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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.

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:

"SHORT TITLE.--Sections 1 through 14 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:

"DEFINITIONS.--As used in the Assisted Outpatient
Treatment Act:

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

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

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

1 support to persons with serious and persistent mental
2 disorders;

3 D. "assisted outpatient treatment" means
4 categories of outpatient services ordered by a district
5 court, including case management services, care coordination
6 or 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
18 activities;
- 19 (5) educational and vocational training or
20 activities;
- 21 (6) alcohol and substance abuse treatment
22 and counseling;
- 23 (7) periodic blood tests or urinalysis for
24 the presence of alcohol or illegal drugs for a patient with a
25 history of alcohol or substance abuse;

1 (8) supervision of living arrangements; and

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

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

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

13 G. "least restrictive appropriate alternative"
14 means treatment and conditions that:

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

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

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

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

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

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

11 K. "participating municipality or county" means a
12 municipality or county that has entered into a memorandum of
13 understanding with its respective district court with respect
14 to the funding of such district court's administrative
15 expenses, including legal fees, for proceedings pursuant to
16 the Assisted Outpatient Treatment Act;

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

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

23 N. "provider" means an individual or organization
24 licensed, certified or otherwise authorized or permitted by
25 law to provide mental or physical health diagnosis or

1 treatment in the ordinary course of business or practice of a
2 profession;

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

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

14 R. "surrogate decision-maker" means:

15 (1) an agent designated by the respondent;

16 (2) a guardian; or

17 (3) a treatment guardian; and

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

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

25 "ASSISTED OUTPATIENT TREATMENT--CRITERIA.--A person may

1 be ordered to participate in assisted outpatient treatment if
2 the court finds by clear and convincing evidence that the
3 person:

4 A. is eighteen years of age or older and is a
5 resident of a participating municipality or county;

6 B. has a primary diagnosis of a mental disorder;

7 C. has demonstrated a history of lack of
8 compliance with treatment for a mental disorder that has:

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

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

24 (3) resulted in the person being
25 hospitalized, incarcerated or detained for six months or more

1 and the person is to be discharged or released within the
2 next thirty days or was discharged or released within the
3 past sixty days;

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

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

12 F. will likely benefit from, and the person's best
13 interests will be served by, receiving assisted outpatient
14 treatment."

15 SECTION 4. A new section of the Mental Health and
16 Developmental Disabilities Code is enacted to read:

17 "PETITION TO THE COURT.--

18 A. A petition for an order authorizing assisted
19 outpatient treatment may be filed in the district court for
20 the county in which the respondent is present or reasonably
21 believed to be present; provided that such district court is
22 a party to a memorandum of understanding with a participating
23 municipality or county.

24 B. A petition for an order authorizing assisted
25 outpatient treatment may be filed only by the following

1 persons:

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

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

5 (3) the sibling or child of the respondent;
6 provided that the sibling or child is eighteen years of age
7 or older;

8 (4) the director of a hospital where the
9 respondent is hospitalized;

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

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

17 (7) a surrogate decision-maker.

18 C. The petition shall be entitled "In the Matter
19 of _____" and shall include:

20 (1) each criterion for assisted outpatient
21 treatment as set forth in Section 3 of the Assisted
22 Outpatient Treatment Act;

23 (2) facts that support the petitioner's
24 belief that the respondent meets each criterion; provided
25 that the hearing on the petition need not be limited to the

1 stated facts; and

2 (3) whether the respondent is present or is
3 reasonably believed to be present within the county where the
4 petition is filed.

5 D. The petition shall be accompanied by an
6 affidavit of a qualified professional that shall state that:

7 (1) the qualified professional has
8 personally examined the respondent no more than ten days
9 prior to the filing of the petition, that the qualified
10 professional recommends assisted outpatient treatment for the
11 respondent and that the qualified professional is willing and
12 able to testify at the hearing on the petition either in
13 person or by contemporaneous transmission from a different
14 location; or

15 (2) no more than ten days prior to the
16 filing of the petition, the qualified professional or the
17 qualified professional's designee has unsuccessfully
18 attempted to persuade the respondent to submit to an
19 examination, that the qualified professional has reason to
20 believe that the respondent meets the criteria for assisted
21 outpatient treatment and that the qualified professional is
22 willing and able to examine the respondent and testify at the
23 hearing on the petition either in person or by
24 contemporaneous transmission from a different location."

25 SECTION 5. A new section of the Mental Health and

1 Developmental Disabilities Code is enacted to read:

2 "QUALIFIED PROTECTIVE ORDER.--

3 A. A motion seeking a qualified protective order
4 shall accompany each petition for an order authorizing
5 assisted outpatient treatment.

6 B. In considering the motion, the court shall
7 determine which parties to the proceeding and their attorneys
8 are authorized to receive, subpoena and transmit protected
9 health information pertaining to the respondent for purposes
10 of the proceeding. If the petitioner is a party identified
11 in Paragraph (1), (2) or (3) of Subsection B of Section 4 of
12 the Assisted Outpatient Treatment Act, the court may bar or
13 limit the disclosure of the respondent's protected health
14 information.

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

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

22 E. Within forty-five days after the later of the
23 exhaustion of all appeals or the date on which the respondent
24 is no longer receiving assisted outpatient treatment, the
25 parties and their attorneys and any person or entity in

1 possession of protected health information received from a
2 party or the party's attorney in the course of the proceeding
3 shall destroy all copies of protected health information
4 pertaining to the respondent, except that counsel are not
5 required to secure the return or destruction of protected
6 health information submitted to the court.

7 F. Nothing in the order controls or limits the use
8 of protected health information pertaining to the respondent
9 that comes into the possession of a party or the party's
10 attorney from a source other than a covered entity.

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

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

18 "HEARING--EXAMINATION BY A QUALIFIED PROFESSIONAL.--

19 A. Upon receipt of a petition meeting all
20 requirements of Sections 4 and 5 of the Assisted Outpatient
21 Treatment Act, the court shall fix a date for a hearing:

22 (1) no sooner than three or later than seven
23 days after the date of service or as stipulated by the
24 parties or, upon a showing of good cause, no later than
25 thirty days after the date of service; or

1 (2) if the respondent is hospitalized at the
2 time of filing of the petition, before discharge of the
3 respondent and in sufficient time to arrange for a continuous
4 transition from inpatient treatment to assisted outpatient
5 treatment.

6 B. A copy of the petition and notice of hearing
7 shall be served, in the same manner as a summons, on the
8 petitioner, the respondent, the qualified professional whose
9 affidavit accompanied the petition, a current provider, if
10 any, and a surrogate decision-maker, if any.

11 C. If the respondent has a surrogate
12 decision-maker who wishes to provide testimony at the
13 hearing, the court shall afford the surrogate decision-maker
14 an opportunity to testify.

15 D. The respondent shall be represented by counsel
16 at all stages of the proceedings.

17 E. If the respondent fails to appear at the
18 hearing after notice, the court may conduct the hearing in
19 the respondent's absence; provided that the respondent's
20 counsel is present.

21 F. If the respondent has refused to be examined by
22 the qualified professional whose affidavit accompanied the
23 petition, the court may order a mental examination of the
24 respondent as provided by Rule 1-035 (A) NMRA. The
25 examination of the respondent may be performed by the

1 qualified professional whose affidavit accompanied the
2 petition. If the examination is performed by another
3 qualified professional, the examining qualified professional
4 shall be authorized to consult with the qualified
5 professional whose affidavit accompanied the petition.

6 G. If the respondent has refused to be examined by
7 a qualified professional and the court finds reasonable
8 grounds to believe that the allegations of the petition are
9 true, the court may issue a written order directing a peace
10 officer who has completed crisis intervention training to
11 detain and transport the respondent to a provider for
12 examination by a qualified professional. A respondent
13 detained pursuant to this subsection shall be detained no
14 longer than necessary to complete the examination and in no
15 event longer than twenty-four hours.

16 H. A qualified professional, who has personally
17 examined the respondent within ten days of the filing of the
18 petition, shall provide testimony in support of the finding
19 that the respondent meets all of the criteria for assisted
20 outpatient treatment and in support of the written proposed
21 treatment plan developed pursuant to Section 7 of the
22 Assisted Outpatient Treatment Act, including:

23 (1) the recommended assisted outpatient
24 treatment, the rationale for the recommended assisted
25 outpatient treatment and the facts that establish that such

1 treatment is the least restrictive appropriate alternative;

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

5 (3) if the recommended assisted outpatient
6 treatment includes medication, the types or classes of
7 medication that should be authorized, the beneficial and
8 detrimental physical and mental effects of such medication
9 and whether such medication should be self-administered or
10 administered by a specified provider."

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

13 "WRITTEN PROPOSED TREATMENT PLAN.--

14 A. No later than the date of the hearing, a
15 qualified professional shall provide a written proposed
16 treatment plan to the court. The plan shall state all
17 treatment services recommended for the respondent and, for
18 each such service, shall specify a provider that has agreed
19 to provide the service.

20 B. In developing a written proposed treatment
21 plan, the qualified professional shall take into account, if
22 existing, an advance directive for mental health treatment
23 and provide the following persons with an opportunity to
24 participate:

25 (1) the respondent;

1 (2) all current treating providers;

2 (3) upon the request of the respondent, an
3 individual significant to the respondent, including any
4 relative, close friend or individual otherwise concerned with
5 the welfare of the respondent; and

6 (4) any surrogate decision-maker.

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

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

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

25 (2) such testing is necessary to prevent a

1 relapse or deterioration that would be likely to result in
2 serious harm to self or likely to result in serious harm to
3 others.

4 E. If the respondent has executed an advance
5 directive for mental health treatment, the qualified
6 professional shall include a copy of such advance directive
7 with the submission of the proposed treatment plan."

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

10 "DISPOSITION.--

11 A. After a hearing meeting all requirements of
12 Section 6 of the Assisted Outpatient Treatment Act, receipt
13 of a proposed treatment plan meeting all requirements of
14 Section 7 of that act and consideration of all relevant
15 evidence, the court may order the respondent to receive
16 assisted outpatient treatment if it finds by clear and
17 convincing evidence that the respondent meets all criteria
18 set forth in Section 3 of the Assisted Outpatient Treatment
19 Act.

20 B. The court's order shall:

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

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

25 (3) direct one or more specified providers

1 to provide or arrange for all assisted outpatient treatment
2 for the patient throughout the period of the order.

3 C. If the court order includes medication, it
4 shall state the type or types of medication and the dosage
5 range found to be necessary, based on the treatment plan and
6 evidence presented. The court may order the respondent to
7 self-administer medication or accept the administration of
8 such medication by a specified provider. In no event shall
9 the court require or authorize the use of physical force or
10 restraints to administer medication to the respondent.

11 D. The court may not order treatment that has not
12 been recommended by the qualified professional and included
13 in the written proposed treatment plan, nor direct the
14 participation of a provider that has not been specified in
15 such plan.

16 E. Nothing in the Assisted Outpatient Treatment
17 Act, nor in the court's order, shall require any of the
18 following to make payment for any services or items not
19 otherwise a covered benefit under the terms of the applicable
20 program or contract of insurance:

- 21 (1) a health maintenance organization;
- 22 (2) a managed health care plan;
- 23 (3) a health insurance company;
- 24 (4) a group health plan that provides
25 medical care to employees or their dependents under the

1 federal Employee Retirement Income Security Act of 1974
2 directly or through insurance, reimbursement or other means;
3 or

4 (5) the state medicaid program.

5 F. If the court has received testimony from a
6 surrogate decision-maker or a copy of an advance directive
7 for mental health treatment executed by the respondent, the
8 treatment order shall not conflict with the preferences
9 expressed in such testimony or advance directive without a
10 showing of good cause."

11 SECTION 9. A new section of the Mental Health and
12 Developmental Disabilities Code is enacted to read:

13 "EXPEDITIOUS APPEAL.--There shall be a right to an
14 expeditious appeal from a final order in a proceeding under
15 the Assisted Outpatient Treatment Act."

16 SECTION 10. A new section of the Mental Health and
17 Developmental Disabilities Code is enacted to read:

18 "EFFECT OF DETERMINATION THAT RESPONDENT IS IN NEED OF
19 ASSISTED OUTPATIENT TREATMENT.--An assisted outpatient
20 treatment order shall not be construed as a determination
21 that the respondent is incompetent."

22 SECTION 11. A new section of the Mental Health and
23 Developmental Disabilities Code is enacted to read:

24 "APPLICATIONS FOR CONTINUED PERIODS OF TREATMENT.--

25 A. Prior to the expiration of the period of

1 assisted outpatient treatment, a party or the respondent's
2 surrogate decision-maker may apply to the court for a
3 subsequent order authorizing continued assisted outpatient
4 treatment for a period not to exceed one year. The
5 application shall be served upon those persons required to be
6 served with notice of a petition for an order authorizing
7 assisted outpatient treatment and every specified provider.

8 B. If the court's disposition of the application
9 does not occur prior to the expiration date of the current
10 order, the current order shall remain in effect until the
11 court's disposition. The disposition of the application
12 shall occur no later than ten calendar days following the
13 filing of the application.

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

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

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

23 (3) is in need of continued assisted
24 outpatient treatment as the least restrictive appropriate
25 alternative in order to prevent a relapse or deterioration

1 likely to result in serious harm to self or likely to result
2 in serious harm to others; and

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

6 SECTION 12. A new section of the Mental Health and
7 Developmental Disabilities Code is enacted to read:

8 "APPLICATION TO STAY, VACATE, MODIFY OR ENFORCE AN
9 ORDER.--

10 A. In addition to any other right or remedy
11 available by law with respect to the court order for assisted
12 outpatient treatment, a party or the respondent's surrogate
13 decision-maker may apply to the court to stay, vacate, modify
14 or enforce the order. The application shall be served upon
15 those persons required to be served with notice of a petition
16 for an order authorizing assisted outpatient treatment and
17 every specified provider. The disposition of the application
18 shall occur no later than ten calendar days following the
19 filing of the application.

20 B. A specified provider shall apply to the court
21 for approval before instituting a proposed material change in
22 mandated services or assisted outpatient treatment unless
23 such change is contemplated in the order. The application
24 shall be served upon those persons required to be served with
25 notice of a petition for an order authorizing assisted

1 outpatient treatment and every specified provider. The
2 disposition of the application shall occur no later than ten
3 calendar days following the filing of the application.
4 Nonmaterial changes may be instituted by the provider without
5 court approval. For purposes of this subsection, "material
6 change" means an addition or deletion of a category of
7 assisted outpatient treatment and does not include a change
8 in medication or dosage contemplated in the order that, based
9 upon the clinical judgment of the provider, is in the best
10 interest of the patient.

11 C. A court order requiring periodic blood tests or
12 urinalysis for the presence of alcohol or abused substances
13 shall be subject to review after six months by a qualified
14 professional, who shall be authorized to terminate such blood
15 tests or urinalysis without further action by the court."

16 SECTION 13. A new section of the Mental Health and
17 Developmental Disabilities Code is enacted to read:

18 "FAILURE TO COMPLY WITH ASSISTED OUTPATIENT TREATMENT.--

19 A. If a qualified professional determines that a
20 respondent has materially failed to comply with the assisted
21 outpatient treatment as ordered by the court, such that the
22 qualified professional believes that the respondent's
23 condition is likely to result in serious harm to self or
24 likely to result in serious harm to others and that immediate
25 detention is necessary to prevent such harm, the qualified

1 professional shall certify the need for detention and
2 transport of the respondent for emergency mental health
3 evaluation and care pursuant to the provisions of Paragraph
4 (4) of Subsection A of Section 43-1-10 NMSA 1978.

5 B. A respondent's failure to comply with an order
6 of assisted outpatient treatment is not grounds for
7 involuntary civil commitment or a finding of contempt of
8 court, or for the use of physical force or restraints to
9 administer medication to the respondent."

10 SECTION 14. A new section of the Mental Health and
11 Developmental Disabilities Code is enacted to read:

12 "SEQUESTRATION AND CONFIDENTIALITY OF RECORDS.--

13 A. All records or information containing protected
14 health information relating to the respondent, including all
15 pleadings and other documents filed in the matter, social
16 records, diagnostic evaluations, psychiatric or psychologic
17 reports, videotapes, transcripts and audio recordings of
18 interviews and examinations, recorded testimony and the
19 assisted outpatient treatment plan that was produced or
20 obtained as part of a proceeding pursuant to the Assisted
21 Outpatient Treatment Act, shall be confidential and closed to
22 the public.

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

25 (1) court personnel;

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

16 SECTION 15. Section 43-1-3 NMSA 1978 (being Laws 1977,
17 Chapter 279, Section 2, as amended) is amended to read:

18 "43-1-3. DEFINITIONS.--As used in the Mental Health and
19 Developmental Disabilities Code:

20 A. "aversive stimuli" means anything that, because
21 it is believed to be unreasonably unpleasant, uncomfortable
22 or distasteful to the client, is administered or done to the
23 client for the purpose of reducing the frequency of a
24 behavior, but does not include verbal therapies, physical
25 restrictions to prevent imminent harm to self or others or

1 psychotropic medications that are not used for purposes of
2 punishment;

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

11 C. "code" means the Mental Health and
12 Developmental 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
18 intrusive than necessary to achieve acceptable treatment
19 objectives for 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
23 for the protection of the client or others from physical
24 injury; 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
4 by 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
10 of a person that is attributable to mental retardation,
11 cerebral palsy, autism or neurological dysfunction that
12 requires treatment or habilitation similar to that provided
13 to persons 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
18 health institute at Las Vegas, the Los Lunas medical center
19 or, if none of the foregoing is reasonably available or
20 appropriate, the office of a physician or a certified
21 psychologist, and that is capable of performing a mental
22 status examination adequate to determine the need for
23 involuntary treatment;

24 J. "experimental treatment" means any mental
25 health or developmental disabilities treatment that presents

1 significant risk of physical harm, but does not include
2 accepted treatment used in competent practice of medicine and
3 psychology and supported by scientifically acceptable
4 studies;

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

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

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

23 N. "likelihood of serious harm to others" means
24 that it is more likely than not that in the near future a
25 person will inflict serious, unjustified bodily harm on

1 another person or commit a criminal sexual offense, as
2 evidenced by behavior causing, attempting or threatening such
3 harm, which behavior gives rise to a reasonable fear of such
4 harm from the person;

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

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

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

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

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

24 (2) provision of health care to an
25 individual; or

1 (3) payment for the provision of health care
2 to an individual;

3 S. "psychosurgery":

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

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

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

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

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

22 T. "qualified mental health professional licensed
23 for independent practice" means an independent social worker,
24 a licensed professional clinical mental health counselor, a
25 marriage and family therapist, a certified nurse practitioner

1 or a clinical nurse specialist with a specialty in mental
2 health, all of whom by training and experience are qualified
3 to work with persons with a mental disorder;

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

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

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

15 "43-1-19. DISCLOSURE OF INFORMATION.--

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

23 B. Authorization from the client shall not be
24 required for the disclosure or transmission of confidential
25 information in the following circumstances:

1 (1) when the request is from a mental health
2 or developmental disability professional or from an employee
3 or trainee working with a person with a mental disability or
4 developmental disability, to the extent that the practice,
5 employment or training on behalf of the client requires
6 access to such information is necessary;

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

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

17 (4) when the disclosure of such information
18 is to the primary caregiver of the client and the disclosure
19 is only of information necessary for the continuity of the
20 client's treatment in the judgment of the treating physician
21 or certified psychologist who discloses the information; or

22 (5) when such disclosure is to an insurer
23 contractually obligated to pay part or all of the expenses
24 relating to the treatment of the client at the residential
25 facility. The information disclosed shall be limited to data

1 identifying the client, facility and treating or supervising
2 physician and the dates and duration of the residential
3 treatment. It shall not be a defense to an insurer's
4 obligation to pay that the information relating to the
5 residential treatment of the client, apart from information
6 disclosed pursuant to this section, has not been disclosed to
7 the insurer.

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

11 (1) is in writing and signed; and

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

17 D. The client has a right of access to
18 confidential information and has the right to make copies of
19 any information and to submit clarifying or correcting
20 statements and other documentation of reasonable length for
21 inclusion with the confidential information. The statements
22 and other documentation shall be kept with the relevant
23 confidential information, shall accompany it in the event of
24 disclosure and shall be governed by the provisions of this
25 section to the extent they contain confidential information.

1 Nothing in this subsection shall prohibit the denial of
2 access to such records when a physician or other mental
3 health or developmental disabilities professional believes
4 and notes in the client's medical records that such
5 disclosure would not be in the best interests of the client.
6 In any such case, the client has the right to petition the
7 court for an order granting such access.

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

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

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

1 regulation.

2 H. A person appointed as a treatment guardian in
3 accordance with the Mental Health and Developmental
4 Disabilities Code may act as the client's personal
5 representative pursuant to the federal Health Insurance
6 Portability and Accountability Act of 1996, Sections
7 1171-1179 of the Social Security Act, 42 U.S.C. Section
8 1320d, as amended, and applicable federal regulations to
9 obtain access to the client's protected health information,
10 including mental health information and relevant physical
11 health information, and may communicate with the client's
12 health care providers in furtherance of such treatment."

13 SECTION 17. DELAYED REPEAL.--Sections 1 through 14 of
14 this act are repealed on July 1, 2021.

15 SECTION 18. EFFECTIVE DATE.--The effective date of the
16 provisions of this act is July 1, 2016. _____

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