

1 SENATE BILL 9
2 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SPECIAL SESSION, 2024**

3 INTRODUCED BY
4 Mark Moores
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9
10 AN ACT

11 RELATING TO COMMITMENT PROCEDURES; PROVIDING A DEFINITION FOR
12 "HARM TO SELF" AND "HARM TO OTHERS".
13

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

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

17 "43-1-3. DEFINITIONS.--As used in the Mental Health and
18 Developmental Disabilities Code:

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

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

8 C. "code" means the Mental Health and Developmental
9 Disabilities Code;

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

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

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

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

24 E. "convulsive treatment" means any form of mental
25 health treatment that depends upon creation of a convulsion by

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1 any means, including electroconvulsive treatment and insulin
2 coma treatment;

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

4 G. "crisis triage center" means a health facility
5 that:

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

7 and

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

11 H. "department" or "division" means the behavioral
12 health services division of the health care authority;

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

19 J. "evaluation facility" means a community mental
20 health or developmental disability program, a crisis triage
21 center or a medical facility that has psychiatric or
22 developmental or intellectual disability services available,
23 including the New Mexico behavioral health institute at Las
24 Vegas, or, if none of those is reasonably available or
25 appropriate, the office of a physician or a certified

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1 psychologist that is capable of performing a mental status
2 examination adequate to determine the need for involuntary
3 treatment;

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

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

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

22 ~~[N. "likelihood of serious harm to oneself" means~~
23 ~~that it is more likely than not that in the near future the~~
24 ~~person will attempt to commit suicide or will cause serious~~
25 ~~bodily harm to the person's self by violent or other self-~~

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1 ~~destructive means, including grave passive neglect;~~

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

9 N. "harm to self" means that:

10 (1) a person is unable, without care,
11 supervision and the continued assistance of others not
12 otherwise available, to exercise self-control, judgment and
13 discretion in the conduct of the person's daily
14 responsibilities and social relations or to satisfy the
15 person's need for nourishment, personal or medical care,
16 shelter or self-protection and safety; and

17 (2) there is a reasonable probability of the
18 person suffering serious physical debilitation in the near
19 future unless adequate treatment is provided pursuant to the
20 Mental Health and Developmental Disabilities Code. A showing
21 of behavior that is grossly irrational, actions that the person
22 is unable to control, behavior that is grossly inappropriate to
23 a situation or other evidence of severely impaired insight and
24 judgment creates a prima facie inference that a person is
25 unable to care for the person's self;

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1 O. "harm to others" means that within the relevant
2 past, the person has inflicted, attempted to inflict or
3 threatened to inflict serious bodily harm on another, has acted
4 in such a way as to create a substantial risk of serious bodily
5 harm to another or has engaged in extreme destruction of
6 property and that there is a reasonable probability that the
7 conduct will be repeated;

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

13 Q. "mental health or developmental or intellectual
14 disabilities professional" means a physician or other
15 professional who by training or experience is qualified to work
16 with persons with a mental disorder or a developmental or
17 intellectual disability;

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

23 S. "protected health information" means
24 individually identifiable health information transmitted by or
25 maintained in an electronic form or any other form or media

1 that relates to the:

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

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

5 (3) payment for the provision of health care
6 to a person;

7 T. "psychosurgery":

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

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

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

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

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

24 U. "qualified mental health professional licensed
25 for independent practice" means an independent social worker, a

1 licensed professional clinical mental health counselor, a
2 marriage and family therapist, a certified nurse practitioner,
3 a clinical nurse specialist with a specialty in mental health
4 or a licensed art therapist, all of whom by training and
5 experience are qualified to work with persons with a mental
6 disorder;

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

13 W. "treatment" means any effort to accomplish a
14 significant change in the mental or emotional condition or
15 behavior of the client."

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

18 "43-1B-2. DEFINITIONS.--As used in the Assisted
19 Outpatient Treatment Act:

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

24 B. "agent" means an individual designated in a
25 power of attorney for health care to make a mental health care

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1 decision for the individual granting the power;

2 C. "assertive community treatment" means a team
3 treatment approach designed to provide comprehensive community-
4 based psychiatric treatment, rehabilitation and support to
5 persons with serious and persistent mental disorders;

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

- 17 (1) medication;
- 18 (2) periodic blood tests or urinalysis to
19 determine compliance with prescribed medications;
- 20 (3) individual or group therapy;
- 21 (4) day or partial-day programming activities;
- 22 (5) educational and vocational training or
23 activities;
- 24 (6) alcohol and substance abuse treatment and
25 counseling;

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1 (7) periodic blood tests or urinalysis for the
2 presence of alcohol or illegal drugs for a patient with a
3 history of alcohol or substance abuse;

4 (8) supervision of living arrangements; and

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

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

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

15 G. "least restrictive appropriate alternative"
16 means treatment and conditions that:

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

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

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

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

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

10 H. "harm to self" means that:

11 (1) a person is unable, without care,
12 supervision and the continued assistance of others not
13 otherwise available, to exercise self-control, judgment and
14 discretion in the conduct of the person's daily
15 responsibilities and social relations or to satisfy the
16 person's need for nourishment, personal or medical care,
17 shelter or self-protection and safety; and

18 (2) there is a reasonable probability of the
19 person suffering serious physical debilitation in the near
20 future unless adequate treatment is provided pursuant to the
21 Assisted Outpatient Treatment Act. A showing of behavior that
22 is grossly irrational, actions that a person is unable to
23 control, behavior that is grossly inappropriate to a situation
24 or other evidence of severely impaired insight and judgment
25 creates a prima facie inference that a person is unable to care

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1 for the person's self;

2 I. "harm to others" means that within the relevant
3 past, the person has inflicted, attempted to inflict or
4 threatened to inflict serious bodily harm on another, has acted
5 in such a way as to create a substantial risk of serious bodily
6 harm to another or has engaged in extreme destruction of
7 property; and that there is a reasonable probability that the
8 conduct will be repeated;

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 the
16 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 law
25 to provide mental or physical health diagnosis or treatment in

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1 the ordinary course of business or practice of a profession;

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

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

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

13 R. "surrogate decision-maker" means:

14 (1) an agent designated by the respondent;

15 (2) a guardian; or

16 (3) a treatment guardian; and

17 S. "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."