

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
SENATE BILL 53

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

AN ACT

RELATING TO HEALTH CARE; ENACTING THE ASSISTED OUTPATIENT
TREATMENT ACT; PROVIDING FOR ASSISTED OUTPATIENT TREATMENT
PROCEEDINGS; PROVIDING FOR SEQUESTRATION AND CONFIDENTIALITY OF
RECORDS; PROVIDING FOR PENALTIES; AMENDING THE MENTAL HEALTH
AND DEVELOPMENTAL DISABILITIES CODE TO REQUIRE DATA COLLECTION
FOR CERTAIN PROCEEDINGS; ~~MAKING APPROPRIATIONS.~~

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of the Mental Health and
Developmental Disabilities Code is enacted to read:

"[NEW MATERIAL] SHORT TITLE.--Sections 1 through 15 of
this act may be cited as the "Assisted Outpatient Treatment
Act"."

SECTION 2. A new section of the Mental Health and
Developmental Disabilities Code is enacted to read:

1 "[NEW MATERIAL] DEFINITIONS.--As used in the Assisted
2 Outpatient Treatment Act:

3 A. "advance directive for mental health treatment"
4 means an individual instruction or power of attorney for mental
5 health treatment made pursuant to the Mental Health Care
6 Treatment Decisions Act;

7 B. "agent" means an individual designated in a
8 power of attorney for health care to make a mental health care
9 decision for the individual granting the power;

10 C. "assertive community treatment" means a team
11 treatment approach designed to provide comprehensive community-
12 based psychiatric treatment, rehabilitation and support to
13 persons with serious and persistent mental disorders;

14 D. "assisted outpatient treatment" means categories
15 of outpatient services ordered by a district court, including
16 case management services or assertive community treatment team
17 services, prescribed to treat a patient's mental disorder and
18 to assist a patient in living and functioning in the community
19 or to attempt to prevent a relapse or deterioration that may
20 reasonably be predicted to result in harm to the patient or
21 another or the need for hospitalization. Assisted outpatient
22 treatment may include:

- 23 (1) medication;
- 24 (2) periodic blood tests or urinalysis to
25 determine compliance with prescribed medications;

- (3) individual or group therapy;
 - (4) day or partial-day programming activities;
 - (5) educational and vocational training or activities;
 - (6) alcohol and substance abuse treatment and counseling;
 - (7) periodic blood tests or urinalysis for the presence of alcohol or illegal drugs for a patient with a history of alcohol or substance abuse;
 - (8) supervision of living arrangements; and
 - (9) any other services prescribed to treat the patient's mental disorder and to assist the patient in living and functioning in the community, or to attempt to prevent a deterioration of the patient's mental or physical condition;
- E. "covered entity" means a health plan, a health care clearinghouse or a health care provider that transmits any health information in electronic form;
- F. "guardian" means a judicially appointed guardian having authority to make mental health care decisions for an individual;
- G. "least restrictive appropriate alternative" means treatment and conditions that:
- (1) are no more harsh, hazardous or intrusive than necessary to achieve acceptable treatment objectives; and
 - (2) do not restrict physical movement or

1 require residential care, except as reasonably necessary for
2 the administration of treatment or the protection of the
3 patient;

4 H. "likely to result in serious harm to others"
5 means ~~that it~~ is more likely than not that in the near future a
6 person will ~~inflict~~ serious, unjustified bodily harm on another
7 person or commit a criminal sexual offense, as evidenced by
8 behavior causing, attempting or threatening such harm, which
9 behavior gives rise to a reasonable fear of such harm from the
10 person;

11 I. "likely to result in serious harm to self" means
12 ~~that it~~ is more likely than not that in the near future the
13 person will attempt to commit suicide or will cause serious
14 bodily harm to the person's self by violent or other self-
15 destructive means, including grave passive neglect;

16 J. "mandated service" means a service specified in
17 a court order requiring assisted outpatient treatment;

18 K. "patient" means a person receiving assisted
19 outpatient treatment pursuant to a court order;

20 L. "power of attorney for health care" means the
21 designation of an agent to make health care decisions for the
22 individual granting the power, made while the individual has
23 capacity;

24 M. "provider" means an individual or organization
25 licensed, certified or otherwise authorized or permitted by law

1 to provide mental or physical health diagnosis or treatment in
 2 the ordinary course of business or practice of a profession;

3 N. "qualified professional" means a physician,
 4 licensed psychologist, prescribing psychologist, certified
 5 nurse practitioner or clinical nurse specialist with a
 6 specialty in mental health, or a physician assistant with a
 7 specialty in mental health;

8 O. "qualified protective order" means, with respect
 9 to protected health information, an order of a district court
 10 or stipulation of parties to a proceeding under the Assisted
 11 Outpatient Treatment Act;

12 P. "respondent" means a person who is the subject
 13 of a petition or order for assisted outpatient treatment;

14 Q. "surrogate decision-maker" means an agent
 15 designated by the respondent, a guardian or a treatment
 16 guardian; and

17 R. "treatment guardian" means a person appointed
 18 pursuant to Section 43-1-15 NMSA 1978 to make mental health
 19 treatment decisions for a person who has been found by clear
 20 and convincing evidence to be incapable of making the person's
 21 own mental health treatment decisions."

22 **SECTION 3.** A new section of the Mental Health and
 23 Developmental Disabilities Code is enacted to read:

24 "[NEW MATERIAL] ASSISTED OUTPATIENT TREATMENT--CRITERIA.--
 25 A person may be ordered to participate in assisted outpatient

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1 treatment if the court finds by clear and convincing evidence
2 that the person:

3 A. is eighteen years of age or older;
4 B. has a primary diagnosis of a mental disorder;
5 C. has demonstrated a history of lack of compliance
6 with treatment for a mental disorder that has:

7 (1) at least twice within the last forty-eight
8 months, been a significant factor in necessitating
9 hospitalization or necessitating receipt of services in a
10 forensic or other mental health unit or a correctional
11 facility; provided that the forty-eight-month period shall be
12 extended by the length of any hospitalization or incarceration
13 of the person that occurred within the forty-eight-month
14 period;

15 (2) resulted in one or more acts of serious
16 violent behavior toward self or others or threats of, or
17 attempts at, serious physical harm to self or others within the
18 last forty-eight months; provided that the forty-eight-month
19 period shall be extended by the length of any hospitalization
20 or incarceration of the person that occurred within the forty-
21 eight-month period; or

22 (3) resulted in the person being hospitalized
23 or incarcerated for six months or more and the person is to be
24 discharged or released within the next thirty days or was
25 discharged or released within the past sixty days;

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1 D. is unwilling or unlikely, as a result of a
2 mental disorder, to participate voluntarily in outpatient
3 treatment that would enable the person to live safely in the
4 community without court supervision;

5 E. is in need of assisted outpatient treatment as
6 the least restrictive appropriate alternative to prevent a
7 relapse or deterioration likely to result in serious harm to
8 self or likely to result in serious harm to others; and

9 F. will likely benefit from, and the person's best
10 interests will be served by, receiving assisted outpatient
11 treatment."

12 **SECTION 4.** A new section of the Mental Health and
13 Developmental Disabilities Code is enacted to read:

14 "[NEW MATERIAL] PETITION TO THE COURT.--

15 A. A petition for an order authorizing assisted
16 outpatient treatment may be filed in the district court for the
17 county in which the respondent is present or reasonably
18 believed to be present. A petition shall be filed only by the
19 following persons:

20 (1) a person eighteen years of age or older
21 who resides with the respondent;

22 (2) the parent or spouse of the respondent;

23 (3) the sibling or child of the respondent;

24 provided that the sibling or child is eighteen years of age or
25 older;

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1 (4) the director of a hospital where the
2 respondent is hospitalized;

3 (5) the director of a public or charitable
4 organization or agency or a home where the respondent resides
5 and that provides mental health services to the respondent;

6 (6) a qualified professional who either
7 supervises the treatment of or treats the respondent for a
8 mental disorder or has supervised or treated the respondent for
9 a mental disorder within the past forty-eight months; or

10 (7) a surrogate decision-maker.

11 B. The petition shall be entitled "In the Matter of
12 _____" and shall include:

13 (1) each criterion for assisted outpatient
14 treatment as set forth in Section 3 of the Assisted Outpatient
15 Treatment Act;

16 (2) facts that support the petitioner's belief
17 that the respondent meets each criterion; provided that the
18 hearing on the petition need not be limited to the stated
19 facts; and

20 (3) whether the respondent is present or is
21 reasonably believed to be present within the county where the
22 petition is filed.

23 C. The petition shall be accompanied by an
24 affidavit of a qualified professional and shall state that:

25 (1) the qualified professional has personally

1 examined the respondent no more than ten days prior to the
 2 filing of the petition, that the qualified professional
 3 recommends assisted outpatient treatment for the respondent and
 4 that the qualified professional is willing and able to testify
 5 at the hearing on the petition either in person or by
 6 contemporaneous transmission from a different location; or

7 (2) no more than ten days prior to the filing
 8 of the petition, the qualified professional or the qualified
 9 professional's designee has unsuccessfully attempted to
 10 persuade the respondent to submit to an examination, that the
 11 qualified professional has reason to believe that the
 12 respondent meets the criteria for assisted outpatient treatment
 13 and that the qualified professional is willing and able to
 14 examine the respondent and testify at the hearing on the
 15 petition either in person or by contemporaneous transmission
 16 from a different location."

17 **SECTION 5.** A new section of the Mental Health and
 18 Developmental Disabilities Code is enacted to read:

19 "[NEW MATERIAL] QUALIFIED PROTECTIVE ORDER.--

20 A. A motion seeking a qualified protective order
 21 shall accompany each petition for an order authorizing assisted
 22 outpatient treatment.

23 B. In considering the motion, the court shall
 24 determine which parties to the proceeding and their attorneys
 25 are authorized to receive, subpoena and transmit protected

1 health information pertaining to the respondent for purposes of
2 the proceeding. If the petitioner is a party identified in
3 Paragraph (1), (2) or (3) of Subsection A of Section 4 of the
4 Assisted Outpatient Treatment Act, the court may bar or limit
5 the disclosure of the respondent's protected health
6 information.

7 C. Covered entities shall only disclose protected
8 health information pertaining to the respondent in accordance
9 with the court's order, except as otherwise provided by state
10 and federal health care privacy laws.

11 D. Parties and their attorneys are only authorized
12 to use the protected health information of the respondent as
13 directed by the court's order.

14 E. Within forty-five days after the later of the
15 exhaustion of all appeals or the date on which the respondent
16 is no longer receiving assisted outpatient treatment, the
17 parties and their attorneys and any person or entity in
18 possession of protected health information received from a
19 party or the party's attorney in the course of the proceeding
20 shall destroy all copies of protected health information
21 pertaining to the respondent, except that counsel are not
22 required to secure the return or destruction of protected
23 health information submitted to the court.

24 F. Nothing in the order controls or limits the use
25 of protected health information pertaining to the respondent

1 that comes into the possession of a party or the party's
2 attorney from a source other than a covered entity.

3 G. Nothing in the court's order shall authorize any
4 party to obtain medical records or information through means
5 other than formal discovery requests, subpoenas, depositions or
6 other lawful process, or pursuant to a patient authorization."

7 **SECTION 6.** A new section of the Mental Health and
8 Developmental Disabilities Code is enacted to read:

9 "[NEW MATERIAL] HEARING--EXAMINATION BY A QUALIFIED
10 PROFESSIONAL.--

11 A. Upon receipt of a petition for an order
12 authorizing assisted outpatient treatment, the court shall fix
13 a date for a hearing:

14 (1) no sooner than three or later than seven
15 days after the date of service or as stipulated by the parties,
16 or upon a showing of good cause, no later than thirty days
17 after the date of service; or

18 (2) if the respondent is hospitalized at the
19 time of filing of the petition, before discharge of the
20 respondent and in sufficient time to arrange for a continuous
21 transition from inpatient treatment to assisted outpatient
22 treatment.

23 B. A copy of the petition and notice of hearing
24 shall be served, in the same manner as a summons, on the
25 petitioner, the respondent, the qualified professional whose

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1 affidavit accompanied the petition and a current provider, if
2 any.

3 C. If, on the date that the petition is filed, the
4 respondent has a surrogate decision-maker, a copy of the
5 petition and notice of hearing shall be served, in the same
6 manner as a summons, on the surrogate decision-maker.

7 D. The respondent shall be represented by counsel
8 at all stages of the proceedings.

9 E. If the respondent fails to appear at the hearing
10 after notice, the court may conduct the hearing in the
11 respondent's absence, provided that the respondent's counsel is
12 present.

13 F. If the respondent has refused to be examined by
14 the qualified professional whose affidavit accompanied the
15 petition, the court may order a mental examination of the
16 respondent as provided by Rule 1-035 (A) NMRA. The examination
17 of the respondent may be performed by the qualified
18 professional whose affidavit accompanied the petition. If the
19 examination is performed by another qualified professional, the
20 examining qualified professional shall be authorized to consult
21 with the qualified professional whose affidavit accompanied the
22 petition.

23 G. If the respondent has refused to be examined by
24 a qualified professional and the court finds reasonable grounds
25 to believe that the allegations of the petition are true, the

1 court may issue a written order directing a peace officer who
2 has completed crisis intervention training to detain and
3 transport the respondent to a provider for examination by a
4 qualified professional. A respondent detained pursuant to this
5 subsection shall be detained no longer than necessary to
6 complete the examination and in no event longer than twenty-
7 four hours.

8 H. The court shall not order assisted outpatient
9 treatment for the respondent unless a qualified professional,
10 who has personally examined the respondent within ten days of
11 the filing of the petition, testifies at the hearing in person
12 or by contemporaneous transmission from a different location.
13 The qualified professional shall provide testimony in support
14 of the finding that the respondent meets all of the criteria
15 for assisted outpatient treatment and testimony on the written
16 proposed treatment plan developed pursuant to Section 7 of the
17 Assisted Outpatient Treatment Act, including:

18 (1) the recommended assisted outpatient
19 treatment, the rationale for the recommended assisted
20 outpatient treatment and the facts that establish that such
21 treatment is the least restrictive appropriate alternative;

22 (2) information regarding the respondent's
23 access to, and the availability of, recommended assisted
24 outpatient treatment in the community or elsewhere; and

25 (3) if the recommended assisted outpatient

1 treatment includes medication, the types or classes of
2 medication that should be authorized, the beneficial and
3 detrimental physical and mental effects of such medication and
4 whether such medication should be self-administered or
5 administered by a specified provider."

6 **SECTION 7.** A new section of the Mental Health and
7 Developmental Disabilities Code is enacted to read:

8 "[NEW MATERIAL] WRITTEN PROPOSED TREATMENT PLAN.--

9 A. The court shall not order assisted outpatient
10 treatment unless a qualified professional provides a written
11 proposed treatment plan to the court. The plan shall state all
12 treatment services recommended for the respondent and, for each
13 such service, shall specify a provider that has agreed to
14 provide the service.

15 B. In developing a written proposed treatment plan,
16 the qualified professional shall take into account, if
17 existing, an advance directive for mental health treatment and
18 provide the following persons with an opportunity to
19 participate:

- 20 (1) the respondent;
21 (2) all current treating providers;
22 (3) upon the request of the respondent, an
23 individual significant to the respondent, including any
24 relative, close friend or individual otherwise concerned with
25 the welfare of the respondent; and

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(4) any surrogate decision-maker.

C. The written proposed treatment plan shall include case management services or an assertive community treatment team to provide care coordination and assisted outpatient treatment services recommended by the qualified professional. If the plan includes medication, it shall state whether such medication should be self-administered or administered by a specified provider, and shall specify type and dosage range of medication. In no event shall the plan recommend the use of physical force or restraints to administer medication to the respondent.

D. If the written proposed treatment plan includes alcohol or substance abuse counseling and treatment, the plan may include a provision requiring relevant testing for either alcohol or abused substances; provided that the qualified professional's clinical basis for recommending such plan provides sufficient facts for the court to find that:

(1) the respondent has a history of co-occurring alcohol or substance abuse; and

(2) such testing is necessary to prevent a relapse or deterioration that would be likely to result in serious harm to self or likely to result in serious harm to others."

SECTION 8. A new section of the Mental Health and Developmental Disabilities Code is enacted to read:

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1 "[NEW MATERIAL] DISPOSITION.--

2 A. After a hearing and consideration of all
3 relevant evidence, the court shall order the respondent to
4 receive assisted outpatient treatment if it finds by clear and
5 convincing evidence that the respondent meets all criteria set
6 forth in Section 3 of the Assisted Outpatient Treatment Act.

7 B. The court's order shall:

8 (1) provide for a period of outpatient
9 treatment not to exceed one year;

10 (2) specify the assisted outpatient treatment
11 services that the respondent is to receive; and

12 (3) direct one or more specified providers to
13 provide or arrange for all assisted outpatient treatment for
14 the patient throughout the period of the order.

15 C. If the court order includes medication, it shall
16 state the type or types of medication and the dosage range
17 found to be necessary, based on the treatment plan and evidence
18 presented. The court may order the respondent to self-
19 administer medication or accept the administration of such
20 medication by a specified provider. In no event shall the
21 court require or authorize the use of physical force or
22 restraints to administer medication to the respondent.

23 D. The court may not order treatment that has not
24 been recommended by the qualified professional and included in
25 the written proposed treatment plan, nor direct the

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1 participation of a provider that has not been specified in such
2 plan.

3 E. If the respondent has a surrogate decision-maker
4 or an advance directive for mental health treatment, the court
5 shall follow the decisions of the surrogate decision-maker or
6 the advance directive in determining the treatment ordered,
7 unless there is good cause shown to order otherwise.

8 F. The court shall not order assisted outpatient
9 treatment for a respondent with a surrogate decision-maker
10 without notice to such surrogate decision-maker and an
11 opportunity for hearing as provided in Section 6 of the
12 Assisted Outpatient Treatment Act.

13 G. The court may order assisted outpatient
14 treatment:

15 (1) in lieu of involuntary inpatient
16 commitment ~~if it~~ finds assisted outpatient treatment to be the
17 least restrictive appropriate alternative; or

18 (2) as a means of jail diversion."

19 **SECTION 9.** A new section of the Mental Health and
20 Developmental Disabilities Code is enacted to read:

21 "[NEW MATERIAL] EXPEDITIOUS APPEAL.--There shall be a
22 right to an expeditious appeal from a final order in a
23 proceeding under the Assisted Outpatient Treatment Act."

24 **SECTION 10.** A new section of the Mental Health and
25 Developmental Disabilities Code is enacted to read:

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1 "[NEW MATERIAL] EFFECT OF DETERMINATION THAT RESPONDENT IS
2 IN NEED OF ASSISTED OUTPATIENT TREATMENT.--An assisted
3 outpatient treatment order shall not be construed as a
4 determination that the respondent is incompetent."

5 **SECTION 11.** A new section of the Mental Health and
6 Developmental Disabilities Code is enacted to read:

7 "[NEW MATERIAL] APPLICATIONS FOR CONTINUED PERIODS OF
8 TREATMENT.--

9 A. Prior to the expiration of the period of
10 assisted outpatient treatment, a party or respondent's
11 surrogate decision-maker may apply to the court for a
12 subsequent order authorizing continued assisted outpatient
13 treatment for a period not to exceed one year. The application
14 shall be served upon those persons required to be served with
15 notice of a petition for an order authorizing assisted
16 outpatient treatment and every specified provider.

17 B. If the court's disposition of the application
18 does not occur prior to the expiration date of the current
19 order, the current order shall remain in effect until the
20 court's disposition. The disposition of the application shall
21 occur no later than ten calendar days following the filing of
22 the application.

23 C. A respondent may be ordered to participate in
24 continued assisted outpatient treatment if the court finds by
25 clear and convincing evidence that the respondent:

1 (1) continues to have a primary diagnosis of a
2 mental disorder;

3 (2) is unwilling or unlikely, as a result of a
4 mental disorder, to participate voluntarily in outpatient
5 treatment that would enable the respondent to live safely in
6 the community without court supervision;

7 (3) is in need of continued assisted
8 outpatient treatment as the least restrictive appropriate
9 alternative in order to prevent a relapse or deterioration
10 likely to result in serious harm to self or likely to result in
11 serious harm to others; and

12 (4) will likely benefit from, and the
13 respondent's best interests will be served by, receiving
14 continued assisted outpatient treatment."

15 **SECTION 12.** A new section of the Mental Health and
16 Developmental Disabilities Code is enacted to read:

17 "[NEW MATERIAL] APPLICATION TO STAY, VACATE, MODIFY OR
18 ENFORCE AN ORDER.--

19 A. In addition to any other right or remedy
20 available by law with respect to the court order for assisted
21 outpatient treatment, a party or respondent's surrogate
22 decision-maker may apply to the court to stay, vacate, modify
23 or enforce the order. The application shall be served upon
24 those persons required to be served with notice of a petition
25 for an order authorizing assisted outpatient treatment and

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1 every specified provider. The disposition of the application
2 shall occur no later than ten calendar days following the
3 filing of the application.

4 B. A specified provider shall apply to the court
5 for approval before instituting a proposed material change in
6 mandated services or assisted outpatient treatment unless such
7 change is contemplated in the order. The application shall be
8 served upon those persons required to be served with notice of
9 a petition for an order authorizing assisted outpatient
10 treatment and every specified provider. The disposition of the
11 application shall occur no later than ten calendar days
12 following the filing of the application. Nonmaterial changes
13 may be instituted by the provider without court approval. For
14 purposes of this subsection, "material change" means an
15 addition or deletion of a category of assisted outpatient
16 treatment and does not include a change in medication or dosage
17 contemplated in the order that, based upon the clinical
18 judgment of the provider, is in the best interest of the
19 patient.

20 C. A court order requiring periodic blood tests or
21 urinalysis for the presence of alcohol or abused substances
22 shall be subject to review after six months by a qualified
23 professional, who shall be authorized to terminate such blood
24 tests or urinalysis without further action by the court."

25 **SECTION 13.** A new section of the Mental Health and

1 Developmental Disabilities Code is enacted to read:

2 "[NEW MATERIAL] FAILURE TO COMPLY WITH ASSISTED OUTPATIENT
3 TREATMENT.--

4 A. If a qualified professional determines that a
5 respondent has materially failed to comply with the assisted
6 outpatient treatment as ordered by the court, such that the
7 qualified professional believes that the respondent's condition
8 is likely to result in serious harm to self or likely to result
9 in serious harm to others and that immediate detention is
10 necessary to prevent such harm, the qualified professional
11 shall certify the need for detention and transport of the
12 respondent for emergency mental health evaluation and care
13 pursuant to the provisions of Paragraph (4) of Subsection A of
14 Section 43-1-10 NMSA 1978.

15 B. A respondent's failure to comply with an order
16 of assisted outpatient treatment is not grounds for involuntary
17 civil commitment or a finding of contempt of court, or for the
18 use of physical force or restraints to administer medication to
19 the respondent."

20 **SECTION 14.** A new section of the Mental Health and
21 Developmental Disabilities Code is enacted to read:

22 "[NEW MATERIAL] SEQUESTRATION AND CONFIDENTIALITY OF
23 RECORDS.--

24 A. All records or information containing protected
25 health information relating to the respondent, including all

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1 pleadings and other documents filed in the matter, social
2 records, diagnostic evaluations, psychiatric or psychologic
3 reports, videotapes, transcripts and audio recordings of
4 interviews and examinations, recorded testimony and the
5 assisted outpatient treatment plan that was produced or
6 obtained as part of a proceeding pursuant to the Assisted
7 Outpatient Treatment Act shall be confidential and closed to
8 the public.

9 B. The records described in Subsection A of this
10 section may only be disclosed to the parties and:

- 11 (1) court personnel;
- 12 (2) court-appointed special advocates;
- 13 (3) attorneys representing parties to the
14 proceeding;
- 15 (4) surrogate decision-makers;
- 16 (5) peace officers requested by the
17 court to perform any duties or functions related to the
18 respondent as deemed appropriate by the court;
- 19 (6) qualified professionals and providers
20 involved in the evaluation or treatment of the respondent;
- 21 (7) public health authorities or entities
22 conducting public health surveillance or research, if
23 authorized by law; and
- 24 (8) any other person or entity, by order of
25 the court, having a legitimate interest in the case or the work

1 of the court.

2 C. A person who intentionally releases any
3 information or records closed to the public pursuant to the
4 Assisted Outpatient Treatment Act or who releases or makes
5 other use of the records in violation of that act is guilty of
6 a fourth degree felony and shall be punished in accordance with
7 the provisions of Section 31-18-15 NMSA 1978."

8 **SECTION 15.** A new section of the Mental Health and
9 Developmental Disabilities Code is enacted to read:

10 "[NEW MATERIAL] EDUCATIONAL MATERIALS.--The division and
11 the interagency behavioral health purchasing collaborative, in
12 consultation with the administrative office of the courts,
13 shall prepare educational and training materials on the
14 provisions of the Assisted Outpatient Treatment Act, which
15 shall be made available no later than January 1, 2016 to
16 providers, judges, court personnel, peace officers and the
17 general public."

18 **SECTION 16.** Section 43-1-3 NMSA 1978 (being Laws 1977,
19 Chapter 279, Section 2, as amended) is amended to read:

20 "43-1-3. DEFINITIONS.--As used in the Mental Health and
21 Developmental Disabilities Code:

22 A. "aversive stimuli" means anything that, because
23 it is believed to be unreasonably unpleasant, uncomfortable or
24 distasteful to the client, is administered or done to the
25 client for the purpose of reducing the frequency of a behavior,

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1 but does not include verbal therapies, physical restrictions to
2 prevent imminent harm to self or others or psychotropic
3 medications that are not used for purposes of punishment;

4 B. "client" means any patient who is requesting or
5 receiving mental health services or any person requesting or
6 receiving developmental disabilities services or who is present
7 in a mental health or developmental disabilities facility for
8 the purpose of receiving such services or who has been placed
9 in a mental health or developmental disabilities facility by
10 the person's parent or guardian or by any court order;

11 C. "code" means the Mental Health and Developmental
12 Disabilities Code;

13 D. "consistent with the least drastic means
14 principle" means that the habilitation or treatment and the
15 conditions of habilitation or treatment for the client,
16 separately and in combination:

17 (1) are no more harsh, hazardous or intrusive
18 than necessary to achieve acceptable treatment objectives for
19 the client;

20 (2) involve no restrictions on physical
21 movement and no requirement for residential care except as
22 reasonably necessary for the administration of treatment or for
23 the protection of the client or others from physical injury;
24 and

25 (3) are conducted at the suitable available

1 facility closest to the client's place of residence;

2 E. "convulsive treatment" means any form of mental
3 health treatment that depends upon creation of a convulsion by
4 any means, including but not limited to electroconvulsive
5 treatment and insulin coma treatment;

6 F. "court" means a district court of New Mexico;

7 G. "department" or "division" means the behavioral
8 health services division of the human services department;

9 H. "developmental disability" means a disability of
10 a person that is attributable to mental retardation, cerebral
11 palsy, autism or neurological dysfunction that requires
12 treatment or habilitation similar to that provided to persons
13 with mental retardation;

14 I. "evaluation facility" means a community mental
15 health or developmental disability program or a medical
16 facility that has psychiatric or developmental disability
17 services available, including the New Mexico behavioral health
18 institute at Las Vegas, the Los Lunas medical center or, if
19 none of the foregoing is reasonably available or appropriate,
20 the office of a physician or a certified psychologist, and that
21 is capable of performing a mental status examination adequate
22 to determine the need for involuntary treatment;

23 J. "experimental treatment" means any mental health
24 or developmental disabilities treatment that presents
25 significant risk of physical harm, but does not include

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1 accepted treatment used in competent practice of medicine and
2 psychology and supported by scientifically acceptable studies;

3 K. "grave passive neglect" means failure to provide
4 for basic personal or medical needs or for one's own safety to
5 such an extent that it is more likely than not that serious
6 bodily harm will result in the near future;

7 L. "habilitation" means the process by which
8 professional persons and their staff assist a client with a
9 developmental disability in acquiring and maintaining those
10 skills and behaviors that enable the person to cope more
11 effectively with the demands of the person's self and
12 environment and to raise the level of the person's physical,
13 mental and social efficiency. "Habilitation" includes but is
14 not limited to programs of formal, structured education and
15 treatment;

16 M. "likelihood of serious harm to oneself" means
17 that it is more likely than not that in the near future the
18 person will attempt to commit suicide or will cause serious
19 bodily harm to the person's self by violent or other self-
20 destructive means, including ~~but not limited to~~ grave passive
21 neglect;

22 N. "likelihood of serious harm to others" means
23 that it is more likely than not that in the near future a
24 person will inflict serious, unjustified bodily harm on another
25 person or commit a criminal sexual offense, as evidenced by

behavior causing, attempting or threatening such harm, which behavior gives rise to a reasonable fear of such harm from the person;

O. "mental disorder" means substantial disorder of a person's emotional processes, thought or cognition that grossly impairs judgment, behavior or capacity to recognize reality, but does not mean developmental disability;

P. "mental health or developmental disabilities professional" means a physician or other professional who by training or experience is qualified to work with persons with a mental disorder or a developmental disability;

Q. "physician" or "certified psychologist", when used for the purpose of hospital admittance or discharge, means a physician or certified psychologist who has been granted admitting privileges at a hospital licensed by the department of health, if such privileges are required;

R. "protected health information" means individually identifiable health information transmitted by or maintained in an electronic form or any other form or media that relates to the:

(1) past, present or future physical or mental health or condition of an individual;

(2) provision of health care to an individual;

or

(3) payment for the provision of health care

to an individual;

~~[R-]~~ S. "psychosurgery":

(1) means those operations currently referred to as lobotomy, psychiatric surgery and behavioral surgery and all other forms of brain surgery if the surgery is performed for the purpose of the following:

(a) modification or control of thoughts, feelings, actions or behavior rather than the treatment of a known and diagnosed physical disease of the brain;

(b) treatment of abnormal brain function or normal brain tissue in order to control thoughts, feelings, actions or behavior; or

(c) treatment of abnormal brain function or abnormal brain tissue in order to modify thoughts, feelings, actions or behavior when the abnormality is not an established cause for those thoughts, feelings, actions or behavior; and

(2) does not include prefrontal sonic treatment in which there is no destruction of brain tissue;

~~[S-]~~ T. "qualified mental health professional licensed for independent practice" means an independent social worker, a licensed professional clinical mental health counselor, a marriage and family therapist, a certified nurse practitioner or a clinical nurse specialist with a specialty in mental health, all of whom by training and experience are qualified to work with persons with a mental disorder;

1 ~~[F.]~~ U. "residential treatment or habilitation
 2 program" means diagnosis, evaluation, care, treatment or
 3 habilitation rendered inside or on the premises of a mental
 4 health or developmental disabilities facility, hospital,
 5 clinic, institution or supervisory residence or nursing home
 6 when the client resides on the premises; and

7 ~~[U.]~~ V. "treatment" means any effort to accomplish
 8 a significant change in the mental or emotional condition or
 9 behavior of the client."

10 **SECTION 17.** Section 43-1-19 NMSA 1978 (being Laws 1977,
 11 Chapter 279, Section 18, as amended) is amended to read:

12 "43-1-19. DISCLOSURE OF INFORMATION.--

13 A. Except as otherwise provided in the code, no
 14 person shall, without the authorization of the client, disclose
 15 or transmit any confidential information from which a person
 16 well acquainted with the client might recognize the client as
 17 the described person, or any code, number or other means that
 18 can be used to match the client with confidential information
 19 regarding the client.

20 B. Authorization from the client shall not be
 21 required for the disclosure or transmission of confidential
 22 information in the following circumstances:

23 (1) when the request is from a mental health
 24 or developmental disability professional or from an employee or
 25 trainee working with a person with a mental disability or

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1 developmental disability, to the extent that the practice,
2 employment or training on behalf of the client requires access
3 to such information is necessary;

4 (2) when such disclosure is necessary to
5 protect against a clear and substantial risk of imminent
6 serious physical injury or death inflicted by the client on the
7 client's self or another;

8 (3) when the disclosure is made pursuant to
9 the provisions of the Assisted Outpatient Treatment Act, using
10 reasonable efforts to limit protected health information to
11 that which is minimally necessary to accomplish the intended
12 purpose of the use, disclosure or request;

13 [~~(3)~~] (4) when the disclosure of such
14 information is to the primary caregiver of the client and the
15 disclosure is only of information necessary for the continuity
16 of the client's treatment in the judgment of the treating
17 physician or certified psychologist who discloses the
18 information; or

19 [~~(4)~~] (5) when such disclosure is to an
20 insurer contractually obligated to pay part or all of the
21 expenses relating to the treatment of the client at the
22 residential facility. The information disclosed shall be
23 limited to data identifying the client, facility and treating
24 or supervising physician and the dates and duration of the
25 residential treatment. It shall not be a defense to an

insurer's obligation to pay that the information relating to the residential treatment of the client, apart from information disclosed pursuant to this section, has not been disclosed to the insurer.

C. No authorization given for the transmission or disclosure of confidential information shall be effective unless it:

(1) is in writing and signed; and

(2) contains a statement of the client's right to examine and copy the information to be disclosed, the name or title of the proposed recipient of the information and a description of the use that may be made of the information.

D. The client has a right of access to confidential information and has the right to make copies of any information and to submit clarifying or correcting statements and other documentation of reasonable length for inclusion with the confidential information. The statements and other documentation shall be kept with the relevant confidential information, shall accompany it in the event of disclosure and shall be governed by the provisions of this section to the extent they contain confidential information. Nothing in this subsection shall prohibit the denial of access to such records when a physician or other mental health or developmental disabilities professional believes and notes in the client's medical records that such disclosure would not be in the best

interests of the client. In any such case, the client has the right to petition the court for an order granting such access.

E. Where there exists evidence that the client whose consent to disclosure of confidential information is sought is incapable of giving or withholding valid consent and the client does not have a guardian or treatment guardian appointed by a court, the person seeking such authorization shall petition the court for the appointment of a treatment guardian to make a substitute decision for the client, except that if the client is less than fourteen years of age, the client's parent or guardian is authorized to consent to disclosure on behalf of the client.

F. Information concerning a client disclosed under this section shall not be released to any other person, agency or governmental entity or placed in files or computerized data banks accessible to any persons not otherwise authorized to obtain information under this section.

G. Nothing in the code shall limit the confidentiality rights afforded by federal statute or regulation.

H. A person appointed as a treatment guardian in accordance with the Mental Health and Developmental Disabilities Code may act as the client's personal representative pursuant to the federal Health Insurance Portability and Accountability Act of 1996, Sections 1171-1179

1 of the Social Security Act, 42 U.S.C. Section 1320d, as
 2 amended, and applicable federal regulations to obtain access to
 3 the client's protected health information, including mental
 4 health information and relevant physical health information,
 5 and may communicate with the client's health care providers in
 6 furtherance of such treatment."

7 **SECTION 18.** A new section of the Mental Health and
 8 Developmental Disabilities Code is enacted to read:

9 "[NEW MATERIAL] COMPILATION OF DATA FOR COURT-ORDERED
 10 MENTAL HEALTH TREATMENT AND APPOINTMENT OF TREATMENT
 11 GUARDIAN.--

12 A. The clerk of each court with jurisdiction to
 13 order assisted outpatient treatment pursuant to the Assisted
 14 Outpatient Treatment Act or involuntary commitment pursuant to
 15 the Mental Health and Developmental Disabilities Code shall
 16 provide a monthly report to the administrative office of the
 17 courts with the following information for the previous month:

18 (1) the number of petitions for assisted
 19 outpatient treatment filed with the court;

20 (2) the number of petitions for involuntary
 21 commitment of an adult pursuant to Section 43-1-11 NMSA 1978
 22 filed with the court;

23 (3) the number of petitions for extended
 24 commitment of adults pursuant to Section 43-1-12 NMSA 1978
 25 filed with the court;

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1 (4) the number of petitions for involuntary
2 commitment of developmentally disabled adults to residential
3 care pursuant to Section 43-1-13 NMSA 1978 filed with the
4 court;

5 (5) the number of petitions for appointment of
6 a treatment guardian pursuant to Section 43-1-15 NMSA 1978
7 filed with the court; and

8 (6) the disposition of each case included in
9 the monthly report, including the number of orders for
10 inpatient mental health services and the number of orders for
11 outpatient mental health services.

12 B. Beginning September 1, 2015, the administrative
13 office of the courts shall quarterly provide the information
14 reported to it pursuant to Subsection A of this section to the:

15 (1) department; and

16 (2) interagency behavioral health purchasing
17 collaborative.

18 C. The provisions of Subsections A and B of this
19 section do not require the production of protected health
20 information, information deemed confidential under Subsection A
21 of Section 14 of the Assisted Outpatient Treatment Act or
22 information protected from disclosure under Section 43-1-19
23 NMSA 1978."

SECTION 19. DELAYED REPEAL.--Sections 1 through 15 of this
act are repealed on July 1, 2020.

~~SECTION 19. APPROPRIATIONS.~~

~~A. Two hundred seventy five thousand dollars~~

1 ~~(\$275,000) is appropriated from the general fund to the~~
2 ~~administrative office of the courts for expenditure in fiscal~~
3 ~~year 2016 to hire personnel and to conduct necessary training~~
4 ~~to compile and report data relating to court ordered mental~~
5 ~~health treatment and proceedings to appoint treatment guardians~~
6 ~~as required by the Mental Health and Developmental Disabilities~~
7 ~~Code; and to contract for attorney services required by the~~
8 ~~Assisted Outpatient Treatment Act. Any unexpended or~~
9 ~~unencumbered balance remaining at the end of fiscal year 2016~~
10 ~~shall revert to the general fund.~~

11 ~~B. Two hundred thousand dollars (\$200,000) is~~
12 ~~appropriated from the general fund to the behavioral health~~
13 ~~services division of the human services department for~~
14 ~~expenditure in fiscal years 2016 through 2018 to contract with~~
15 ~~a state university for a study to evaluate the implementation~~
16 ~~and effectiveness of assisted outpatient treatment in New~~
17 ~~Mexico for the period of July 1, 2015 through December 31,~~
18 ~~2017. Any unexpended or unencumbered balance remaining at the~~
19 ~~end of fiscal year 2018 shall revert to the general fund.~~

20 **SECTION 20. EFFECTIVE DATE.**--The effective date of the
21 provisions of this act is July 1, 2015.