SENATE BILL

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

DISCUSSION DRAFT

FOR THE LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

AN ACT

RELATING TO HEALTH CARE; ENACTING THE ASSISTED OUTPATIENT TREATMENT ACT; PROVIDING FOR ASSISTED OUTPATIENT TREATMENT PROCEEDINGS; REQUIRING PUBLIC HEALTH SURVEILLANCE AND OVERSIGHT; 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; MAKING APPROPRIATIONS.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 17 of this act may be cited as the "Assisted Outpatient Treatment Act".

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

A. "advance directive for mental health treatment"

means an individual instruction or power of attorney for mental health treatment made pursuant to the Mental Health Care Treatment Decisions Act;

B. "assertive community treatment" means a team treatment approach designed to provide comprehensive community-based psychiatric treatment, rehabilitation and support to persons with serious and persistent mental illness;

C. "assisted outpatient treatment" means categories of outpatient services ordered by a district court, including case management services or assertive community treatment team services, prescribed to treat a patient's mental illness 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. Assisted outpatient treatment may 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;

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(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 illness 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;

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

E. "department" means the department of health;

F. "least restrictive appropriate alternative" means treatment and conditions that:

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

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

G. "mandated service" means a service specified in a court order requiring assisted outpatient treatment;

H. "mental illness" means a substantial disorder of thought, mood or behavior that impairs a person's judgment, but does not mean developmental disability;

I. "patient" means a person receiving assisted

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outpatient treatment pursuant to a court order;

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

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

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

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

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

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

M. "respondent" means a person who is the subject of a petition for assisted outpatient treatment; and

N. "treatment guardian" means a person appointed pursuant to Section 43-1-15 NMSA 1978 to make mental health treatment decisions for a person who has been found by clear and convincing evidence to be incapable of making the person's

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own mental health treatment decisions.

SECTION 3. [NEW MATERIAL] ASSISTED OUTPATIENT TREATMENT--CRITERIA.--A person may be ordered to participate in assisted outpatient treatment if the court finds by clear and convincing evidence that the person:

A. is eighteen years of age or older;

B. is suffering from a primary diagnosis of mental illness;

C. is unlikely to survive safely in the community without supervision, based on a clinical determination;

D. has:

(1) entered and the court has accepted a plea of guilty but mentally ill, or been found guilty but mentally ill or been found incompetent to stand trial; or

(2) demonstrated a history of lack of compliance with treatment for mental illness that has:

(a) at least twice within the last forty-eight months, been a significant factor in necessitating hospitalization or necessitating receipt of services in a forensic or other mental health unit or a correctional facility; provided that the forty-eight-month period shall be extended by the length of any hospitalization or incarceration of the person that occurred within the forty-eight-month period;

(b) resulted in one or more acts of

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serious violent behavior toward self or others or threats of, or attempts at, serious physical harm to self or others within the last forty-eight months; provided that the forty-eight-month period shall be extended by the length of any hospitalization or incarceration of the person that occurred within the forty-eight-month period; or

(c) resulted in the person being hospitalized or incarcerated for six months or more and the person is to be discharged or released within the next thirty days or was discharged or released within the past sixty days;

E. is unwilling or unlikely, as a result of mental illness, to participate voluntarily in outpatient treatment that would enable the person to live safely in the community without court supervision;

F. in view of the person's treatment history and current behavior, is in need of assisted outpatient treatment in order to prevent a relapse or deterioration that would be likely to result in serious harm to the person or another person; and

G. will likely benefit from assisted outpatient treatment.

SECTION 4. [NEW MATERIAL] PETITION TO THE COURT.--

A. A petition for an order authorizing assisted outpatient treatment may be filed in the district court for the county in which the respondent is present or reasonably

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believed to be present. A petition shall be filed only by the following persons:

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

(2) the parent or spouse of the respondent;

(3) the sibling or child of the respondent; provided that the sibling or child is eighteen years of age or older;

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

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

(6) a psychiatrist who either supervises the treatment of or treats the respondent for a mental illness or has supervised or treated the respondent for mental illness within the past forty-eight months;

(7) a provider or social services official of the city or county where the respondent is present or reasonably believed to be present; or

(8) a parole officer or probation officer assigned to supervise the respondent.

B. The petition shall include:

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

Treatment Act;

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

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

C. The petition shall be accompanied by an affidavit of a physician and shall state that:

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

(2) no more than ten days prior to the filing of the petition, the physician or the physician's designee has made appropriate attempts to elicit the cooperation of the respondent but has not been successful in persuading the respondent to submit to an examination, that the physician has reason to believe, based on the most reliable information available to the physician, that the respondent meets the criteria for assisted outpatient treatment and that the

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physician is willing and able to examine the respondent and testify at the hearing on the petition either in person or by contemporaneous transmission from a different location.

SECTION 5. [NEW MATERIAL] APPLICATION FOR QUALIFIED PROTECTIVE ORDER--CONTENTS OF ORDER.--

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

B. The qualified protective order shall provide that:

(1) all parties to the proceeding and their attorneys are authorized to receive, subpoena and transmit protected health information pertaining to the respondent for purposes of the proceeding;

(2) all covered entities are authorized to disclose protected health information pertaining to the respondent to all attorneys of record in the proceeding;

(3) the parties and their attorneys are permitted to use the protected health information of the respondent in any manner reasonably connected to the proceeding, including disclosure to attorney support staff, experts, copy services, consultants and court reporters;

(4) within forty-five days after the later of the exhaustion of all appeals or the date on which the respondent is no longer receiving assisted outpatient

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treatment, the parties and their attorneys and any person or entity in possession of protected health information received from a party or the party's attorney in the course of the proceeding shall destroy all copies of protected health information pertaining to the respondent, except that counsel are not required to secure the return or destruction of protected health information submitted to the court;

(5) nothing in the order controls or limits the use of protected health information pertaining to the respondent that comes into the possession of a party or the party's attorney from a source other than a covered entity; and

(6) nothing in the order authorizes counsel for the petitioner to obtain medical records or information through means other than formal discovery requests, subpoenas, depositions or other lawful process, or pursuant to a patient authorization.

SECTION 6. [NEW MATERIAL] HEARING--RIGHTS OF RESPONDENT--EXAMINATION BY A PHYSICIAN.--

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

(1) no later than seven days after the date of service or attempted service or as stipulated by the parties, or upon a showing of good cause, no later than thirty days after the date of service or attempted service; or

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

B. A copy of the petition and notice of hearing shall be served, in the same manner as a summons, on the petitioner, the respondent, the physician whose affirmation or affidavit accompanied the petition, the current provider, if any, and any other person that the court deems advisable.

C. If, on the date that the petition is filed, the respondent is under the supervision of a treatment guardian, a copy of the petition and notice of hearing shall be served, in the same manner as a summons, on the treatment guardian and on the court that appointed such treatment guardian.

D. The respondent shall be represented by counsel at all stages of the proceedings. The respondent shall have the right to present evidence and cross-examine witnesses. A record of the hearing shall be made, and the respondent shall have a right to an expeditious appeal to the court of appeals according to the rules of appellate procedure of the supreme court.

E. If the respondent fails to appear at the hearing after notice, and significant attempts to elicit the attendance of the respondent have failed, the court may conduct the

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hearing in the respondent's absence, setting forth the factual basis for conducting the hearing without the presence of the respondent.

F. The court shall not order assisted outpatient treatment for the respondent unless a physician, who has personally examined the respondent within ten days prior to the filing of the petition, testifies at the hearing in person or by contemporaneous transmission from a different location.

G. If the respondent has refused to be examined by a physician and the court finds reasonable grounds to believe that the allegations of the petition are true, the court may direct a peace officer to take the respondent into custody and transport the respondent to a provider for examination by a physician. The examination of the respondent may be performed by the physician whose affidavit accompanied the petition. If the examination is performed by another physician, the examining physician shall be authorized to consult with the physician whose affidavit accompanied the petition. No respondent taken into custody pursuant to this subsection shall be detained longer than necessary or longer than twenty-four hours.

SECTION 7. [NEW MATERIAL] WRITTEN PROPOSED TREATMENT PLAN.--

A. The court shall not order assisted outpatient treatment unless a physician:

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(1) provides a written proposed treatment plan to the court; and

(2) testifies in person or by contemporaneous transmission from a different location to explain the written proposed treatment plan.

B. In developing a written proposed treatment plan, the physician shall take into account, if existing, an advance directive for mental health treatment and provide the following persons with an opportunity to actively participate in the development of the plan:

(1) the respondent;

(2) the treating physician;

(3) upon the request of the respondent, an individual significant to the respondent, including any relative, close friend or individual otherwise concerned with the welfare of the respondent; and

(4) any court-appointed surrogate decision-maker, including a guardian or treatment guardian, who has previously been authorized by a court to make substitute decisions regarding the respondent's mental health.

C. The written proposed treatment plan shall include case management services or an assertive community treatment team to provide care coordination and assisted outpatient treatment services recommended by the physician. If the written proposed treatment plan includes medication, it

shall state whether such medication should be self-administered or should be administered by an authorized professional and shall specify type and dosage range of medication most likely to provide maximum benefit for the respondent.

D. If the written proposed treatment plan includes alcohol or substance abuse counseling and treatment, the plan may include a provision requiring relevant testing for either alcohol or abused substances; provided that the physician's clinical basis for recommending such plan provides sufficient facts for the court to find that:

(1) the respondent has a history of alcohol or substance abuse that is clinically related to the mental illness; and

(2) such testing is necessary to prevent a relapse or deterioration that would be likely to result in serious harm to the respondent or others.

E. Testimony explaining the written proposed treatment plan shall include:

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

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

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(3) if the recommended assisted outpatient treatment includes medication, the types or classes of medication that should be authorized, the beneficial and detrimental physical and mental effects of such medication and whether such medication should be self-administered or should be administered by an authorized professional.

SECTION 8. [NEW MATERIAL] DISPOSITION.--

A. If the respondent has an advance directive for mental health treatment or a personal representative, agent, surrogate, guardian or individual designated by the respondent to make health care decisions, the court shall take into account any advance directive for mental health treatment or directions by the personal representative, agent, surrogate, guardian or individual designated by the respondent in determining whether to adopt the written proposed treatment plan in an order mandating assisted outpatient treatment.

B. The court shall not enter an order authorizing assisted outpatient treatment for a respondent with a court-appointed surrogate decision-maker, including a guardian or treatment guardian, without notice to such surrogate decision-maker and an opportunity for hearing as provided in Section 6 of the Assisted Outpatient Treatment Act.

C. After a hearing and consideration of all relevant evidence, the court shall order the respondent to receive assisted outpatient treatment if it finds:

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(1) by clear and convincing evidence that grounds for assisted outpatient treatment have been established;

(2) that assisted outpatient treatment is the least restrictive appropriate alternative; and

(3) that assisted outpatient treatment is in the respondent's best interest.

D. The court's order shall:

(1) provide for an initial period of outpatient treatment not to exceed one year;

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

(3) direct a specified provider to provide or arrange for all assisted outpatient treatment for the patient throughout the period of the order.

E. The court may order the respondent to self-administer psychotropic drugs or accept the administration of such drugs by an authorized professional. The order shall be effective for the duration of the respondent's assisted outpatient treatment.

F. The court may not order treatment that has not been recommended by the examining physician and included in the written proposed treatment plan for assisted outpatient treatment.

G. The court may order assisted outpatient

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treatment as an alternative to involuntary inpatient commitment if it finds assisted outpatient treatment to be a less restrictive alternative to accomplish treatment plan objectives.

H. For the duration of the assisted outpatient treatment and any additional periods of treatment ordered, the court may at any time on its own motion set a status hearing or conference and shall be authorized to require the attendance of the parties and their counsel, expert witnesses, treatment and service providers, case managers and such other persons as the court deems necessary.

SECTION 9. [NEW MATERIAL] EFFECT OF DETERMINATION THAT RESPONDENT IS IN NEED OF ASSISTED OUTPATIENT TREATMENT.--The determination by a court that a person is in need of assisted outpatient treatment shall not be construed as or deemed to be a determination that such person is incompetent pursuant to Section 43-1-11 NMSA 1978.

SECTION 10. [NEW MATERIAL] APPLICATIONS FOR CONTINUED PERIODS OF TREATMENT.--

A. If a provider determines that the condition of a patient requires further assisted outpatient treatment, the provider shall seek, prior to the expiration of the period of assisted outpatient treatment ordered by the court, a subsequent order authorizing continued assisted outpatient treatment for a period not to exceed one year from the date of

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the subsequent order. If the court's disposition of the application does not occur prior to the expiration date of the current order, the current order shall remain in effect until the court's disposition.

B. A patient may be ordered to participate in continued assisted outpatient treatment if the court finds that the patient:

(1) continues to suffer from a primary diagnosis of mental illness;

(2) is unlikely to survive safely in the community without supervision, based on a clinical determination;

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

(4) in view of the patient's treatment history and current behavior, is in need of continued assisted outpatient treatment in order to prevent a relapse or deterioration that would be likely to result in serious harm to the patient or another person; and

(5) will likely benefit from continued assisted outpatient treatment.

SECTION 11. [NEW MATERIAL] APPLICATION TO STAY, VACATE, MODIFY OR ENFORCE AN ORDER.--

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A. In addition to any other right or remedy available by law with respect to the court order for assisted outpatient treatment, the patient, the patient's attorney or any court-appointed surrogate decision-maker, including a guardian or treatment guardian, who has previously been authorized by a court to make substitute decisions regarding the patient's mental health may apply to the court to stay, vacate, modify or enforce the order. A copy of the application shall be served on the specified provider and the original petitioner.

B. The specified provider shall apply to the court for approval before instituting a proposed material change in mandated services or assisted outpatient treatment unless such change is contemplated in the order. An application for approval shall be served upon those persons required to be served with notice of a petition for an order authorizing assisted outpatient treatment. Nonmaterial changes may be instituted by the provider without court approval. For purposes of this subsection, "material change" means an addition or deletion of a category of assisted outpatient treatment and does not include a change in medication or dosage that, based upon the clinical judgment of the treating physician, is in the best interest of the patient.

C. A court order requiring periodic blood tests or urinalysis for the presence of alcohol or abused substances

shall be subject to review after six months by a physician, who shall be authorized to terminate such blood tests or urinalysis without further action by the court.

SECTION 12. [NEW MATERIAL] FAILURE TO COMPLY WITH ASSISTED OUTPATIENT TREATMENT.--

A. A physician may determine that a patient has failed to comply with assisted outpatient treatment if, in the clinical judgment of the physician:

(1) the patient has failed a blood test, urinalysis or alcohol or drug test as required by the court order or has materially failed to comply with the treatment as ordered by the court despite efforts made to solicit compliance; and

(2) the patient needs an examination to determine whether hospitalization is necessary pursuant to the Mental Health and Developmental Disabilities Code.

B. Upon the request of a physician, a provider may transport a patient to any hospital authorized to receive such patient for the performance of an examination.

C. If deemed necessary and upon the request of a physician, a provider may request the aid of a peace officer to take the patient into custody and accompany the provider in transporting the patient to any hospital authorized to receive such patient. A peace officer shall carry out a provider's directive pursuant to this section.

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D. The patient may be retained for observation, care, treatment and further examination in the hospital for up to seventy-two hours to permit a physician to determine whether the patient is in need of hospitalization pursuant to the Mental Health and Developmental Disabilities Code. Any continued involuntary retention in a hospital beyond the initial seventy-two-hour period shall be in accordance with the provisions of the Mental Health and Developmental Disabilities Code relating to the involuntary admission and retention of a patient. If, at any time during the seventy-two-hour period, the patient is determined not to meet the involuntary admission and retention provisions of the Mental Health and Developmental Disabilities Code and the patient does not agree to stay in the hospital as a voluntary or informal patient, the patient must be released.

E. A patient's failure to comply with an order of assisted outpatient treatment is not grounds for involuntary civil commitment or a finding of contempt of court.

SECTION 13. [NEW MATERIAL] PUBLIC HEALTH SURVEILLANCE AND OVERSIGHT OF ASSISTED OUTPATIENT TREATMENT.--The department, in collaboration with the interagency behavioral health purchasing collaborative, shall conduct public health surveillance and oversight of assisted outpatient treatment through each county public health office.

SECTION 14. [NEW MATERIAL] COMBINATION OR COORDINATION OF

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EFFORTS AND FUNDING.--Nothing in the Assisted Outpatient Treatment Act shall be construed to preclude:

A. the combination or coordination of efforts among local governmental units, hospitals and other local service providers in providing assisted outpatient treatment; or

B. public or private funding of the administration or operation of assisted outpatient treatment services or infrastructure.

SECTION 15. [NEW MATERIAL] SEQUESTRATION AND CONFIDENTIALITY OF RECORDS.--

A. A petition for an order authorizing assisted outpatient treatment shall be entitled "In the Matter of _____" and shall set forth with specificity:

(1) the facts necessary to invoke the jurisdiction of the court;

(2) the name, birth date and residence address of the respondent; and

(3) any other substantive matters required by the Assisted Outpatient Treatment Act to be set forth in the petition.

B. All records or information containing protected health information relating to the respondent, including all pleadings and other documents filed in the matter, social records, diagnostic evaluations, psychiatric or psychologic

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reports, videotapes, transcripts and audio recordings of interviews and examinations, recorded testimony and the assisted outpatient treatment plan that was produced or obtained as part of a proceeding pursuant to the Assisted Outpatient Treatment Act shall be confidential and closed to the public.

C. The records described in Subsection B of this section shall be disclosed only to the parties and:

(1) court personnel;

(2) court-appointed special advocates;

(3) attorneys representing parties to the proceeding;

(4) the respondent's personal representative, agent, surrogate, guardian or individual designated by the respondent to make health care decisions;

(5) the respondent's treatment guardian;

(6) peace officers requested by the court to perform any duties or functions related to the respondent as deemed appropriate by the court;

(7) providers involved in the evaluation or treatment of the respondent;

(8) public health authorities or entities conducting public health surveillance or research or as otherwise authorized by law; and

(9) any other person or entity, by order of the

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court, having a legitimate interest in the case or the work of the court.

D. A person who intentionally releases any information or records closed to the public pursuant to the Assisted Outpatient Treatment Act or who releases or makes other use of the records in violation of that act is guilty of a petty misdemeanor.

SECTION 16. [NEW MATERIAL] CRIMINAL PROSECUTION.--A person who knowingly makes a false statement or provides false information or false testimony in a petition for an order authorizing assisted outpatient treatment is guilty of a petty misdemeanor.

SECTION 17. [NEW MATERIAL] EDUCATIONAL MATERIALS.--The department and the interagency behavioral health purchasing collaborative, in consultation with the administrative office of the courts, shall prepare educational and training materials on the provisions of the Assisted Outpatient Treatment Act, which shall be made available no later than January 1, 2016 to providers, judges, court personnel, peace officers and the general public.

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

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

A. "aversive stimuli" means anything that, because

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it is believed to be unreasonably unpleasant, uncomfortable or distasteful to the client, is administered or done to the client for the purpose of reducing the frequency of a behavior, but does not include verbal therapies, physical restrictions to prevent imminent harm to self or others or psychotropic medications that are not used for purposes of punishment;

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

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

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

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

(2) involve no restrictions on physical movement and no requirement for residential care except as reasonably necessary for the administration of treatment or for the

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protection of the client or others from physical injury; and

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

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

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

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

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

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

J. "experimental treatment" means any mental health

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or developmental disabilities treatment that presents significant risk of physical harm, but does not include accepted treatment used in competent practice of medicine and psychology and supported by scientifically acceptable studies;

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

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

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

N. "likelihood of serious harm to others" means that it is more likely than not that in the near future a

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person will inflict serious, unjustified bodily harm on another person or commit a criminal sexual offense, as evidenced by behavior causing, attempting or threatening such harm, which behavior gives rise to a reasonable fear of such harm from the person;

O. "medical emergency" means any physical or mental health emergency that requires immediate medical intervention;

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

[~~P.~~] Q. "mental health or developmental disabilities professional" means a physician or other professional who by training or experience is qualified to work with persons with a mental disorder or a developmental disability;

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

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

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that relates to the:

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

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

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

[~~R.~~] T. "psychosurgery":

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

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

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

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

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

[~~S.~~] U. "qualified mental health professional

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licensed for independent practice" means an independent social worker, a licensed professional clinical mental health counselor, a marriage and family therapist, a certified nurse practitioner or a clinical nurse specialist with a specialty in mental health, all of whom by training and experience are qualified to work with persons with a mental disorder;

[~~T.~~] V. "residential treatment or habilitation program" means diagnosis, evaluation, care, treatment or habilitation rendered inside or on the premises of a mental health or developmental disabilities facility, hospital, clinic, institution or supervisory residence or nursing home when the client resides on the premises; and

[~~U.~~] W. "treatment" means any effort to accomplish a significant change in the mental or emotional condition or behavior of the client."

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

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

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

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

(1) when the request is from a mental health or developmental disability professional or from an employee or trainee working with a person with a mental disability or developmental disability, to the extent that the practice, employment or training on behalf of the client requires access to such information is necessary;

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

(3) when the disclosure of such information is to the primary caregiver of the client and the disclosure is only of information necessary for the continuity of the client's treatment in the judgment of the treating physician or certified psychologist who discloses the information; or

(4) when such disclosure is to an insurer contractually obligated to pay part or all of the expenses relating to the treatment of the client at the residential facility. The information disclosed shall be limited to data identifying the client, facility and treating or supervising physician and the dates and duration of the residential treatment. It shall not be a defense to an insurer's

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obligation to pay that the information relating to the residential treatment of the client, apart from information disclosed pursuant to this section, has not been disclosed to the insurer.

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

(1) is in writing and signed; and

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

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

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interests of the client. In any such case, the client has the right to petition the court for an order granting such access.

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

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

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

H. A person appointed as a treatment guardian in accordance with the Mental Health and Developmental Disabilities Code may act as the client's personal representative pursuant to the federal Health Insurance Portability and Accountability Act of 1996, Sections 1171-1179

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of the Social Security Act, 42 U.S.C. Section 1320d, as amended, and applicable federal regulations to obtain access to the client's protected health information, including mental health information and relevant physical health information, and may communicate with the client's health care providers in furtherance of such treatment."

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

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

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

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

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

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

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(4) the number of petitions for involuntary commitment of developmentally disabled adults to residential care pursuant to Section 43-1-13 NMSA 1978 filed with the court;

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

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

B. Beginning September 1, 2015, the administrative office of the courts shall quarterly provide the information reported to it pursuant to Subsection A of this section to the:

(1) department of health; and

(2) interagency behavioral health purchasing collaborative.

C. The provisions of Subsections A and B of this section do not require the production of protected health information, information deemed confidential under Subsection B of Section 15 of the Assisted Outpatient Treatment Act or information protected from disclosure under Section 43-1-19 NMSA 1978."

SECTION 21. APPROPRIATIONS.--

A. Three million dollars ($3,000,000) is

appropriated from the general fund to the department of health for expenditure in fiscal year 2016 to conduct public health surveillance and oversight of assisted outpatient treatment programs pursuant to the Assisted Outpatient Treatment Act through each county public health office. Any unexpended or unencumbered balance remaining at the end of fiscal year 2016 shall revert to the general fund.

B. Two hundred seventy-five thousand dollars ($275,000) is appropriated from the general fund to the administrative office of the courts for expenditure in fiscal year 2016 to hire personnel and to conduct necessary training to compile and report data relating to court-ordered mental health treatment and proceedings to appoint treatment guardians as required by the Mental Health and Developmental Disabilities Code; and to contract for attorney services required by the Assisted Outpatient Treatment Act. Any unexpended or unencumbered balance remaining at the end of fiscal year 2016 shall revert to the general fund.

C. Two hundred thousand dollars ($200,000) is appropriated from the general fund to the board of regents of the university of New Mexico for expenditure in fiscal years 2016 through 2018 to contract for a study to evaluate the implementation and effectiveness of assisted outpatient treatment in New Mexico for the period of July 1, 2015 through December 31, 2017 conducted under the auspices of the

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university of New Mexico health sciences center. Any unexpended or unencumbered balance remaining at the end of fiscal year 2018 shall revert to the general fund.

SECTION 22. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2015.

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