009 funding elimination.</p>

¹ The term “planning and service area” refers to an area designated by a State agency “after considering the geographical distribution of older individuals in the State, the incidence of the need for supportive services, nutrition services, multipurpose senior centers, and legal assistance, the distribution of older individuals who have greatest economic need residing in such areas, the distribution of older individuals who are Indians residing in such areas, the distribution of resources available to provide such services or centers, the boundaries of existing areas within the State which were drawn for the planning or administration of support services programs, the location of units of general purpose local government within the State, and any other relevant factors...” 42 U.S.C. § 3026(a)(1).

**Duties of the Office of Substitute Decision Maker Mandated by Iowa Code 231E
FY 2013 - with Full Appropriation**

- Hire Administrator (Iowa Code § 231E.4(2))
- Hire Investigator/Legal Assistant (Iowa Code § 231E.4(4)(c))
- Provide information and referrals to the public regarding substitute decision-making services (Iowa Code § 231E.4(3)(g))
- Re-institute a substitute decision maker education and training program and offer the program to both public and private decision makers (Iowa Code § 231E.4(3)(j))
- Intervene in cases where an appointed guardian/conservator is not fulfilling prescribed duties or the best interests of the ward require the intervention pursuant to Iowa Code 231E.7
- Hire a substitute decision maker (Iowa Code § 231E.4(4)(c))
- Serve as substitute decision maker of last resort (Iowa Code § 231E.4(2))
- Work with various state agencies and the judicial branch to establish a referral system for the provision of services (Iowa Code § 231E.4(3)(e))
- Accept judicial appointments (Iowa Code § 231E.6)
- Develop and maintain a current listing of public and private services and programs available (Iowa Code § 231E.4(3)(f))
- Provide personal representatives for estates where a person is not available for that purpose (Iowa Code § 231E.4(3)(h))
- Establish Local offices in each of the planning and service areas by July 1, 2015 (Iowa Code § 231E.4(3)(a))
- Maintain statistical data on the local offices (Iowa Code § 231E.4(3)(i))
- Monitor, maintain or terminate contracts with local offices (Iowa Code § 231E.4(3)(b))
- Provide technical assistance to the local offices
- Retain oversight responsibilities for all substitute decision makers (Iowa Code § 231E.4(3)(h))
- Act as a substitute decision maker if a local office is not available to do so (Iowa Code § 231E.4(3)(d))
- The local offices shall each provide the following services:
 - Maintain a staff of professionally qualified individuals to carry out the decision-making functions (Iowa Code § 231E.5(2)(a))
 - Identify client needs and local resources to provide necessary support services to service recipients (Iowa Code § 231E.5(2)(b))
 - Collect program data (Iowa Code § 231E.5(2)(c))
 - Conduct background checks on employees and volunteers (Iowa Code § 231E.5(2)(f))
 - Investigate the situation of a proposed ward and determine what type of substitute decision-making, if any, is required (Iowa Code § 231E.5(2)(g))
 - Serve as personal representative, where necessary. (Iowa Code § 231E.5(2)(h))
- Collect fees for provision of services when possible (Iowa Admin. Code 17-22.14).

Proposed State Office Budget

Administrator (Attorney 2)\$ 98,252

The Administrator, mandated under Iowa Code § 231E.4(2), will administer, develop, monitor, and assist to train and education professionals and the general public. The Administrator must be a licensed attorney and must have social services knowledge in order to adequately assist persons in need of substitute decision-making. The Administrator will be responsible for establishing a local office in each of the six planning and service areas (Iowa Code § 231E.4(3)(a)); providing oversight of the local office contracts (Iowa Code § 231E.4(3)(b)) and all local substitute decision makers (Iowa Code § 231E.4(3)(c)); working with various state agencies (DHS, IDPH, Governor’s Developmental Disabilities Council, etc.) and the judicial branch to establish a referral system (Iowa Code § 231E.4(3)(e)); providing legal interventions in guardianships and conservatorships where the ward is abused, neglected, or financially exploited; developing an education and training program in cooperation with the judicial council (Iowa Code § 231E.4(3)(j)); and all other duties required of an office administrator.

\$98,252 reflects the average salary of an Attorney 2, plus benefits.

Substitute Decision Maker (EO1)\$ 81,755

Under Iowa Code § 231E.4(4)(c), the state office may employ the staff necessary to administer the state office. The substitute decision maker in the state office shall be responsible for providing personal representatives for estates where there is no one else available to serve (Iowa Code § 231E.4(3)(h)) as well as acting as substitute decision maker (Iowa Code § 231E.4(3)(d)) if a local office is not available to do so. A local office may be unable to act as substitute decision maker if either a conflict exists (Iowa Code § 231E.10; Iowa Admin. Code 17-22.6) or where assisting the consumer will cause the local substitute decision maker to exceed the staffing ratios (Iowa Admin. Code 17-22.5).

The professional staff hired to serve in this role are required to have graduated from an accredited four-year college or university and be certified by the National Guardianship Association (Iowa Admin. Code 17-22.3). In addition to these qualifications, the substitute decision makers must have the knowledge and skills necessary to successfully complete a range of tasks frequently required of a substitute decision maker, including but not limited to: act as a case manager, fiduciary, and advocate; develop a budget and manage assets and finances; determine eligibility for programs and apply for the same; mediate family dynamics; conduct assessments; consent to medical care; locate resources including housing, medical care, and in-home services where needed; respond to court inquiries and complete an annual report for submission to the court.

\$81,755 reflects the average salary of an Executive Officer 1, plus benefits.

Investigator.....\$ 79,368

Under Iowa Code § 231E.4(4)(c), the state office may employ the necessary staff for program administration. The investigator will develop and maintain a current listing of public and private programs providing substitute decision-making services (Iowa Code § 231E.4(3)(f)); provide information and referrals to the public regarding substitute decision-making services (Iowa Code § 231E.4(3)(g)); assist in maintaining local statistical data and providing an annual report to the general assembly (Iowa Code § 231E.4(i)); gather information through interviews; assist attorneys in gathering and organizing evidence and testimony; and work with the judicial branch and state agencies to pursue findings of concern. In order to successfully complete these tasks and others, the investigator will need substantial experience with substitute decision making as well as a basic understanding of the legal concepts and processes involved.

\$79,368 reflects the average salary of an Investigator, plus benefits.

Office Administration\$ 11,177

These are the costs associated with the physical operation of the state office and includes rent (\$361.50 per month); phones (\$382.20 per year for three office phones; \$600 per year for one on-call smartphone); postage (\$100 per month); office supplies (\$150 per month); and a one-time cost to purchase computers (\$700 per computer x 3 employees).

Travel.....\$ 7,600

Under Iowa Code § 231E.4(3)(b) and (c), the state office shall monitor contracts with local offices and provide oversight for all local substitute decision makers, necessitating travel. The travel budget will allow state office employees to visit each of the six planning and service areas four times in order to provide technical assistance. In addition this budget allows for travel to provide education and training to members of the public and those serving as decision makers (Iowa Code § 231E.4(3)(j)). This figure also accounts for conferences and training for state office employees.

Volunteer Guardianship Monitoring Project (Year 1).....\$ 14,535

Under 231E.4(4)(b) the state office may accept the services of individual volunteers and volunteer organizations. The Office of Substitute Decision Maker will collaborate with the University of Iowa College of Law to begin a volunteer guardianship/conservatorship monitoring and assistance pilot project. This proposed pilot project will recruit, train and supervise volunteers to assist the courts in performing their function of monitoring guardianships and conservatorships. Project volunteers will ensure that court records are accurate and up to date; review reports and accountings from guardians and conservators to better protect wards; make visits to incapacitated wards to ensure needs are met; and bring identified problems and concerns to the attention of the courts. This monitoring will allow the Office of Substitute Decision Maker to intervene in cases where guardians and conservators are not fulfilling prescribed duties

The University of Iowa College of Law has offered to contribute \$116,518 towards costs associated with the operation of this pilot project (including the salary and fringe benefits of the project director, travel costs, and indirect costs). This proposed figure represents the cost of a part-time Project Coordinator in addition to travel costs for staff and volunteers. * This figure is expected to increase by \$10,300 in the second year of the project.

Education, Training, and Awareness\$ 39,500

Under Iowa Code § 231E.4(3)(j), the state office is charged with developing, in cooperation with the judicial council, a substitute decision-maker education and training program. The office will train current guardians, conservators, professionals, and volunteers on the roles and responsibilities of substitute decision makers so that abuse, neglect, and exploitation can be avoided and or detected.

Legal\$ 50,000

The state office may intervene in guardianship or conservatorship proceedings where the decision maker is not fulfilling prescribed duties or the best interests of the ward require the intervention (Iowa Code § 231E.7). These interventions require legal representation from the Iowa Attorney General’s Office (Iowa Code § 231E.11). It is estimated that these interventions will consume about 50% of an assistant attorney general’s time.

Case Management Database\$ 20,000

Under Iowa Code § 231E.4(i), the state office is required to maintain statistical data on the local offices and the demographics of consumers served. In a previous request for application for a similar product, the average quote was just under \$53,000. The product found to be most cost-effective for the services needed was around \$20,000. This is a one-time cost. After the first year, the annual support fee is \$4,000.

Other\$ 1,000

This category includes costs associated with background checks for both staff and volunteers.

Sources of RevenueUnknown

The Iowa Administrative Code entitles the state and local offices of substitute decision makers to reasonable compensation for their services. The rules outline criteria for collecting fees (Iowa Admin. Code 17-22.13) in addition to a fee schedule to determine what fees are applicable to the services provided (Iowa Admin. Code 17-22.14). While we anticipate that a majority of those requiring the services provided by the Office of Substitute Decision Maker will need significant subsidy, there is an expectation that those with the ability to contribute will be charged on a sliding-fee scale. A copy of the fee schedule is attached.

State Office Total\$403,187

Proposed Local Office Budget

3 Substitute Decision Makers (EO1)\$217,650

Local offices are required to maintain a staff of professionally qualified individuals to carry out the substitute decision-making functions (Iowa Code § 231E.5(2)(a)); meet standards established for the local office (Iowa Code § 231E.5(2)(d)); comply with minimum staffing requirements and caseload restrictions (Iowa Code 231E.5(2)(e)); provide a series of services to proposed wards (Iowa Code § 231E.5(2)(g)); and determine where it is necessary to appoint a personal representative to petition to open and settle an estate (Iowa Code § 231E.5(2)(h)).

The professional staff hired to serve in this role are required to have graduated from an accredited four-year college or university and be certified by the National Guardianship Association (Iowa Admin. Code 17-22.3). In addition to these qualifications, the substitute decision makers must have the knowledge and skills necessary to successfully complete a range of tasks frequently required of a substitute decision maker, including but not limited to: act as a case manager, fiduciary, and advocate; develop a budget and manage assets and finances; determine eligibility for programs and apply for the same; mediate family dynamics; conduct assessments; consent to medical care; locate resources including housing, medical care, and in-home services where needed; respond to court inquiries and complete an annual report for submission to the court.

This figure is equivalent to an Executive Officer 1 salary, plus fringe benefits (\$71,880) for three full time employees.

Administrative Assistant.....\$ 23,960

Each local office may employ staff and delegate powers and duties of the substitute decision maker (Iowa Code § 231E.5(3)(c)). An administrative assistant will identify the local resources providing services (Iowa Code § 231E.5(2)(b)); collect data (Iowa Code § 231E.5(2)(c)); and conduct background checks on employees and volunteers (Iowa Code § 231E.5(2)(f)). In addition to these tasks, the administrative assistant will provide intake services, information and assistance, and assist in the operation of the office.

Office Administration\$ 14,800

Physical operation of the local offices includes rent (\$600 per month); phones and internet (\$2,400 per year); postage (\$100 per month); office supplies (\$150 per month); computers (\$700 per employee); and a one-time cost to purchase a copier/scanner/fax machine (\$600).

Travel.....\$ 8,000

The travel budget will allow for local office employees to visit consumers (wards) within their planning and service areas. The substitute decision makers at the local level shall do all of the following: “(1) Determine the most appropriate form of substitute decision-making needed...; (2) Determine whether the needs of the proposed ward require the appointment of a guardian or conservator; (3) Assess the financial resources of the proposed ward...; (4) Inquire and... search to determine whether any other person may be willing and able to serve as the proposed ward’s guardian or conservator; (5) Determine the form of guardianship or conservatorship to request of a court...; (6) If determined necessary, file a petition for the appointment of a guardian or conservator...” Iowa Code § 231E.5(2)(g). This travel budget is necessary to allow the substitute decision makers to do all that is required above.

Other\$ 500

This includes costs associated with staff and volunteer background checks.

Legal\$ 43,000

Under 231E.7 the local office may intervene in a guardianship or conservatorship proceeding if the local office or the court finds that an existing guardian or conservator is not fulfilling prescribed duties or the best interests of the ward require the intervention. These interventions will require the legal representation of the Iowa Attorney General’s office or a county attorney. It is estimated that these interventions will consume about 50% of an assistant county attorney’s time.

Sources of Revenue Unknown

The Iowa Administrative Code entitles the state and local offices of substitute decision makers to reasonable compensation for their services. The rules outline criteria for collecting fees (Iowa Admin. Code 17-22.13) in addition to a fee schedule to determine what fees are applicable to the services provided (Iowa Admin. Code 17-22.14). While we anticipate that a majority of those requiring the services provided by the Office of Substitute Decision Maker will need significant subsidy, there is an expectation that those with the ability to contribute will be charged on a sliding-fee scale. A copy of the fee schedule is attached.

Local Office Total\$307,910

All 6 Local Office Totals..... \$1,847,460

Fully Functioning Office of Substitute Decision Maker \$2,250,647

Implementation Schedule

Please note that this timeline is drafted assuming full funding beginning on July 1, 2013. This timeline is tentative and subject to change.

1. Begin proper hiring processes through the Department of Administrative Services June 10, 2013
2. Start date for Administrator, Intake Investigator, and Substitute Decision Maker August 16, 2013
3. Develop Request for Application to designate local offices of substitute decision makers October 18, 2013
4. Issue Request for Application on targeted small business website November 4, 2013
5. Issue Request for Application on state system November 7, 2013
6. Respond to applicant questions regarding Request for Application process November 13, 2013
7. Request for Application proposals due December 13, 2013
8. Review team begins evaluation of Request for Application proposals December 16, 2013
9. Iowa Commission on Aging reviews recommendations regarding requests for applications and approves or disapproves the Iowa Department on Aging's recommendations for designation of local offices of state substitute decision maker January, 2014
11. Issue notice of intent to award and notice of non-intent to award to entities that applied for the Request for Application After January 2014 meeting
12. Acceptance of notice of intent due to the Iowa Department on Aging February 3, 2014
13. Designate new local offices of substitute decision maker April 1, 2014
14. Local offices begin hiring process April 1, 2014
15. State office trains local substitute decision makers May 1, 2014
16. Projected goal for functioning local offices July 1, 2014

17—22.14 (231E,633) Fee schedule. The following fees are applicable to services provided by an SDM unless reduced or waived pursuant to paragraph 22.13(1) “b.”

Action or Responsibility	Fee
One-time case opening:	
Guardianship	\$200
Conservatorship	\$300
Guardianship and conservatorship	\$500
Durable power of attorney for health care	\$ 60
Durable power of attorney for financial matters	\$100
Power of attorney for health care and financial matters	\$160
Monthly SDM services for conservator, durable power of attorney for health care and general power of attorney for financial matters.	
Total value of liquid assets:	
\$6,500 – \$9,999	\$100
\$10,000 – \$19,999	\$125
\$20,000 – \$29,999	\$150
\$30,000 – \$39,999	\$175
\$40,000 – \$49,999	\$200
\$50,000 – \$59,999	\$225
\$60,000 – \$69,999	\$250
\$70,000 – \$79,999	\$275
\$80,000 – \$89,999	\$300
\$90,000 – \$99,999	\$325
\$100,000 or above	\$350
Personal representative	As determined by Iowa Code section 633.197
Preparation and filing of income tax returns:	
Each federal return	\$ 50
Each state return	\$ 25
Settlement of a personal injury cause of action:	
Each cause of action approved by the probate court	\$250
Establishment of a recognized trust for the consumer’s financial estate:	
Each trust	\$250
Representative payee—monthly fee	As determined by the federal governmental agency that appoints the representative payee

[ARC 8489B, IAB 1/27/10, effective 1/7/10]