

HOUSE BILL 588

**51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

INTRODUCED BY

Rick Miera

AN ACT

RELATING TO MENTAL HEALTH DISORDERS; AMENDING THE MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES CODE TO PROVIDE FOR COMMUNITY ENGAGEMENT TEAMS TO ASSIST CLIENTS UNLIKELY TO LIVE SAFELY IN THE COMMUNITY AND WHO ARE NOT CAPABLE OF MAKING TREATMENT DECISIONS; MAKING THE BEHAVIORAL HEALTH SERVICES DIVISION OF THE HUMAN SERVICES DEPARTMENT RESPONSIBLE FOR OVERSIGHT OF COMMUNITY ENGAGEMENT TEAMS; ENACTING SUBSTANTIVE AND PROCEDURAL REQUIREMENTS FOR PROCEEDINGS SEEKING AN ORDER TO DETERMINE THE CAPACITY OF A CLIENT UNLIKELY TO LIVE SAFELY IN THE COMMUNITY; ENACTING SUBSTANTIVE AND PROCEDURAL REQUIREMENTS FOR PROCEEDINGS SEEKING APPOINTMENT OF A TREATMENT GUARDIAN FOR A CLIENT WHO IS UNLIKELY TO LIVE SAFELY IN THE COMMUNITY AND WHO IS NOT CAPABLE OF MAKING TREATMENT DECISIONS; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2007.

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

2 SECTION 1. Section 43-1-3 NMSA 1978 (being Laws 1977,  
3 Chapter 279, Section 2, as amended by Laws 2007, Chapter 46,  
4 Section 42 and by Laws 2007, Chapter 325, Section 9) is amended  
5 to read:

6 "43-1-3. DEFINITIONS.--As used in the Mental Health and  
7 Developmental Disabilities Code:

8 A. "aversive stimuli" means anything that, because  
9 it is believed to be unreasonably unpleasant, uncomfortable or  
10 distasteful to the client, is administered or done to the  
11 client for the purpose of reducing the frequency of a behavior,  
12 but does not include verbal therapies, physical restrictions to  
13 prevent imminent harm to self or others or psychotropic  
14 medications that are not used for purposes of punishment;

15 B. "capacity" means an individual's ability to  
16 understand and appreciate the nature and consequences of  
17 proposed mental health treatment, including significant  
18 benefits, risks and alternatives to the proposed mental health  
19 treatment, and to make and communicate an informed mental  
20 health treatment decision;

21 C. "case manager" means a person with specific  
22 skills, training and knowledge who manages and coordinates  
23 mental health resources and services;

24 ~~[B-]~~ D. "client" means any patient who is  
25 requesting or receiving mental health services or any person

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

8 E. "client living in the community" means a client  
9 living outside of an institution but not in a residential  
10 treatment or habilitation program;

11 [~~G.~~] F. "code" means the Mental Health and  
12 Developmental Disabilities Code;

13 G. "community engagement team" means a group  
14 created by any government or private funding stream to assist  
15 in the engagement of individuals who have a mental disorder,  
16 who lack capacity to make treatment decisions and who, without  
17 treatment, are unlikely to live safely in the community without  
18 support;

19 [~~D.~~] H. "consistent with the least drastic means  
20 principle" means that the habilitation or treatment and the  
21 conditions of habilitation or treatment for the client,  
22 separately and in combination:

23 (1) are no more harsh, hazardous or intrusive  
24 than necessary to achieve acceptable treatment objectives for  
25 the client;

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1 (2) involve no restrictions on physical  
2 movement and no requirement for residential care except as  
3 reasonably necessary for the administration of treatment or for  
4 the protection of the client or others from physical injury;  
5 and

6 (3) are conducted at the suitable available  
7 facility closest to the client's place of residence;

8 [~~E-~~] I. "convulsive treatment" means any form of  
9 mental health treatment that depends upon creation of a  
10 convulsion by any means, including but not limited to  
11 electroconvulsive treatment and insulin coma treatment;

12 [~~F-~~] J. "court" means a district court of New  
13 Mexico;

14 [~~G-~~] K. "department" or "division" means the  
15 behavioral health services division of the human services  
16 department;

17 [~~H-~~] L. "developmental disability" means a  
18 disability of a person that is attributable to mental  
19 retardation, cerebral palsy, autism or neurological dysfunction  
20 that requires treatment or habilitation similar to that  
21 provided to persons with mental retardation;

22 [~~I-~~] M. "evaluation facility" means a community  
23 mental health or developmental disability program or a medical  
24 facility that has psychiatric or developmental disability  
25 services available, including the New Mexico behavioral health

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1 institute at Las Vegas, the Los Lunas medical center or, if  
2 none of the foregoing is reasonably available or appropriate,  
3 the office of a [~~licensee~~] physician or a certified  
4 psychologist, and that is capable of performing a mental status  
5 examination adequate to determine the need for involuntary  
6 treatment;

7 [~~J-~~] N. "experimental treatment" means any mental  
8 health or developmental disabilities treatment that presents  
9 significant risk of physical harm, but does not include  
10 accepted treatment used in competent practice of medicine and  
11 psychology and supported by scientifically acceptable studies;

12 [~~K-~~] O. "grave passive neglect" means failure to  
13 provide for basic personal or medical needs or for one's own  
14 safety to such an extent that it is more likely than not that  
15 serious bodily harm will result in the near future;

16 [~~L-~~] P. "habilitation" means the process by which  
17 professional persons and their staff assist a client with a  
18 developmental disability in acquiring and maintaining those  
19 skills and behaviors that enable the person to cope more  
20 effectively with the demands of the person's self and  
21 environment and to raise the level of the person's physical,  
22 mental and social efficiency. "Habilitation" includes but is  
23 not limited to programs of formal, structured education and  
24 treatment;

25 Q. "institution" means a jail, a detention center,

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1 a prison or other correctional facility or a hospital and does  
2 not include a residential treatment or habilitation program;

3 R. "licensed independent mental health  
4 professional" means a physician, psychologist, independent  
5 social worker, marriage and family therapist, certified nurse  
6 practitioner with a specialty in mental health, clinical nurse  
7 specialist with a specialty in mental health, professional art  
8 therapist or professional clinical mental health counselor;

9 ~~[M-]~~ S. "likelihood of serious harm to oneself"  
10 means that it is more likely than not that in the near future  
11 the person will attempt to commit suicide or will cause serious  
12 bodily harm to the person's self by violent or other self-  
13 destructive means, including but not limited to grave passive  
14 neglect;

15 ~~[N-]~~ T. "likelihood of serious harm to others"  
16 means that it is more likely than not that in the near future a  
17 person will inflict serious, unjustified bodily harm on another  
18 person or commit a criminal sexual offense, as evidenced by  
19 behavior causing, attempting or threatening such harm, which  
20 behavior gives rise to a reasonable fear of such harm from the  
21 person;

22 ~~[O-]~~ U. "mental [~~disability~~] disorder or illness"  
23 means substantial disorder of a person's emotional processes,  
24 thought or cognition that grossly impairs judgment, behavior or  
25 capacity to recognize reality, but does not mean developmental

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1 disability;

2 [P-] V. "mental health or developmental  
3 disabilities professional" means a physician or other  
4 professional who by training or experience is qualified to work  
5 with persons with a mental [~~disability~~] disorder or illness or  
6 a developmental disability;

7 [Q-] W. "physician" or "certified psychologist",  
8 when used for the purpose of hospital admittance or discharge,  
9 means a physician or certified psychologist who has been  
10 granted admitting privileges at a hospital licensed by the  
11 department of health, if such privileges are required;

12 [R-] X. "psychosurgery":

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

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

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

23 (c) treatment of abnormal brain function  
24 or abnormal brain tissue in order to modify thoughts, feelings,  
25 actions or behavior when the abnormality is not an established

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1 cause for those thoughts, feelings, actions or behavior; and

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

4 Y. "recommended course of treatment" means an  
5 appropriate level of care based upon a client's presenting  
6 problem;

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

13 ~~F.~~] AA. "treatment" means any effort to accomplish  
14 a significant change in the mental or emotional condition or  
15 behavior of the client; and

16 BB. "unlikely to live safely in the community"  
17 means that it is probable that, if left untreated, a client  
18 will suffer mental distress and experience deterioration of the  
19 ability to function independently and consistently maintain the  
20 client's health, safety or welfare without support and mental  
21 health services, as evidenced by current behavior showing an  
22 inability to refrain from behavior that threatens or endangers  
23 the client or others."

24 SECTION 2. A new section of the Mental Health and  
25 Developmental Disabilities Code is enacted to read:

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1           "[NEW MATERIAL] COMMUNITY ENGAGEMENT TEAM--OVERSIGHT BY  
2 THE DIVISION.--

3           A. A community engagement team shall work with  
4 clients with mental health disorders and shall not work with  
5 clients whose sole diagnosis is a developmental disability,  
6 mental retardation or brain injuries.

7           B. A community engagement team shall have at least  
8 one member who is a licensed independent mental health  
9 professional and may include members who are case managers,  
10 community support workers or core service workers acting under  
11 the supervision of a licensed independent mental health  
12 professional.

13           C. In the absence of good cause given to the  
14 division, a community engagement team shall have at least one  
15 certified peer specialist who lives with a mental illness as a  
16 member of the team.

17           D. A community engagement team may act through one  
18 or more of its members authorized to act on its behalf.

19           E. A licensed independent mental health  
20 professional who is a member of a community engagement team may  
21 assess and determine capacity of clients that a court or  
22 special master has found eligible for community engagement team  
23 services.

24           F. A community engagement team shall strive to  
25 provide culturally appropriate services to the clients it

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1 serves.

2 G. The division may authorize the formation of  
3 community engagement teams to work with clients with mental  
4 health disorders in specified geographic service areas.

5 H. The division shall:

6 (1) be responsible for oversight of community  
7 engagement teams and for ensuring that community engagement  
8 team members practicing under licensure or certification are  
9 properly credentialed and working within their respective  
10 scopes of practice;

11 (2) in coordination with the administrative  
12 office of the courts, develop a form:

13 (a) application for community engagement  
14 team services;

15 (b) order to grant or deny an  
16 application for community engagement team services;

17 (c) petition for an order to evaluate  
18 the capacity of a client;

19 (d) order to grant or deny a petition  
20 for an order to evaluate the capacity of a client;

21 (e) petition for an order appointing a  
22 treatment guardian; and

23 (f) order to grant or deny a petition  
24 for an order appointing a treatment guardian;

25 (3) develop guidelines for reimbursement of

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1 community engagement team services;

2 (4) report annually to the behavioral health  
3 services subcommittee of the legislative health and human  
4 services committee on the community engagement teams operating  
5 under the supervision of the division throughout the state; and

6 (5) promulgate rules necessary or appropriate  
7 to implement the provisions of this section."

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

10 "[NEW MATERIAL] ACCESS TO TREATMENT THROUGH A COMMUNITY  
11 ENGAGEMENT TEAM--ELIGIBILITY FOR COMMUNITY ENGAGEMENT TEAM  
12 SERVICES.--

13 A. An application for community engagement team  
14 services may be filed by any interested person who believes  
15 that a client living or found in the community:

16 (1) is eligible for and in need of mental  
17 health services;

18 (2) lacks capacity; and

19 (3) is unlikely to be able to live safely in  
20 the community but does not require immediate inpatient or  
21 emergency care pursuant to Section 43-1-10 or 43-1-11 NMSA  
22 1978.

23 B. An application for community engagement team  
24 services shall be filed in the district court having  
25 jurisdiction over the person of the client or, pursuant to Rule

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1 1-053 of the Rules of Civil Procedure for the District Courts,  
2 may be heard by a special master specifically appointed by the  
3 court to hear such applications pro bono.

4 C. A district court or special master shall  
5 evaluate the application within forty-eight hours of filing to  
6 determine the client's eligibility for community engagement  
7 team services.

8 D. Eligibility for community engagement team  
9 services shall be based upon a good faith determination by a  
10 district court or special master that the client who is the  
11 subject of the application for services:

12 (1) has a mental disorder;

13 (2) lacks decisional capacity or the client's  
14 decisional capacity is unknown; and

15 (3) is unlikely to be able to live safely in  
16 the community but does not require immediate inpatient or  
17 emergency care pursuant to Section 43-1-10 or 43-1-11 NMSA  
18 1978.

19 E. If a district court or special master determines  
20 that the client is not eligible for community engagement team  
21 services, the district court or special master shall promptly  
22 notify the applicant of its decision in writing on a form  
23 prescribed by the division.

24 F. After a district court or special master grants  
25 an application for community engagement team services, the

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1 community engagement team:

2 (1) shall make reasonable efforts to engage  
3 and assess the client's capacity or, if such efforts are  
4 unsuccessful, petition a court to order an evaluation of the  
5 client's capacity;

6 (2) shall assist the client to access and  
7 receive appropriate services and support that enable the client  
8 to continue to live in the community, including resources for  
9 housing, food, transportation, mental health or other health  
10 treatment; and

11 (3) may assist the client in seeking the  
12 appointment of a treatment guardian.

13 G. Nothing in this section shall:

14 (1) prevent a mental health or developmental  
15 disabilities professional or other interested person from  
16 petitioning a court for the appointment of a treatment guardian  
17 without the involvement of a community engagement team; or

18 (2) require the involvement of a community  
19 engagement team prior to:

20 (a) initiating necessary emergency care  
21 pursuant to Section 43-1-10 NMSA 1978;

22 (b) seeking a civil commitment pursuant  
23 to Section 43-1-11 NMSA 1978; or

24 (c) seeking the appointment of a  
25 treatment guardian for a client in the community who is not

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1 eligible for, or in need of, community engagement team  
2 services."

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

5 "[NEW MATERIAL] PROCEDURE FOR COMMUNITY ENGAGEMENT TEAM TO  
6 PETITION FOR AN ORDER TO EVALUATE CLIENT'S CAPACITY.--A  
7 petition for an order to evaluate the capacity of a client who  
8 has not been assessed by the community engagement team shall  
9 include:

10 A. a sworn affidavit by a member of the community  
11 engagement team stating that, based upon the affiant's  
12 reasonable belief after consideration of available information:

13 (1) the client is unlikely to live safely in  
14 the community;

15 (2) the client is in need of outpatient mental  
16 health services; and

17 (3) the client's capacity is unknown;

18 B. a detailed description of the efforts made by  
19 the community engagement team to engage and assess the client;

20 C. a copy of the application for community  
21 engagement team services and the order granting the  
22 application;

23 D. contact information for the person most  
24 knowledgeable about the client's interaction with the community  
25 engagement team;

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1           E. the time and place where the client may be found  
2 for service of process and notice of hearing, if known; and

3           F. the name and contact information of the client's  
4 guardian, if any, or other suitable person upon whom service of  
5 process may be made pursuant to Subsection I of Rule 1-004 of  
6 the Rules of Civil Procedure for the District Courts."

7           **SECTION 5.** A new section of the Mental Health and  
8 Developmental Disabilities Code is enacted to read:

9           "[NEW MATERIAL] APPOINTMENT OF AN ATTORNEY TO REPRESENT A  
10 CLIENT--NOTICE TO A CLIENT AND THE CLIENT'S ATTORNEY--BASIS FOR  
11 AN ORDER FOR EVALUATION OF CAPACITY--CONTENTS OF ORDER.--

12           A. Upon petition by a community engagement team  
13 seeking an order to evaluate the capacity of a client who has  
14 not been assessed by the community engagement team, the court  
15 shall:

16                       (1) appoint an attorney to represent the  
17 client; and

18                       (2) serve a copy of the petition and notice of  
19 hearing on the client and the client's attorney.

20           B. Service of the petition and notice of hearing  
21 upon the client may be made by:

22                       (1) a member of the community engagement team;

23                       (2) a member of the community engagement team  
24 who, upon request, shall be accompanied by a peace officer; or

25                       (3) the sheriff's department.

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1 C. The court shall consider the petition, the  
2 application for community engagement services and all other  
3 evidence in support of a petition seeking an order for  
4 evaluation of a client's capacity and may order an evaluation  
5 of the client's capacity if the court finds by clear and  
6 convincing evidence that:

7 (1) the client is unlikely to live safely in  
8 the community;

9 (2) the client is in need of outpatient mental  
10 health services; and

11 (3) the client's capacity is unknown.

12 D. Before ruling on a petition for an order to  
13 evaluate capacity, the court may require the affiant of the  
14 sworn statement required in Subsection A of Section 4 of this  
15 2013 act to appear personally and may examine the affiant under  
16 oath.

17 E. The order granting the petition requesting an  
18 evaluation of the capacity of a client:

19 (1) shall set forth specific findings upon  
20 which the order is based; and

21 (2) may, upon the recommendation of the  
22 community engagement team, order:

23 (a) a peace officer to accompany a  
24 community engagement team member to assess the client at the  
25 client's residence or where the client can be found;

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1 (b) a peace officer to take the client  
2 into custody and transport the client to an evaluation  
3 facility; and

4 (c) an evaluation facility to conduct an  
5 evaluation of the client's capacity and, upon a finding that  
6 the client lacks capacity, to recommend a course of treatment  
7 and to provide a copy of the evaluation and recommended course  
8 of treatment, if any, to both the court and the community  
9 engagement team within twenty-four hours after the evaluation.

10 F. Under no circumstances shall an order for  
11 evaluation of capacity require or allow a client to be  
12 transported to, or detained in, a jail.

13 G. A hearing on a petition seeking an order to  
14 evaluate capacity for a client living in the community shall be  
15 held within ten days of service of the petition and notice of  
16 hearing.

17 H. If the client fails to appear for the hearing  
18 after notice of hearing has been served pursuant to this  
19 section, the court may consider the sworn testimony of  
20 witnesses and other relevant evidence in making its decision to  
21 order an evaluation of capacity.

22 I. Within ten days of receiving notice of the  
23 court's decision ordering a capacity evaluation, provided the  
24 client did not attend the hearing on the petition or waive the  
25 right to appear after consultation with an attorney, the client

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1 has the right to move for reconsideration of the court's order  
2 on the basis of new evidence.

3 J. If the court grants the client's request for  
4 hearing on the client's motion for reconsideration, the motion  
5 shall be heard within ten days after the entry of the order  
6 setting the date for the hearing on the motion.

7 K. The clerk of the court shall serve a copy of the  
8 order setting hearing on the motion for reconsideration on:

- 9 (1) the client;  
10 (2) legal counsel for the client; and  
11 (3) all parties, other than the client, to the  
12 proceeding that resulted in the order to evaluate capacity."

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

15 "[NEW MATERIAL] PROCEDURE FOR A COMMUNITY ENGAGEMENT TEAM  
16 TO PETITION FOR AN ORDER APPOINTING A TREATMENT GUARDIAN.--

17 A. A community engagement team may petition for an  
18 order appointing a treatment guardian:

- 19 (1) if the community engagement team has  
20 assessed a client and made a determination that the client  
21 lacks capacity; or  
22 (2) based upon a determination that a client  
23 lacks capacity made by an evaluation facility as a result of a  
24 petition by the community engagement team for an order to  
25 evaluate the client's capacity.

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1           B. A petition seeking the appointment of a  
2 treatment guardian regarding a client that the community  
3 engagement team has assessed as lacking capacity shall include:

4                   (1) a sworn affidavit by a member of the  
5 community engagement team stating that, based upon the  
6 affiant's reasonable belief after assessment of the client and  
7 consideration of available information:

8                           (a) the client is unlikely to live  
9 safely in the community;

10                           (b) the client is in need of outpatient  
11 mental health services; and

12                           (c) the client lacks capacity;

13                   (2) the facts specifically describing the  
14 assessment made of the client upon which the community  
15 engagement team's determination that the client lacks capacity  
16 is based;

17                   (3) a copy of the application for community  
18 engagement services and order granting the application;

19                   (4) a recommended course of treatment with the  
20 following information:

21                           (a) the name and address of the  
22 recommended treatment provider and hours of operation;

23                           (b) contact information for the person  
24 most knowledgeable about the client's interaction with the  
25 community engagement team; and

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1 (c) the time and place where the client  
2 may be found for service of process and notice of hearing, if  
3 known; and

4 (5) the name and contact information of the  
5 client's guardian, if any, or other suitable person upon whom  
6 service of process may be made pursuant to Subsection I of Rule  
7 1-004 of the Rules of Civil Procedure for the District Courts.

8 C. A petition seeking the appointment of a  
9 treatment guardian following a determination that a client  
10 lacks capacity made by an evaluation facility as a result of a  
11 petition filed by the community engagement team for an order to  
12 evaluate the client's capacity shall include:

13 (1) a sworn affidavit by a member of the  
14 community engagement team stating that, based upon the  
15 affiant's reasonable belief after assessment of the client and  
16 after consideration of available information:

17 (a) the client is unlikely to live  
18 safely in the community;

19 (b) the client is in need of outpatient  
20 mental health services; and

21 (c) the client lacks capacity;

22 (2) a copy of the report of the evaluation  
23 facility and of the evaluation facility's recommended course of  
24 treatment, if any, made pursuant to court order as a result of  
25 a petition by the community engagement team for an order to

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1 evaluate the client's capacity, stating that the client lacks  
2 capacity;

3 (3) a copy of the application for community  
4 engagement services and the order granting the application;

5 (4) unless already provided by the evaluation  
6 facility, a recommended course of treatment with the following  
7 information:

8 (a) the name and address of the  
9 recommended treatment provider and hours of operation; and

10 (b) contact information for the person  
11 most knowledgeable about the client's interaction with the  
12 community engagement team;

13 (5) the time and place where the client may be  
14 found for service of process and notice of hearing, if known;  
15 and

16 (6) the name and contact information of the  
17 client's guardian, if any, or other suitable person upon whom  
18 service of process may be made pursuant to Subsection I of Rule  
19 1-004 of the Rules of Civil Procedure for the District Courts."

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

22 "[NEW MATERIAL] APPOINTMENT OF AN ATTORNEY TO REPRESENT A  
23 CLIENT--NOTICE TO A CLIENT AND THE CLIENT'S ATTORNEY--BASIS FOR  
24 AN ORDER APPOINTING TREATMENT GUARDIAN--CONTENTS OF ORDER.--

25 A. Upon petition by a community engagement team

1 seeking the appointment of a treatment guardian for a client  
2 who lacks capacity, the court shall:

3 (1) appoint an attorney to represent the  
4 client; and

5 (2) serve a copy of the petition and notice of  
6 hearing on the client and the client's attorney.

7 B. Service of the petition and notice of hearing  
8 upon the client may be made by:

9 (1) a member of the community engagement team;

10 (2) a member of the community engagement team  
11 who, upon request, shall be accompanied by a peace officer; or

12 (3) the sheriff's department.

13 C. The court shall consider the petition, the  
14 application for community engagement services and all other  
15 evidence in support of a petition seeking the appointment of a  
16 treatment guardian, and if the court finds by clear and  
17 convincing evidence that the client is not capable of making  
18 the client's own treatment decisions, the court may order the  
19 appointment of a treatment guardian.

20 D. Before ruling on a petition for an order to  
21 appoint a treatment guardian, the court may require the affiant  
22 of the sworn statement required in Paragraph (1) of Subsection  
23 B of Section 6 of this 2013 act to appear personally and may  
24 examine the affiant under oath.

25 E. The order granting or denying a petition for an

1 order appointing a treatment guardian shall set forth specific  
2 findings upon which the order is based.

3 F. A hearing to appoint a treatment guardian for a  
4 client living in the community shall be held within:

5 (1) ten days of service of the petition if no  
6 capacity evaluation was ordered; or

7 (2) twenty days of service of the petition if  
8 an order for a capacity evaluation was granted.

9 G. If the client fails to appear for the hearing to  
10 appoint a treatment guardian after notice of hearing has been  
11 served pursuant to this section, the court may consider the  
12 sworn testimony of witnesses and other relevant evidence in  
13 making its decision to appoint a treatment guardian.

14 H. Within ten days of receiving notice of the  
15 appointment of a treatment guardian, provided the client did  
16 not attend the hearing on the petition or waive the right to  
17 appear after consultation with an attorney, the client has the  
18 right to move for reconsideration of the court's appointment of  
19 a treatment guardian on the basis of new evidence.

20 I. If the court grants the client's request for  
21 hearing on the client's motion for reconsideration, the motion  
22 shall be heard within ten days after the entry of the order  
23 setting the date for the hearing on the motion.

24 J. The clerk of court shall serve a copy of the  
25 order setting hearing on the motion for reconsideration on:

underscored material = new  
[bracketed material] = delete

- 1 (1) the client;  
2 (2) legal counsel for the client;  
3 (3) all parties, other than the client, to the  
4 proceeding that resulted in the appointment of a treatment  
5 guardian; and  
6 (4) the treatment guardian."

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

9 "[NEW MATERIAL] IMMUNITY FROM LIABILITY.--Persons  
10 providing community engagement team services, acting on behalf  
11 of a community engagement team or serving as members of a  
12 community engagement team shall not be liable in any civil or  
13 criminal action if they are acting in good faith and without  
14 malicious purpose."

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

17 "[NEW MATERIAL] CONFIDENTIALITY.--Community engagement  
18 teams established pursuant to the Mental Health and  
19 Developmental Disabilities Code and rules promulgated by the  
20 division shall be considered a provider of services consistent  
21 with federal and state confidentiality laws that allow the  
22 exchange of health information for treatment purposes."