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AN ACT

RELATING TO COMMITMENT PROCEDURES; PROVIDING A DEFINITION FOR "SERIOUS HARM TO SELF" AND "SERIOUS 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 prevent imminent harm to self or others or psychotropic medications that are not used for purposes of punishment;

B. "client" means a patient who is requesting or receiving mental health services or any person requesting or receiving developmental disabilities services or who is present in a mental health or developmental disabilities facility for the purpose of receiving such services or who has been placed in a mental health or developmental

1 disabilities facility by the person's parent or guardian or  
2 by any court order;

3 C. "code" means the Mental Health and  
4 Developmental Disabilities Code;

5 D. "consistent with the least drastic means  
6 principle" means that the habilitation or treatment and the  
7 conditions of habilitation or treatment for the client,  
8 separately and in combination:

9 (1) are no more harsh, hazardous or  
10 intrusive than necessary to achieve acceptable treatment  
11 objectives for the client;

12 (2) involve no restrictions on physical  
13 movement and no requirement for residential care except as  
14 reasonably necessary for the administration of treatment or  
15 for the protection of the client or others from physical  
16 injury; and

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

19 E. "convulsive treatment" means any form of mental  
20 health treatment that depends upon creation of a convulsion  
21 by any means, including electroconvulsive treatment and  
22 insulin coma treatment;

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

24 G. "crisis triage center" means a health facility  
25 that:

1 (1) is licensed by the health care  
2 authority; and

3 (2) provides stabilization of behavioral  
4 health crises and may include residential and nonresidential  
5 stabilization;

6 H. "department" or "division" means the behavioral  
7 health services division of the health care authority;

8 I. "developmental or intellectual disability"  
9 means a severe chronic disability attributable to  
10 significantly subaverage general intellectual functioning  
11 existing concurrently with deficits in adaptive behavior,  
12 cerebral palsy, autism or neurological dysfunction that  
13 requires similar treatment or habilitation;

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

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

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

20 N. "serious harm to self" means that:

21 (1) it is more likely than not that in the  
22 near future, the person will attempt to cause self-inflicted  
23 death or will intentionally cause serious bodily harm to the  
24 person's self; or

25 (2) the person's recent behavior:

1 (a) demonstrates that, as a result of a  
2 mental disorder, the person lacks the decisional capacity to  
3 satisfy the person's need for nourishment, personal or  
4 medical care, shelter or self-protection and safety and that  
5 it is more likely than not that the lack of decisional  
6 capacity will result in death, serious bodily injury or  
7 serious physical or mental debilitation in the near future if  
8 treatment is not ordered; and

9 (b) makes it more likely than not that  
10 the person will suffer serious physical debilitation in the  
11 near future unless adequate treatment is provided pursuant to  
12 the Mental Health and Developmental Disabilities Code;

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

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

23 Q. "physician" or "certified psychologist", when  
24 used for the purpose of hospital admittance or discharge,  
25 means a physician or certified psychologist who has been

1 granted admitting privileges at a hospital licensed by the  
2 health care authority, if such privileges are required;

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

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

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

10 (3) payment for the provision of health care  
11 to a person;

12 S. "psychosurgery":

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

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

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

24 (c) treatment of abnormal brain  
25 function or abnormal brain tissue in order to modify

1 thoughts, feelings, actions or behavior when the abnormality  
2 is not an established cause for those thoughts, feelings,  
3 actions or behavior; and

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

6 T. "qualified mental health professional licensed  
7 for independent practice" means an independent social worker,  
8 a licensed professional clinical mental health counselor, a  
9 marriage and family therapist, a certified nurse  
10 practitioner, a clinical nurse specialist with a specialty in  
11 mental health or a licensed art therapist, all of whom by  
12 training and experience are qualified to work with persons  
13 with a mental disorder;

14 U. "residential treatment or habilitation program"  
15 means diagnosis, evaluation, care, treatment or habilitation  
16 rendered inside or on the premises of a mental health or  
17 developmental disabilities facility, hospital, clinic,  
18 institution or supervisory residence or nursing home when the  
19 client resides on the premises; and

20 V. "treatment" means any effort to accomplish a  
21 significant change in the mental or emotional condition or  
22 behavior of the client."

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

25 "43-1B-2. DEFINITIONS.--As used in the Assisted

1 Outpatient Treatment Act:

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

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

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

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

25 (1) medication;

- 1 (2) periodic blood tests or urinalysis to  
2 determine compliance with prescribed medications;
- 3 (3) individual or group therapy;
- 4 (4) day or partial-day programming  
5 activities;
- 6 (5) educational and vocational training or  
7 activities;
- 8 (6) alcohol and substance abuse treatment  
9 and counseling;
- 10 (7) periodic blood tests or urinalysis for  
11 the presence of alcohol or illegal drugs for a patient with a  
12 history of alcohol or substance abuse;
- 13 (8) supervision of living arrangements; and
- 14 (9) any other services prescribed to treat  
15 the patient's mental disorder and to assist the patient in  
16 living and functioning in the community, or to attempt to  
17 prevent a deterioration of the patient's mental or physical  
18 condition;

19 E. "covered entity" means a health plan, a health  
20 care clearinghouse or a health care provider that transmits  
21 any health information in electronic form;

22 F. "guardian" means a judicially appointed  
23 guardian having authority to make mental health care  
24 decisions for an individual;

25 G. "least restrictive appropriate alternative"

1 means treatment and conditions that:

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

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

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

15 I. "serious harm to self" means that:

16 (1) it is more likely than not that in the  
17 near future, the person will attempt to cause self-inflicted  
18 death or will intentionally cause serious bodily harm to the  
19 person's self; or

20 (2) the person's recent behavior:

21 (a) demonstrates that, as a result of a  
22 mental disorder, the person lacks the decisional capacity to  
23 satisfy the person's need for nourishment, personal or  
24 medical care, shelter or self-protection and safety and that  
25 it is more likely than not that the lack of decisional

1 capacity will result in death, serious bodily injury or  
2 serious physical or mental debilitation in the near future if  
3 treatment is not ordered; and

4 (b) makes it more likely than not that  
5 the person will suffer serious physical debilitation in the  
6 near future unless adequate treatment is provided pursuant to  
7 the Assisted Outpatient Treatment Act;

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

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

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

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

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

1 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  
8 respect to protected health information, an order of a  
9 district court or stipulation of parties to a proceeding  
10 under the Assisted 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."