

ASSISTED OUTPATIENT TREATMENT ACT

Currently NMSA 1978 §43-1B-1 to § 43-1B-14 (2021)



HOLLY
AGAJANIAN

Chief General Counsel, Office of Governor Michelle
Lujan Grisham

ASSISTED OUTPATIENT TREATMENT (“AOT”) DEFINED

AOT is defined as “... 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 teams 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.”

NMSA §43-1B-2(D)

AOT DEFINED CONTINUED

Can also include:

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

NMSA §43-1B-2(D)(1)-(9)

CURRENT ELIGIBILITY FOR AOT

NMSA §43-1B-3

Court must find by clear and convincing evidence that the respondent:

- Is 18 years old or older AND is a resident of a participating municipality or county;
- Has a primary diagnosis of a mental disorder;
- Has a history of lack of compliance with treatment for their mental disorder that has;
 - At least twice within 48 months, been a significant factor in needing hospitalization, services in a forensic or other mental institution or other health unit, jail, prison or detention center; provided that the 48 months has been extended by the length of any hospitalization, incarceration or detention of the person that occurred within the 48-month period;
 - Resulted in one or more acts of serious violent behavior toward self or another, or resulted in threats/attempts of serious physical harm to self or others, within the last 48 months; provided that the 48 months has been extended by the length of any hospitalization, incarceration or detention of the person that occurred within the 48-month period; *OR*
 - Resulted in the person being incarcerated, hospitalized, or detained for six months or more and the person is to be discharged or released in the next 30 days, or was discharged or release in the last 60 days.
- Is unwilling or unlikely, due to the mental disorder, to voluntarily participate in outpatient treatment which would allow the person to live safely in their community without supervision from the court;
- Needs AOT as the least restrictive appropriate alternative to prevent a relapse or deterioration likely to result in serious harm to self or others; and
- The person will benefit from, and their best interest will be served by receiving AOT.

PETITIONING THE COURT FOR AOT- CURRENT STATUTE

- Petition for an order allowing AOT may be filed with the district court that sits in the county where the respondent is present or reasonably believed to be present.
- The district court where the petition is made must be a party to a memorandum of understanding (MOU) with a participating county or municipality.

NMSA §43-1B-4(a)

PETITIONING THE COURT FOR AOT- CURRENT STATUTE CONTINUED

The following people can file a petition for an order authorizing AOT:

- A person who is 18 years old or older who lives with the respondent;
- The parent or spouse of the respondent;
- An 18-year-old sibling or child of the respondent;
- The director of a hospital where the respondent is hospitalized;
- The director of a public or charitable organization, agency, or home where the respondent resides that provides them with mental health services;
- A qualified professional who treats, supervises or has treated or supervised the treatment of the respondent for a mental disorder in the past 48 months; or
- A surrogate decision maker.

NMSA §43-1B-4(B)

OTHER CONSIDERATIONS

Petition for AOT shall include an affidavit from a qualified health professional (QHP) and state that:

- QHP has examined respondent no more than ten (10) days prior to the filing of the petition, that the QHP recommends AOT, and that the QHP is willing to testify at the hearing for the petition; or
- No more than ten (10) days prior to filing the petition, the QHP or their designees have unsuccessfully attempted to persuade respondent to submit criteria for AOT and the QHP is willing to examine the respondent and testify at the hearing for the petition.

NMSA §43-1B-4(D)(1)-(2)

PROPOSED CHANGES TO AOT LAW- CRISIS STABILIZATION

- Peace officer has discretion to not charge petty misdemeanor or misdemeanor and can instead deliver respondent to either:
 - Crisis Stabilization Center (up to 24 hours);
 - Crisis Residential Center (up to seven (7) days); or
 - Evaluation Facility.
- Peace Officer to be notified by agency:
 - Before Respondent is released from treatment; and
 - If respondent changes their mind and declines treatment.

PROPOSED CHANGES TO AOT LAW- CRITERIA

- 18 years old;
- Currently experiencing a “serious mental disorder” that is severe in degree and persistent in duration, which may cause behavioral functioning that substantially interferes with daily living, and which may result in an inability to maintain stable adjustment and independent functioning without treatment, support, and rehabilitation for a long or indefinite period. This includes, but is not limited to:
 - Schizophrenia;
 - Bipolar disorder;
 - Post-traumatic stress disorder; and
 - Other major affective disorders or severely disabling mental disorders.
- This shall not be interpreted to exclude persons with serious mental disorders and a diagnosis of substance abuse, developmental disability, or other physical or mental disorders.
- Respondent is not stable in ongoing voluntary treatment;
- Respondent either:
 - Unlikely to survive safely in the community without supervision and they are substantially deteriorating; OR
 - Needs services to prevent a relapse or deterioration that would result in grave disability or serious harm to self or others.
- Participation in AOT is the least restrictive alternative; and
- The Respondent is likely to benefit from participating in AOT.

PROPOSED CHANGES TO AOT LAW- ROLL OUT OF AOT

- AOT must be instituted in every judicial district based on the following timeline:
 - Pilots by July 1, 2025;
 - All others July 1, 2026.

PROPOSED CHANGES TO AOT LAW- PETITIONING THE COURT

The following individuals can petition the court for an order allowing AOT:

- Respondent;
- Person with whom respondent resides;
- Spouse, parent, sibling or child, or anyone acting in loco parentis (“in place of a parent”);
- A director or designee of a hospital where the respondent resides;
- Director or designee of an organization, agency or home where the respondent has received services in the past 30 days;
- A licensed behavioral health professional (BHP);
- A first responder who has had repeated interactions with respondent (i.e. multiple arrests, detentions, transportations to treatment or attempts to get treatment, etc.);
- Public guardian of the county where respondent is present;
- Director of county behavioral health agency where respondent is present;
- Adult Protective Services (APS);
- Director or designee of Indian Health Services (IHS); or
- Judge or designee of a New Mexico tribal court.

PROPOSED CHANGES TO AOT LAW- PETITION PROCESS CONTINUED

- Administrative Office of the Court shall issue a mandatory form for use to file a petition with the court.
- Petition should include respondent's name/address, petitioner's relationship to respondent, facts toward eligibility criteria; and either:
 - An affidavit from a licensed behavioral health professional (LBHP) or their designees stating they have examined respondent within 90 days of submission of the petition, or has attempted to examine with no avail, and that the LBHP believes meets the criteria for AOT agreement or plan proceedings; or
 - Proof that respondent has received two intensive treatments within the past 180 days, with one done within the last 60 days.

PROPOSED CHANGES TO AOT LAW- PETITION PROCESS CONTINUED

- After a petition is filed, a hearing will be scheduled to determine whether the threshold has been met;
 - If met, respondent gets:
 - Notice
 - Copies
 - Counsel
 - Supporter
 - Participate in the proceeding- be present, cross examine, etc.
 - Appeal

PROPOSED CHANGES TO AOT LAW- PETITION PROCESS CONTINUED

- Other considerations for initial hearing:
 - Burden of Proof- Prima Facie.
 - Initial hearing is not public unless respondent requests it.
 - If respondent self-identifies as an enrolled tribal member, tribal representative will receive notice and can be present at the initial hearing if respondent wishes.

PROPOSED CHANGES TO AOT LAW- PETITION PROCESS CONTINUED

- Hearing on the merits-
 - Within ten (10) days.
 - Burden of proof- clear and convincing evidence.
 - If burden met, must meet with respondent within 14 days to try to agree on treatment plan.

PROPOSED CHANGES TO AOT LAW- CASE MANAGEMENT

- At next hearing:
 - If AOT agreement reached:
 - Get it approved/modified.
 - Status hearings every 60 days thereon after.
 - If no AOT agreement reached:
 - Clinical evaluation ordered (unless a recent one already exists).
 - Clinical evaluation to include:
 - Clinical diagnosis
 - Capacity- Does respondent have capacity to consent to medication?
 - Any helpful information for court
 - Language on recommended services, programs, medications, interventions.

PROPOSED CHANGES TO AOT LAW- CASE MANAGEMENT

- Hearing to review clinical evaluation
 - To be held within 21 days of evaluation.
 - Input from tribal health should be incorporated as needed.
- Hearing to review plan
 - To be held within 14 days.
 - Court either adopts or modifies plan.
 - Court can order medications but cannot force it.
 - Failure to take medications *does not* equal non-compliance.

PROPOSED CHANGES TO AOT LAW-STATUS HEARINGS

- Every 60 days.
- Reports due five (5) days prior to status hearing. Reports should include:
 - Respondent progress
 - Services provided/not provided
 - Compliance issues
 - Changes needed
- Court may terminate for non-compliance.

PROPOSED CHANGES TO AOT LAW- ONE YEAR STATUS

- Final report- to include:
 - Progress
 - Assessment of stability
 - Services provided/not provided
 - Compliance issues
 - Next steps
- Evidentiary Hearing
 - Respondent can:
 - Request a graduation plan; or
 - Stay in the program.
 - Court can require up to an additional year in the program if:
 - Respondent did not complete the program;
 - All services ordered were provided;
 - Respondent would benefit from it; or
 - Respondent is still eligible.
- Court can terminate at any point and can consider non-compliance to mean additional interventions are needed (including more restrictive ones).

PROPOSED CHANGES TO AOT LAW- STATE RESPONSIBILITIES

- Health Care Administrator/Department of Health to:
 - Convene a working group with stakeholders to assist in implementation; and
 - Collect data from providers and submit an annual report.
- Administrative Office of the Courts will need updated application templates.



QUESTIONS?

- Thank you!
- Holly.agajanian@exec.nm.gov