

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 166

57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025

AN ACT

RELATING TO COMMITMENT PROCEDURES; PROVIDING A DEFINITION FOR
"HARM TO SELF" AND "HARM TO OTHERS" IN THE MENTAL HEALTH AND
DEVELOPMENTAL DISABILITIES CODE AND THE ASSISTED OUTPATIENT
TREATMENT ACT.

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

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

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

A. "aversive stimuli" means anything that, because
it is believed to be unreasonably unpleasant, uncomfortable or
distasteful to the client, is administered or done to the
client for the purpose of reducing the frequency of a behavior,
but does not include verbal therapies, physical restrictions to

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underscoring material = new
~~[bracketed material] = delete~~

1 prevent imminent harm to self or others or psychotropic
2 medications that are not used for purposes of punishment;

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

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

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

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

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

24 (3) are conducted at the suitable available
25 facility close to the client's place of residence;

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1 E. "convulsive treatment" means any form of mental
2 health treatment that depends upon creation of a convulsion by
3 any means, including electroconvulsive treatment and insulin
4 coma treatment;

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

6 G. "crisis triage center" means a health facility
7 that:

8 (1) is licensed by the health care authority;

9 and

10 (2) provides stabilization of behavioral
11 health crises and may include residential and nonresidential
12 stabilization;

13 H. "department" or "division" means the behavioral
14 health services division of the health care authority;

15 I. "developmental or intellectual disability" means
16 a severe chronic disability attributable to significantly
17 subaverage general intellectual functioning existing
18 concurrently with deficits in adaptive behavior, cerebral
19 palsy, autism or neurological dysfunction that requires similar
20 treatment or habilitation;

21 J. "evaluation facility" means a community mental
22 health or developmental disability program, a crisis triage
23 center or a medical facility that has psychiatric or
24 developmental or intellectual disability services available,
25 including the New Mexico behavioral health institute at Las

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~~[bracketed material] = delete~~

1 Vegas, or, if none of those is reasonably available or
2 appropriate, the office of a physician or a certified
3 psychologist that is capable of performing a mental status
4 examination adequate to determine the need for involuntary
5 treatment;

6 K. "experimental treatment" means any mental health
7 or developmental disabilities treatment that presents
8 significant risk of physical harm, but does not include
9 accepted treatment used in competent practice of medicine and
10 psychology and supported by scientifically acceptable studies;

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

15 M. "habilitation" means the process by which
16 professional persons and their staff assist a client with a
17 developmental or an intellectual disability in acquiring and
18 maintaining those skills and behaviors that enable the person
19 to cope more effectively with the demands of the person's self
20 and environment and to raise the level of the person's
21 physical, mental and social efficiency. "Habilitation"
22 includes but is not limited to programs of formal, structured
23 education and treatment;

24 ~~[N. "likelihood of serious harm to oneself" means~~
25 ~~that it is more likely than not that in the near future the~~

1 ~~person will attempt to commit suicide or will cause serious~~
2 ~~bodily harm to the person's self by violent or other self-~~
3 ~~destructive means, including grave passive neglect;~~

4 ~~O. "likelihood of serious harm to others" means~~
5 ~~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 ~~N. "harm to others" means that within the recent~~
12 ~~past, the person has inflicted or attempted to inflict serious~~
13 ~~bodily harm on another or has acted in such a way as to create~~
14 ~~a substantial risk of serious bodily harm to another and it is~~
15 ~~more likely than not that the conduct will be repeated in the~~
16 ~~near future;~~

17 ~~O. "harm to self" means that:~~

18 ~~(1) the person's recent behavior demonstrates~~
19 ~~that the person lacks the capacity to satisfy the person's need~~
20 ~~for nourishment, personal or medical care, shelter or self-~~
21 ~~protection and safety and that it is more likely than not that~~
22 ~~the lack of capacity will result in death, serious bodily~~
23 ~~injury or serious physical or mental debilitation in the near~~
24 ~~future if treatment is not ordered; and~~

25 ~~(2) it is more likely than not that the person~~

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1 will suffer serious physical debilitation in the near future
2 unless adequate treatment is provided pursuant to the Mental
3 Health and Developmental Disabilities Code;

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

9 Q. "mental health or developmental or intellectual
10 disabilities professional" means a physician or other
11 professional who by training or experience is qualified to work
12 with persons with a mental disorder or a developmental or
13 intellectual disability;

14 R. "physician" or "certified psychologist", when
15 used for the purpose of hospital admittance or discharge, means
16 a physician or certified psychologist who has been granted
17 admitting privileges at a hospital licensed by the health care
18 authority, if such privileges are required;

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

23 (1) past, present or future physical or mental
24 health or condition of a person;

25 (2) provision of health care to a person; or

1 (3) payment for the provision of health care
2 to a person;

3 T. "psychosurgery":

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

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

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

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

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

20 U. "qualified mental health professional licensed
21 for independent practice" means an independent social worker, a
22 licensed professional clinical mental health counselor, a
23 marriage and family therapist, a certified nurse practitioner,
24 a clinical nurse specialist with a specialty in mental health
25 or a licensed art therapist, all of whom by training and

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1 experience are qualified to work with persons with a mental
2 disorder;

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

9 W. "treatment" means any effort to accomplish a
10 significant change in the mental or emotional condition or
11 behavior of the client."

12 SECTION 2. Section 43-1B-2 NMSA 1978 (being Laws 2016,
13 Chapter 84, Section 2, as amended) is amended to read:

14 "43-1B-2. DEFINITIONS.--As used in the Assisted
15 Outpatient Treatment Act:

16 A. "advance directive for mental health treatment"
17 means an individual instruction or power of attorney for mental
18 health treatment made pursuant to the Mental Health Care
19 Treatment Decisions Act;

20 B. "agent" means an individual designated in a
21 power of attorney for health care to make a mental health care
22 decision for the individual granting the power;

23 C. "assertive community treatment" means a team
24 treatment approach designed to provide comprehensive community-
25 based psychiatric treatment, rehabilitation and support to

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1 persons with serious and persistent mental disorders;

2 D. "assisted outpatient treatment" means categories
3 of outpatient services ordered by a district court, including
4 case management services, comprehensive community support
5 services, intensive outpatient services, care coordination or
6 assertive community treatment team services, prescribed to
7 treat a patient's mental disorder and to assist a patient in
8 living and functioning in the community or to attempt to
9 prevent a relapse or deterioration that may reasonably be
10 predicted to result in harm to the patient or another or the
11 need for hospitalization. Assisted outpatient treatment may
12 include:

- 13 (1) medication;
- 14 (2) periodic blood tests or urinalysis to
15 determine compliance with prescribed medications;
- 16 (3) individual or group therapy;
- 17 (4) day or partial-day programming activities;
- 18 (5) educational and vocational training or
19 activities;
- 20 (6) alcohol and substance abuse treatment and
21 counseling;
- 22 (7) periodic blood tests or urinalysis for the
23 presence of alcohol or illegal drugs for a patient with a
24 history of alcohol or substance abuse;
- 25 (8) supervision of living arrangements; and

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1 (9) any other services prescribed to treat the
2 patient's mental disorder and to assist the patient in living
3 and functioning in the community, or to attempt to prevent a
4 deterioration of the patient's mental or physical condition;

5 E. "covered entity" means a health plan, a health
6 care clearinghouse or a health care provider that transmits any
7 health information in electronic form;

8 F. "guardian" means a judicially appointed guardian
9 having authority to make mental health care decisions for an
10 individual;

11 G. "least restrictive appropriate alternative"
12 means treatment and conditions that:

13 (1) are no more harsh, hazardous or intrusive
14 than necessary to achieve acceptable treatment objectives; and

15 (2) do not restrict physical movement or
16 require residential care, except as reasonably necessary for
17 the administration of treatment or the protection of the
18 patient;

19 ~~[H. "likely to result in serious harm to others"~~
20 ~~means that it is more likely than not that in the near future a~~
21 ~~person will inflict serious, unjustified bodily harm on another~~
22 ~~person or commit a criminal sexual offense, as evidenced by~~
23 ~~behavior causing, attempting or threatening such harm, which~~
24 ~~behavior gives rise to a reasonable fear of such harm from the~~
25 ~~person;~~

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1 ~~I. "likely to result in serious harm to self" means~~
2 ~~that it is more likely than not that in the near future the~~
3 ~~person will attempt to commit suicide or will cause serious~~
4 ~~bodily harm to the person's self by violent or other self-~~
5 ~~destructive means, including grave passive neglect;]~~

6 H. "harm to others" means that within the recent
7 past, the person has inflicted or attempted to inflict serious
8 bodily harm on another or has acted in such a way as to create
9 a substantial risk of serious bodily harm to another and it is
10 more likely than not that the conduct will be repeated in the
11 near future;

12 I. "harm to self" means that:

13 (1) the person's recent behavior demonstrates
14 that the person lacks the capacity to satisfy the person's need
15 for nourishment, personal or medical care, shelter or self-
16 protection and safety and that it is more likely than not that
17 the lack of capacity will result in death, serious bodily
18 injury or serious physical or mental debilitation in the near
19 future if treatment is not ordered; and

20 (2) it is more likely than not that the person
21 will suffer serious physical debilitation in the near future
22 unless adequate treatment is provided pursuant to the Assisted
23 Outpatient Treatment Act;

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

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1 K. "participating municipality or county" means a
2 municipality or county that has entered into a memorandum of
3 understanding with its respective district court with respect
4 to the funding of such district court's administrative
5 expenses, including legal fees, for proceedings pursuant to the
6 Assisted Outpatient Treatment Act;

7 L. "patient" means a person receiving assisted
8 outpatient treatment pursuant to a court order;

9 M. "power of attorney for health care" means the
10 designation of an agent to make health care decisions for the
11 individual granting the power, made while the individual has
12 capacity;

13 N. "provider" means an individual or organization
14 licensed, certified or otherwise authorized or permitted by law
15 to provide mental or physical health diagnosis or treatment in
16 the ordinary course of business or practice of a profession;

17 O. "qualified professional" means a physician,
18 licensed psychologist, prescribing psychologist, certified
19 nurse practitioner or clinical nurse specialist with a
20 specialty in mental health, or a physician assistant with a
21 specialty in mental health;

22 P. "qualified protective order" means, with respect
23 to protected health information, an order of a district court
24 or stipulation of parties to a proceeding under the Assisted
25 Outpatient Treatment Act;

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1 Q. "respondent" means a person who is the subject
2 of a petition or order for assisted outpatient treatment;

3 R. "surrogate decision-maker" means:

4 (1) an agent designated by the respondent;

5 (2) a guardian; or

6 (3) a treatment guardian; and

7 S. "treatment guardian" means a person appointed
8 pursuant to Section 43-1-15 NMSA 1978 to make mental health
9 treatment decisions for a person who has been found by clear
10 and convincing evidence to be incapable of making the person's
11 own mental health treatment decisions."