

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 198

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

INTRODUCED BY

Paul A. Pacheco

AN ACT

RELATING TO HEALTH CARE; ENACTING THE ASSISTED OUTPATIENT
TREATMENT ACT; PROVIDING FOR ASSISTED OUTPATIENT TREATMENT
PROCEEDINGS; PROVIDING FOR SEQUESTRATION AND CONFIDENTIALITY OF
RECORDS; PROVIDING FOR PENALTIES; AMENDING THE MENTAL HEALTH
AND DEVELOPMENTAL DISABILITIES CODE TO REQUIRE DATA COLLECTION
FOR CERTAIN PROCEEDINGS.

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

SECTION 1. A new section of the Mental Health and
Developmental Disabilities Code is enacted to read:

"[NEW MATERIAL] SHORT TITLE.--Sections 1 through 15 of
this act may be cited as the "Assisted Outpatient Treatment
Act"."

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

.202868.1

underscoring material = new
~~[bracketed material] = delete~~

underscored material = new
[bracketed material] = delete

1 "[NEW MATERIAL] DEFINITIONS.--As used in the Assisted
2 Outpatient Treatment Act:

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

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

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

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

22 Assisted outpatient treatment may include:

- 23 (1) medication;
- 24 (2) periodic blood tests or urinalysis to
25 determine compliance with prescribed medications;

- 1 (3) individual or group therapy;
- 2 (4) day or partial-day programming activities;
- 3 (5) educational and vocational training or
- 4 activities;
- 5 (6) alcohol and substance abuse treatment and
- 6 counseling;
- 7 (7) periodic blood tests or urinalysis for the
- 8 presence of alcohol or illegal drugs for a patient with a
- 9 history of alcohol or substance abuse;
- 10 (8) supervision of living arrangements; and
- 11 (9) any other services prescribed to treat the
- 12 patient's mental disorder and to assist the patient in living
- 13 and functioning in the community, or to attempt to prevent a
- 14 deterioration of the patient's mental or physical condition;
- 15 E. "covered entity" means a health plan, a health
- 16 care clearinghouse or a health care provider that transmits any
- 17 health information in electronic form;
- 18 F. "guardian" means a judicially appointed guardian
- 19 having authority to make mental health care decisions for an
- 20 individual;
- 21 G. "least restrictive appropriate alternative"
- 22 means treatment and conditions that:
- 23 (1) are no more harsh, hazardous or intrusive
- 24 than necessary to achieve acceptable treatment objectives; and
- 25 (2) do not restrict physical movement or

underscoring material = new
~~[bracketed material] = delete~~

1 require residential care, except as reasonably necessary for
2 the administration of treatment or the protection of the
3 patient;

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

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

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

18 K. "participating municipality or county" means a
19 municipality or county that has entered into a memorandum of
20 understanding with its respective district court with respect
21 to the funding of such district court's administrative expenses
22 for proceedings pursuant to the Assisted Outpatient Treatment
23 Act;

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

underscoring material = new
~~[bracketed material] = delete~~

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

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

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

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

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

20 R. "surrogate decision-maker" means an agent
21 designated by the respondent, a guardian or a treatment
22 guardian; and

23 S. "treatment guardian" means a person appointed
24 pursuant to Section 43-1-15 NMSA 1978 to make mental health
25 treatment decisions for a person who has been found by clear

.202868.1

underscored material = new
~~[bracketed material] = delete~~

1 and convincing evidence to be incapable of making the person's
2 own mental health treatment decisions."

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

5 "[NEW MATERIAL] ASSISTED OUTPATIENT TREATMENT--CRITERIA.--

6 A person may be ordered to participate in assisted outpatient
7 treatment if the court finds by clear and convincing evidence
8 that the person:

9 A. is eighteen years of age or older and is a
10 resident of a participating municipality or county;

11 B. has a primary diagnosis of a mental disorder;

12 C. has demonstrated a history of lack of compliance
13 with treatment for a mental disorder that has:

14 (1) at least twice within the last forty-eight
15 months, been a significant factor in necessitating
16 hospitalization or necessitating receipt of services in a
17 forensic or other mental health unit or a jail, prison or
18 detention center; provided that the forty-eight-month period
19 shall be extended by the length of any hospitalization,
20 incarceration or detention of the person that occurred within
21 the forty-eight-month period;

22 (2) resulted in one or more acts of serious
23 violent behavior toward self or others or threats of, or
24 attempts at, serious physical harm to self or others within the
25 last forty-eight months; provided that the forty-eight-month

.202868.1

underscored material = new
[bracketed material] = delete

1 period shall be extended by the length of any hospitalization,
2 incarceration or detention of the person that occurred within
3 the forty-eight-month period; or

4 (3) resulted in the person being hospitalized,
5 incarcerated or detained for six months or more and the person
6 is to be discharged or released within the next thirty days or
7 was discharged or released within the past sixty days;

8 D. is unwilling or unlikely, as a result of a
9 mental disorder, to participate voluntarily in outpatient
10 treatment that would enable the person to live safely in the
11 community without court supervision;

12 E. is in need of assisted outpatient treatment as
13 the least restrictive appropriate alternative to prevent a
14 relapse or deterioration likely to result in serious harm to
15 self or likely to result in serious harm to others; and

16 F. will likely benefit from, and the person's best
17 interests will be served by, receiving assisted outpatient
18 treatment."

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

21 "[NEW MATERIAL] PETITION TO THE COURT.--

22 A. A petition for an order authorizing assisted
23 outpatient treatment may be filed in the district court for the
24 county in which the respondent is present or reasonably
25 believed to be present; provided that such district court is a

.202868.1

underscored material = new
[bracketed material] = delete

1 party to a memorandum of understanding with a participating
2 municipality or county.

3 B. A petition for an order authorizing assisted
4 outpatient treatment shall be filed only by the following
5 persons:

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

8 (2) the parent or spouse of the respondent;

9 (3) the sibling or child of the respondent;

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

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

14 (5) the director of a public or charitable
15 organization or agency or a home where the respondent resides
16 and that provides mental health services to the respondent;

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

21 (7) a surrogate decision-maker.

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

24 (1) each criterion for assisted outpatient
25 treatment as set forth in Section 3 of the Assisted Outpatient

.202868.1

underscoring material = new
~~[bracketed material] = delete~~

1 Treatment Act;

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

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

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

11 (1) the qualified professional has personally
12 examined the respondent no more than ten days prior to the
13 filing of the petition, that the qualified professional
14 recommends assisted outpatient treatment for the respondent and
15 that the qualified professional is willing and able to testify
16 at the hearing on the petition either in person or by
17 contemporaneous transmission from a different location; or

18 (2) no more than ten days prior to the filing
19 of the petition, the qualified professional or the qualified
20 professional's designee has unsuccessfully attempted to
21 persuade the respondent to submit to an examination, that the
22 qualified professional has reason to believe that the
23 respondent meets the criteria for assisted outpatient treatment
24 and that the qualified professional is willing and able to
25 examine the respondent and testify at the hearing on the

.202868.1

underscoring material = new
[bracketed material] = delete

1 petition either in person or by contemporaneous transmission
2 from a different location."

3 SECTION 5. A new section of the Mental Health and
4 Developmental Disabilities Code is enacted to read:

5 "[NEW MATERIAL] QUALIFIED PROTECTIVE ORDER.--

6 A. A motion seeking a qualified protective order
7 shall accompany each petition for an order authorizing assisted
8 outpatient treatment.

9 B. In considering the motion, the court shall
10 determine which parties to the proceeding and their attorneys
11 are authorized to receive, subpoena and transmit protected
12 health information pertaining to the respondent for purposes of
13 the proceeding. If the petitioner is a party identified in
14 Paragraph (1), (2) or (3) of Subsection B of Section 4 of the
15 Assisted Outpatient Treatment Act, the court may bar or limit
16 the disclosure of the respondent's protected health
17 information.

18 C. Covered entities shall only disclose protected
19 health information pertaining to the respondent in accordance
20 with the court's order, except as otherwise provided by state
21 and federal health care privacy laws.

22 D. Parties and their attorneys are only authorized
23 to use the protected health information of the respondent as
24 directed by the court's order.

25 E. Within forty-five days after the later of the

underscored material = new
[bracketed material] = delete

1 exhaustion of all appeals or the date on which the respondent
2 is no longer receiving assisted outpatient treatment, the
3 parties and their attorneys and any person or entity in
4 possession of protected health information received from a
5 party or the party's attorney in the course of the proceeding
6 shall destroy all copies of protected health information
7 pertaining to the respondent, except that counsel are not
8 required to secure the return or destruction of protected
9 health information submitted to the court.

10 F. Nothing in the order controls or limits the use
11 of protected health information pertaining to the respondent
12 that comes into the possession of a party or the party's
13 attorney from a source other than a covered entity.

14 G. Nothing in the court's order shall authorize any
15 party to obtain medical records or information through means
16 other than formal discovery requests, subpoenas, depositions or
17 other lawful process, or pursuant to a patient authorization."

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

20 "[NEW MATERIAL] HEARING--EXAMINATION BY A QUALIFIED
21 PROFESSIONAL.--

22 A. Upon receipt of a petition for an order
23 authorizing assisted outpatient treatment, the court shall fix
24 a date for a hearing:

25 (1) no sooner than three or later than seven

1 days after the date of service or as stipulated by the parties
2 or, upon a showing of good cause, no later than thirty days
3 after the date of service; or

4 (2) if the respondent is hospitalized at the
5 time of filing of the petition, before discharge of the
6 respondent and in sufficient time to arrange for a continuous
7 transition from inpatient treatment to assisted outpatient
8 treatment.

9 B. A copy of the petition and notice of hearing
10 shall be served, in the same manner as a summons, on the
11 petitioner, the respondent, the qualified professional whose
12 affidavit accompanied the petition and a current provider, if
13 any.

14 C. If, on the date that the petition is filed, the
15 respondent has a surrogate decision-maker, a copy of the
16 petition and notice of hearing shall be served, in the same
17 manner as a summons, on the surrogate decision-maker.

18 D. The respondent shall be represented by counsel
19 at all stages of the proceedings.

20 E. If the respondent fails to appear at the hearing
21 after notice, the court may conduct the hearing in the
22 respondent's absence; provided that the respondent's counsel is
23 present.

24 F. If the respondent has refused to be examined by
25 the qualified professional whose affidavit accompanied the

underscoring material = new
~~[bracketed material] = delete~~

1 petition, the court may order a mental examination of the
2 respondent as provided by Rule 1-035 (A) NMRA. The examination
3 of the respondent may be performed by the qualified
4 professional whose affidavit accompanied the petition. If the
5 examination is performed by another qualified professional, the
6 examining qualified professional shall be authorized to consult
7 with the qualified professional whose affidavit accompanied the
8 petition.

9 G. If the respondent has refused to be examined by
10 a qualified professional and the court finds reasonable grounds
11 to believe that the allegations of the petition are true, the
12 court may issue a written order directing a peace officer who
13 has completed crisis intervention training to detain and
14 transport the respondent to a provider for examination by a
15 qualified professional. A respondent detained pursuant to this
16 subsection shall be detained no longer than necessary to
17 complete the examination and in no event longer than twenty-
18 four hours.

19 H. The court shall not order assisted outpatient
20 treatment for the respondent unless a qualified professional,
21 who has personally examined the respondent within ten days of
22 the filing of the petition, testifies at the hearing in person
23 or by contemporaneous transmission from a different location.
24 The qualified professional shall provide testimony in support
25 of the finding that the respondent meets all of the criteria

.202868.1

underscored material = new
[bracketed material] = delete

1 for assisted outpatient treatment and testimony on the written
2 proposed treatment plan developed pursuant to Section 7 of the
3 Assisted Outpatient Treatment Act, including:

4 (1) the recommended assisted outpatient
5 treatment, the rationale for the recommended assisted
6 outpatient treatment and the facts that establish that such
7 treatment is the least restrictive appropriate alternative;

8 (2) information regarding the respondent's
9 access to, and the availability of, recommended assisted
10 outpatient treatment in the community or elsewhere; and

11 (3) if the recommended assisted outpatient
12 treatment includes medication, the types or classes of
13 medication that should be authorized, the beneficial and
14 detrimental physical and mental effects of such medication and
15 whether such medication should be self-administered or
16 administered by a specified provider."

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

19 "[NEW MATERIAL] WRITTEN PROPOSED TREATMENT PLAN.--

20 A. The court shall not order assisted outpatient
21 treatment unless a qualified professional provides a written
22 proposed treatment plan to the court. The plan shall state all
23 treatment services recommended for the respondent and, for each
24 such service, shall specify a provider that has agreed to
25 provide the service.

.202868.1

underscoring material = new
~~[bracketed material] = delete~~

1 B. In developing a written proposed treatment plan,
2 the qualified professional shall take into account, if
3 existing, an advance directive for mental health treatment and
4 provide the following persons with an opportunity to
5 participate:

- 6 (1) the respondent;
7 (2) all current treating providers;
8 (3) upon the request of the respondent, an
9 individual significant to the respondent, including any
10 relative, close friend or individual otherwise concerned with
11 the welfare of the respondent; and
12 (4) any surrogate decision-maker.

13 C. The written proposed treatment plan shall
14 include case management services or an assertive community
15 treatment team to provide care coordination and assisted
16 outpatient treatment services recommended by the qualified
17 professional. If the plan includes medication, it shall state
18 whether such medication should be self-administered or
19 administered by a specified provider and shall specify type and
20 dosage range of medication. In no event shall the plan
21 recommend the use of physical force or restraints to administer
22 medication to the respondent.

23 D. If the written proposed treatment plan includes
24 alcohol or substance abuse counseling and treatment, the plan
25 may include a provision requiring relevant testing for either

underscored material = new
[bracketed material] = delete

1 alcohol or abused substances; provided that the qualified
2 professional's clinical basis for recommending such plan
3 provides sufficient facts for the court to find that:

4 (1) the respondent has a history of co-
5 occurring alcohol or substance abuse; and

6 (2) such testing is necessary to prevent a
7 relapse or deterioration that would be likely to result in
8 serious harm to self or likely to result in serious harm to
9 others."

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

12 "[NEW MATERIAL] DISPOSITION.--

13 A. After a hearing and consideration of all
14 relevant evidence, the court shall order the respondent to
15 receive assisted outpatient treatment if it finds by clear and
16 convincing evidence that the respondent meets all criteria set
17 forth in Section 3 of the Assisted Outpatient Treatment Act.

18 B. The court's order shall:

19 (1) provide for a period of outpatient
20 treatment not to exceed one year;

21 (2) specify the assisted outpatient treatment
22 services that the respondent is to receive; and

23 (3) direct one or more specified providers to
24 provide or arrange for all assisted outpatient treatment for
25 the patient throughout the period of the order.

.202868.1

underscoring material = new
~~[bracketed material] = delete~~

1 C. If the court order includes medication, it shall
2 state the type or types of medication and the dosage range
3 found to be necessary, based on the treatment plan and evidence
4 presented. The court may order the respondent to self-
5 administer medication or accept the administration of such
6 medication by a specified provider. In no event shall the
7 court require or authorize the use of physical force or
8 restraints to administer medication to the respondent.

9 D. The court may not order treatment that has not
10 been recommended by the qualified professional and included in
11 the written proposed treatment plan, nor direct the
12 participation of a provider that has not been specified in such
13 plan.

14 E. Nothing in the Assisted Outpatient Treatment
15 Act, nor in the court's order, shall require any of the
16 following to make payment for any services or items not
17 otherwise a covered benefit under the terms of the applicable
18 program or contract of insurance:

- 19 (1) a health maintenance organization;
20 (2) a managed health care plan;
21 (3) a health insurance company;
22 (4) a group health plan that provides medical
23 care to employees or their dependents under the federal
24 Employee Retirement Income Security Act of 1974 directly or
25 through insurance, reimbursement or other means; or

.202868.1

underscored material = new
[bracketed material] = delete

1 (5) the state medicaid program.

2 F. If the respondent has a surrogate decision-maker
3 or an advance directive for mental health treatment, the court
4 shall follow the decisions of the surrogate decision-maker or
5 the advance directive in determining the treatment ordered,
6 unless there is good cause shown to order otherwise.

7 G. The court shall not order assisted outpatient
8 treatment for a respondent with a surrogate decision-maker
9 without notice to such surrogate decision-maker and an
10 opportunity for hearing as provided in Section 6 of the
11 Assisted Outpatient Treatment Act.

12 H. The court may order assisted outpatient
13 treatment:

14 (1) in lieu of involuntary inpatient
15 commitment if it finds assisted outpatient treatment to be the
16 least restrictive appropriate alternative; or

17 (2) as a means of jail diversion."

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

20 "[NEW MATERIAL] EXPEDITIOUS APPEAL.--There shall be a
21 right to an expeditious appeal from a final order in a
22 proceeding under the Assisted Outpatient Treatment Act."

23 SECTION 10. A new section of the Mental Health and
24 Developmental Disabilities Code is enacted to read:

25 "[NEW MATERIAL] EFFECT OF DETERMINATION THAT RESPONDENT IS

underscored material = new
[bracketed material] = delete

1 IN NEED OF ASSISTED OUTPATIENT TREATMENT.--An assisted
2 outpatient treatment order shall not be construed as a
3 determination that the respondent is incompetent."

4 SECTION 11. A new section of the Mental Health and
5 Developmental Disabilities Code is enacted to read:

6 "[NEW MATERIAL] APPLICATIONS FOR CONTINUED PERIODS OF
7 TREATMENT.--

8 A. Prior to the expiration of the period of
9 assisted outpatient treatment, a party or the respondent's
10 surrogate decision-maker may apply to the court for a
11 subsequent order authorizing continued assisted outpatient
12 treatment for a period not to exceed one year. The application
13 shall be served upon those persons required to be served with
14 notice of a petition for an order authorizing assisted
15 outpatient treatment and every specified provider.

16 B. If the court's disposition of the application
17 does not occur prior to the expiration date of the current
18 order, the current order shall remain in effect until the
19 court's disposition. The disposition of the application shall
20 occur no later than ten calendar days following the filing of
21 the application.

22 C. A respondent may be ordered to participate in
23 continued assisted outpatient treatment if the court finds by
24 clear and convincing evidence that the respondent:

25 (1) continues to have a primary diagnosis of a

underscored material = new
[bracketed material] = delete

1 mental disorder;

2 (2) is unwilling or unlikely, as a result of a
3 mental disorder, to participate voluntarily in outpatient
4 treatment that would enable the respondent to live safely in
5 the community without court supervision;

6 (3) is in need of continued assisted
7 outpatient treatment as the least restrictive appropriate
8 alternative in order to prevent a relapse or deterioration
9 likely to result in serious harm to self or likely to result in
10 serious harm to others; and

11 (4) will likely benefit from, and the
12 respondent's best interests will be served by, receiving
13 continued assisted outpatient treatment."

14 SECTION 12. A new section of the Mental Health and
15 Developmental Disabilities Code is enacted to read:

16 "[NEW MATERIAL] APPLICATION TO STAY, VACATE, MODIFY OR
17 ENFORCE AN ORDER.--

18 A. In addition to any other right or remedy
19 available by law with respect to the court order for assisted
20 outpatient treatment, a party or the respondent's surrogate
21 decision-maker may apply to the court to stay, vacate, modify
22 or enforce the order. The application shall be served upon
23 those persons required to be served with notice of a petition
24 for an order authorizing assisted outpatient treatment and
25 every specified provider. The disposition of the application

.202868.1

underscoring material = new
~~[bracketed material] = delete~~

1 shall occur no later than ten calendar days following the
2 filing of the application.

3 B. A specified provider shall apply to the court
4 for approval before instituting a proposed material change in
5 mandated services or assisted outpatient treatment unless such
6 change is contemplated in the order. The application shall be
7 served upon those persons required to be served with notice of
8 a petition for an order authorizing assisted outpatient
9 treatment and every specified provider. The disposition of the
10 application shall occur no later than ten calendar days
11 following the filing of the application. Nonmaterial changes
12 may be instituted by the provider without court approval. For
13 purposes of this subsection, "material change" means an
14 addition or deletion of a category of assisted outpatient
15 treatment and does not include a change in medication or dosage
16 contemplated in the order that, based upon the clinical
17 judgment of the provider, is in the best interest of the
18 patient.

19 C. A court order requiring periodic blood tests or
20 urinalysis for the presence of alcohol or abused substances
21 shall be subject to review after six months by a qualified
22 professional, who shall be authorized to terminate such blood
23 tests or urinalysis without further action by the court."

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

.202868.1

underscored material = new
[bracketed material] = delete

1 "[NEW MATERIAL] FAILURE TO COMPLY WITH ASSISTED OUTPATIENT
2 TREATMENT.--

3 A. If a qualified professional determines that a
4 respondent has materially failed to comply with the assisted
5 outpatient treatment as ordered by the court, such that the
6 qualified professional believes that the respondent's condition
7 is likely to result in serious harm to self or likely to result
8 in serious harm to others and that immediate detention is
9 necessary to prevent such harm, the qualified professional
10 shall certify the need for detention and transport of the
11 respondent for emergency mental health evaluation and care
12 pursuant to the provisions of Paragraph (4) of Subsection A of
13 Section 43-1-10 NMSA 1978.

14 B. A respondent's failure to comply with an order
15 of assisted outpatient treatment is not grounds for involuntary
16 civil commitment or a finding of contempt of court, or for the
17 use of physical force or restraints to administer medication to
18 the respondent."

19 **SECTION 14.** A new section of the Mental Health and
20 Developmental Disabilities Code is enacted to read:

21 "[NEW MATERIAL] SEQUESTRATION AND CONFIDENTIALITY OF
22 RECORDS.--

23 A. All records or information containing protected
24 health information relating to the respondent, including all
25 pleadings and other documents filed in the matter, social

.202868.1

underscoring material = new
~~[bracketed material] = delete~~

1 records, diagnostic evaluations, psychiatric or psychologic
2 reports, videotapes, transcripts and audio recordings of
3 interviews and examinations, recorded testimony and the
4 assisted outpatient treatment plan that was produced or
5 obtained as part of a proceeding pursuant to the Assisted
6 Outpatient Treatment Act, shall be confidential and closed to
7 the public.

8 B. The records described in Subsection A of this
9 section may only be disclosed to the parties and:

- 10 (1) court personnel;
- 11 (2) court-appointed special advocates;
- 12 (3) attorneys representing parties to the
13 proceeding;
- 14 (4) surrogate decision-makers;
- 15 (5) peace officers requested by the
16 court to perform any duties or functions related to the
17 respondent as deemed appropriate by the court;
- 18 (6) qualified professionals and providers
19 involved in the evaluation or treatment of the respondent;
- 20 (7) public health authorities or entities
21 conducting public health surveillance or research, if
22 authorized by law; and
- 23 (8) any other person or entity, by order of
24 the court, having a legitimate interest in the case or the work
25 of the court.

.202868.1

underscored material = new
[bracketed material] = delete

1 C. A person who intentionally releases any
2 information or records closed to the public pursuant to the
3 Assisted Outpatient Treatment Act or who releases or makes
4 other use of the records in violation of that act is guilty of
5 a fourth degree felony and shall be punished in accordance with
6 the provisions of Section 31-18-15 NMSA 1978."

7 **SECTION 15.** A new section of the Mental Health and
8 Developmental Disabilities Code is enacted to read:

9 "[NEW MATERIAL] EDUCATIONAL MATERIALS.--The division and
10 the interagency behavioral health purchasing collaborative, in
11 consultation with the administrative office of the courts,
12 shall prepare educational and training materials on the
13 provisions of the Assisted Outpatient Treatment Act, which
14 shall be made available no later than January 1, 2017 to
15 providers, judges, court personnel, peace officers and the
16 general public."

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

19 "43-1-3. DEFINITIONS.--As used in the Mental Health and
20 Developmental Disabilities Code:

21 A. "aversive stimuli" means anything that, because
22 it is believed to be unreasonably unpleasant, uncomfortable or
23 distasteful to the client, is administered or done to the
24 client for the purpose of reducing the frequency of a behavior,
25 but does not include verbal therapies, physical restrictions to

.202868.1

1 prevent imminent harm to self or others or psychotropic
2 medications that are not used for purposes of punishment;

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

10 C. "code" means the Mental Health and Developmental
11 Disabilities Code;

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

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

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

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

underscored material = new
~~[bracketed material] = delete~~

1 E. "convulsive treatment" means any form of mental
2 health treatment that depends upon creation of a convulsion by
3 any means, including but not limited to electroconvulsive
4 treatment and insulin coma treatment;

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

6 G. "department" or "division" means the behavioral
7 health services division of the human services department;

8 H. "developmental disability" means a disability of
9 a person that is attributable to mental retardation, cerebral
10 palsy, autism or neurological dysfunction that requires
11 treatment or habilitation similar to that provided to persons
12 with mental retardation;

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

22 J. "experimental treatment" means any mental health
23 or developmental disabilities treatment that presents
24 significant risk of physical harm, but does not include
25 accepted treatment used in competent practice of medicine and

.202868.1

underscoring material = new
~~[bracketed material] = delete~~

1 psychology and supported by scientifically acceptable studies;

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

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

15 M. "likelihood of serious harm to oneself" means
16 that it is more likely than not that in the near future the
17 person will attempt to commit suicide or will cause serious
18 bodily harm to the person's self by violent or other self-
19 destructive means, including ~~[but not limited to]~~ grave passive
20 neglect;

21 N. "likelihood of serious harm to others" means
22 that it is more likely than not that in the near future a
23 person will inflict serious, unjustified bodily harm on another
24 person or commit a criminal sexual offense, as evidenced by
25 behavior causing, attempting or threatening such harm, which

.202868.1

underscored material = new
[bracketed material] = delete

1 behavior gives rise to a reasonable fear of such harm from the
2 person;

3 O. "mental disorder" means substantial disorder of
4 a person's emotional processes, thought or cognition that
5 grossly impairs judgment, behavior or capacity to recognize
6 reality, but does not mean developmental disability;

7 P. "mental health or developmental disabilities
8 professional" means a physician or other professional who by
9 training or experience is qualified to work with persons with a
10 mental disorder or a developmental disability;

11 Q. "physician" or "certified psychologist", when
12 used for the purpose of hospital admittance or discharge, means
13 a physician or certified psychologist who has been granted
14 admitting privileges at a hospital licensed by the department
15 of health, if such privileges are required;

16 R. "protected health information" means
17 individually identifiable health information transmitted by or
18 maintained in an electronic form or any other form or media
19 that relates to the:

20 (1) past, present or future physical or mental
21 health or condition of an individual;

22 (2) provision of health care to an individual;

23 or

24 (3) payment for the provision of health care
25 to an individual;

.202868.1

underscored material = new
[bracketed material] = delete

1 [R-] S. "psychosurgery":

2 (1) means those operations currently referred
3 to as lobotomy, psychiatric surgery and behavioral surgery and
4 all other forms of brain surgery if the surgery is performed
5 for the purpose of the following:

6 (a) modification or control of thoughts,
7 feelings, actions or behavior rather than the treatment of a
8 known and diagnosed physical disease of the brain;

9 (b) treatment of abnormal brain function
10 or normal brain tissue in order to control thoughts, feelings,
11 actions or behavior; or

12 (c) treatment of abnormal brain function
13 or abnormal brain tissue in order to modify thoughts, feelings,
14 actions or behavior when the abnormality is not an established
15 cause for those thoughts, feelings, actions or behavior; and

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

18 [S-] T. "qualified mental health professional
19 licensed for independent practice" means an independent social
20 worker, a licensed professional clinical mental health
21 counselor, a marriage and family therapist, a certified nurse
22 practitioner or a clinical nurse specialist with a specialty in
23 mental health, all of whom by training and experience are
24 qualified to work with persons with a mental disorder;

25 [F-] U. "residential treatment or habilitation

.202868.1

underscored material = new
[bracketed material] = delete

1 program" means diagnosis, evaluation, care, treatment or
2 habilitation rendered inside or on the premises of a mental
3 health or developmental disabilities facility, hospital,
4 clinic, institution or supervisory residence or nursing home
5 when the client resides on the premises; and

6 [U-] V. "treatment" means any effort to accomplish
7 a significant change in the mental or emotional condition or
8 behavior of the client."

9 SECTION 17. Section 43-1-19 NMSA 1978 (being Laws 1977,
10 Chapter 279, Section 18, as amended) is amended to read:

11 "43-1-19. DISCLOSURE OF INFORMATION.--

12 A. Except as otherwise provided in the code, no
13 person shall, without the authorization of the client, disclose
14 or transmit any confidential information from which a person
15 well acquainted with the client might recognize the client as
16 the described person, or any code, number or other means that
17 can be used to match the client with confidential information
18 regarding the client.

19 B. Authorization from the client shall not be
20 required for the disclosure or transmission of confidential
21 information in the following circumstances:

22 (1) when the request is from a mental health
23 or developmental disability professional or from an employee or
24 trainee working with a person with a mental disability or
25 developmental disability, to the extent that the practice,

.202868.1

underscored material = new
[bracketed material] = delete

1 employment or training on behalf of the client requires access
2 to such information is necessary;

3 (2) when such disclosure is necessary to
4 protect against a clear and substantial risk of imminent
5 serious physical injury or death inflicted by the client on the
6 client's self or another;

7 (3) when the disclosure is made pursuant to
8 the provisions of the Assisted Outpatient Treatment Act, using
9 reasonable efforts to limit protected health information to
10 that which is minimally necessary to accomplish the intended
11 purpose of the use, disclosure or request;

12 [~~(3)~~] (4) when the disclosure of such
13 information is to the primary caregiver of the client and the
14 disclosure is only of information necessary for the continuity
15 of the client's treatment in the judgment of the treating
16 physician or certified psychologist who discloses the
17 information; or

18 [~~(4)~~] (5) when such disclosure is to an
19 insurer contractually obligated to pay part or all of the
20 expenses relating to the treatment of the client at the
21 residential facility. The information disclosed shall be
22 limited to data identifying the client, facility and treating
23 or supervising physician and the dates and duration of the
24 residential treatment. It shall not be a defense to an
25 insurer's obligation to pay that the information relating to

.202868.1

underscoring material = new
~~[bracketed material] = delete~~

1 the residential treatment of the client, apart from information
2 disclosed pursuant to this section, has not been disclosed to
3 the insurer.

4 C. No authorization given for the transmission or
5 disclosure of confidential information shall be effective
6 unless it:

7 (1) is in writing and signed; and

8 (2) contains a statement of the client's right
9 to examine and copy the information to be disclosed, the name
10 or title of the proposed recipient of the information and a
11 description of the use that may be made of the information.

12 D. The client has a right of access to confidential
13 information and has the right to make copies of any information
14 and to submit clarifying or correcting statements and other
15 documentation of reasonable length for inclusion with the
16 confidential information. The statements and other
17 documentation shall be kept with the relevant confidential
18 information, shall accompany it in the event of disclosure and
19 shall be governed by the provisions of this section to the
20 extent they contain confidential information. Nothing in this
21 subsection shall prohibit the denial of access to such records
22 when a physician or other mental health or developmental
23 disabilities professional believes and notes in the client's
24 medical records that such disclosure would not be in the best
25 interests of the client. In any such case, the client has the

.202868.1

underscoring material = new
~~[bracketed material] = delete~~

1 right to petition the court for an order granting such access.

2 E. Where there exists evidence that the client
3 whose consent to disclosure of confidential information is
4 sought is incapable of giving or withholding valid consent and
5 the client does not have a guardian or treatment guardian
6 appointed by a court, the person seeking such authorization
7 shall petition the court for the appointment of a treatment
8 guardian to make a substitute decision for the client, except
9 that if the client is less than fourteen years of age, the
10 client's parent or guardian is authorized to consent to
11 disclosure on behalf of the client.

12 F. Information concerning a client disclosed under
13 this section shall not be released to any other person, agency
14 or governmental entity or placed in files or computerized data
15 banks accessible to any persons not otherwise authorized to
16 obtain information under this section.

17 G. Nothing in the code shall limit the
18 confidentiality rights afforded by federal statute or
19 regulation.

20 H. A person appointed as a treatment guardian in
21 accordance with the Mental Health and Developmental
22 Disabilities Code may act as the client's personal
23 representative pursuant to the federal Health Insurance
24 Portability and Accountability Act of 1996, Sections 1171-1179
25 of the Social Security Act, 42 U.S.C. Section 1320d, as

.202868.1

underscoring material = new
~~[bracketed material] = delete~~

1 amended, and applicable federal regulations to obtain access to
2 the client's protected health information, including mental
3 health information and relevant physical health information,
4 and may communicate with the client's health care providers in
5 furtherance of such treatment."

6 SECTION 18. A new section of the Mental Health and
7 Developmental Disabilities Code is enacted to read:

8 "[NEW MATERIAL] COMPILATION OF DATA FOR COURT-ORDERED
9 MENTAL HEALTH TREATMENT AND APPOINTMENT OF TREATMENT
10 GUARDIAN.--

11 A. The clerk of each court with jurisdiction to
12 order assisted outpatient treatment pursuant to the Assisted
13 Outpatient Treatment Act or involuntary commitment pursuant to
14 the Mental Health and Developmental Disabilities Code shall
15 provide a monthly report to the administrative office of the
16 courts with the following information for the previous month:

17 (1) the number of petitions for assisted
18 outpatient treatment filed with the court;

19 (2) the number of petitions for involuntary
20 commitment of an adult pursuant to Section 43-1-11 NMSA 1978
21 filed with the court;

22 (3) the number of petitions for extended
23 commitment of adults pursuant to Section 43-1-12 NMSA 1978
24 filed with the court;

25 (4) the number of petitions for involuntary

underscored material = new
[bracketed material] = delete

1 commitment of developmentally disabled adults to residential
2 care pursuant to Section 43-1-13 NMSA 1978 filed with the
3 court;

4 (5) the number of petitions for appointment of
5 a treatment guardian pursuant to Section 43-1-15 NMSA 1978
6 filed with the court; and

7 (6) the disposition of each case included in
8 the monthly report, including the number of orders for
9 inpatient mental health services and the number of orders for
10 outpatient mental health services.

11 B. Beginning September 1, 2016, the administrative
12 office of the courts shall quarterly provide the information
13 reported to it pursuant to Subsection A of this section to the:

14 (1) department; and

15 (2) interagency behavioral health purchasing
16 collaborative.

17 C. The provisions of Subsections A and B of this
18 section do not require the production of protected health
19 information, information deemed confidential under Subsection A
20 of Section 14 of the Assisted Outpatient Treatment Act or
21 information protected from disclosure under Section 43-1-19
22 NMSA 1978."

23 SECTION 19. DELAYED REPEAL.--Sections 1 through 15 of
24 this act are repealed on July 1, 2021.

25 SECTION 20. EFFECTIVE DATE.--The effective date of the

.202868.1

underscored material = new
[bracketed material] = delete

1 provisions of this act is July 1, 2016.

2 - 36 -

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25