

SENATE BILL 128

54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020

INTRODUCED BY

Mary Kay Papen

This document incorporates amendments that have been adopted during the current legislative session. The document is a tool to show the amendments in context and is not to be used for the purpose of amendments.

AN ACT

RELATING TO MENTAL HEALTH CARE; ADDING ACTIVITIES TO THE DEFINITION OF "ASSISTED OUTPATIENT TREATMENT" ~~SPAC~~ **AND ADDING DISTRICT ATTORNEYS TO THE PERSONS WHO CAN FILE PETITIONS IN THE ASSISTED OUTPATIENT TREATMENT ACT** ~~SPAC~~; REPEALING A DELAYED REPEAL.

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

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

"43-1B-2. DEFINITIONS.--As used in the Assisted

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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 support to persons with serious and persistent mental disorders;

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

- (1) medication;
- (2) periodic blood tests or urinalysis to

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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

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

H. "likely to result in serious harm to others" means that it is more likely than not that in the near future a person will inflict serious, unjustified bodily harm on another 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;

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

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

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

L. "patient" means a person receiving assisted

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outpatient treatment pursuant to a court order;

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

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

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

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

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

R. "surrogate decision-maker" means:

- (1) an agent designated by the respondent;
- (2) a guardian; or
- (3) a treatment guardian; and

S. "treatment guardian" means a person appointed

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

SECTION 2. Section 43-1B-4 NMSA 1978 (being Laws 2016, Chapter 84, Section 4) is amended to read:

"43-1B-4. PETITION TO THE COURT.--

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

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

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

(2) the parent or spouse of the respondent;

(3) the sibling or child of the respondent;

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

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

(5) the director of a public or charitable

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organization or agency or a home where the respondent resides and that provides mental health services to the respondent;

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

SPAC→~~or~~←SPAC SPAC→or←SPAC

(7) a surrogate decision-maker SPAC→~~;~~ or←SPAC
SPAC→.←SPAC

SPAC→~~(8) a district attorney.~~←SPAC

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

(1) each criterion for assisted outpatient treatment as set forth in Section [~~3 of the Assisted Outpatient Treatment Act~~] 43-1B-3 NMSA 1978;

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

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

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

(1) the qualified professional has personally

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

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

SECTION 3. REPEAL.--Laws 2016, Chapter 84, Section 17 is repealed.