

FIFTY-SEVENTH LEGISLATURE
FIRST SESSION

March 18, 2025

SENATE FLOOR AMENDMENT number _____ to HOUSE JUDICIARY COMMITTEE
SUBSTITUTE FOR HOUSE BILL
149, as amended

Amendment sponsored by Senator

1. On page 1, line 16, after "COUNCIL", insert "; PROVIDING A DEFINITION FOR "HARM TO SELF" AND "HARM TO OTHERS" IN THE MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES CODE AND THE ASSISTED OUTPATIENT TREATMENT ACT".

2. On page 9, between lines 8 and 9, insert:

"SECTION 15. Section 43-1-3 NMSA 1978 (being Laws 1977, Chapter 279, Section 2, as amended) is amended to read:

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

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

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

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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 protection of the client or others from physical injury; and

(3) are conducted at the suitable available facility close 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 electroconvulsive treatment and insulin coma treatment;

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

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

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

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

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

I. "developmental or intellectual disability" means a

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severe chronic disability attributable to significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior, cerebral palsy, autism or neurological dysfunction that requires similar treatment or habilitation;

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

K. "experimental treatment" means any mental health 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;

L. "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;

M. "habilitation" means the process by which professional persons and their staff assist a client with a developmental or an intellectual 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;

~~[N. "likelihood of serious harm to oneself" means that it~~

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~~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 grave passive neglect;~~

~~0. "likelihood of serious harm to others" means that it is more likely than not that in the near future a 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;]~~

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

0. "harm to self" means that:

(1) 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; or

(2) the person's recent behavior:

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

(b) makes it more likely than not that the person will suffer serious physical debilitation in the near future unless

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adequate treatment is provided pursuant to the Mental Health and Developmental Disabilities Code;

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 or intellectual disability;

Q. "mental health or developmental or intellectual 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 or intellectual disability;

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 health care authority, 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 that relates to the:

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

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

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

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

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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;

U. "qualified mental health professional 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, a clinical nurse specialist with a specialty in mental health or a licensed art therapist, all of whom by training and experience are qualified to work with persons with a mental disorder;

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

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

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SECTION 16. Section 43-1B-2 NMSA 1978 (being Laws 2016, Chapter 84, Section 2, as amended) is amended to read:

"43-1B-2. 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. "agent" means an individual designated in a power of attorney for health care to make a mental health care decision for the individual granting the power;

C. "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 disorders;

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

(1) medication;

(2) periodic blood tests or urinalysis to determine compliance with prescribed medications;

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

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

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

G. "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

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administration of treatment or the protection of the patient;

~~[H. "likely to result in serious harm to others" means that it is more likely than not that in the near future a 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;~~

~~I. "likely to result in serious harm to self" 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 grave passive neglect;]~~

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

I. "harm to self" means that:

(1) 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; or

(2) the person's recent behavior:

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

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

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

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

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

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

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

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

P. "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

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Treatment Act;

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

R. "surrogate decision-maker" means:

- (1) an agent designated by the respondent;
- (2) a guardian; or
- (3) a treatment guardian; and

S. "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 own mental health treatment decisions."".

Adopted _____
(Chief Clerk)

Not Adopted _____
(Chief Clerk)

Date _____