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SENATE BILL 335

47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006

INTRODUCED BY

Joseph J. Carraro

AN ACT

RELATING TO HEALTH CARE; ENACTING KENDRA'S LAW; PROVIDING FOR ASSISTED OUTPATIENT TREATMENT SERVICES TO TREAT MENTAL ILLNESS.

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

Section 1. SHORT TITLE.--This act may be cited as "Kendra's Law".

Section 2. DEFINITIONS.--As used in Kendra's Law:

A. "assisted outpatient treatment" means outpatient services ordered by a court, including case management services or assertive community treatment team services, prescribed to treat a person's mental illness and to assist a person 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 person or another, suicide or the need for hospitalization;

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1 B. "assisted outpatient treatment program" means a
2 program that arranges and coordinates the provision of assisted
3 outpatient treatment, including monitoring treatment compliance
4 by patients, evaluating and addressing the conditions or needs
5 of assisted outpatients and ensuring compliance with court
6 orders;

7 C. "department" means the department of health;

8 D. "mental illness" means a substantial disorder of
9 thought, mood or behavior that afflicts a person and that
10 impairs that person's judgment, but not to the extent that the
11 person does not know what the person is doing or does not
12 understand the consequences of the person's actions;

13 E. "patient" means a person receiving assisted
14 outpatient treatment pursuant to a court order;

15 F. "provider" means a public or private health care
16 facility or health care practitioner licensed to provide health
17 care services in New Mexico; and

18 G. "subject" means a person who is alleged in a
19 petition, filed pursuant to the provisions of Kendra's Law, to
20 meet the criteria for assisted outpatient treatment.

21 Section 3. PROVIDERS--OUTPATIENT TREATMENT PROGRAM.--A
22 provider may operate, direct and supervise an assisted
23 outpatient treatment program pursuant to Kendra's Law upon
24 approval by the department. Providers may coordinate efforts
25 to provide joint assisted outpatient treatment programs.

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1 Nothing in Kendra's Law shall be construed to affect the
2 ability of a provider to receive, admit or retain patients who
3 otherwise meet the provisions of Kendra's Law regarding
4 receipt, retention or admission.

5 Section 4. ASSISTED OUTPATIENT TREATMENT--CRITERIA.--

6 A. A person may be ordered to obtain assisted
7 outpatient treatment if the court finds that the person:

8 (1) is eighteen years of age or older;

9 (2) is suffering from a mental illness;

10 (3) is unlikely to survive safely in the
11 community without supervision, based on a clinical
12 determination;

13 (4) has a history of lack of compliance with
14 treatment for mental illness;

15 (5) is unlikely, as a result of mental
16 illness, to voluntarily participate in the recommended
17 treatment pursuant to the treatment plan;

18 (6) in view of the person's treatment history
19 and current behavior, is in need of assisted outpatient
20 treatment in order to prevent a relapse or deterioration that
21 would be likely to result in serious harm to himself or another
22 person; and

23 (7) will likely benefit from assisted
24 outpatient treatment.

25 B. If the person has an authorized representative,

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1 the court shall take into account any directions included by
2 the authorized representative in determining the written
3 treatment plan. Nothing in Kendra's Law shall preclude a
4 person with an authorized representative from being subject to
5 a petition for an order authorizing assisted outpatient
6 treatment.

7 C. A court may order assisted outpatient treatment
8 if it does not find a need for commitment pursuant to the
9 Mental Health and Developmental Disabilities Code.

10 Section 5. PETITION TO THE COURT.--

11 A. A petition for an order authorizing assisted
12 outpatient treatment may be filed in the district court in the
13 county in which the subject is present or reasonably believed
14 to be present. A petition shall be filed only by the following
15 persons:

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

18 (2) the parent or spouse of the subject;

19 (3) the sibling or child of the subject,
20 provided that the sibling or child is eighteen years of age or
21 older;

22 (4) the director of a hospital where the
23 subject is hospitalized;

24 (5) the director of a public or charitable
25 organization or agency or a home where the subject resides that

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1 provides mental health services to the subject;

2 (6) a qualified psychiatrist who either
3 supervises the treatment of or treats the subject for a mental
4 illness;

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

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

10 B. The petition shall state:

11 (1) each criterion for assisted outpatient
12 treatment as set forth in Section 4 of Kendra's Law;

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

17 (3) that the subject is present or is
18 reasonably believed to be present within the county where the
19 petition is filed.

20 C. The petition shall be accompanied by an
21 affidavit of a physician, who shall not be the petitioner, and
22 shall state that:

23 (1) the physician has personally examined the
24 subject no more than ten days prior to the filing of the
25 petition, that the physician recommends assisted outpatient

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1 treatment for the subject and that the physician is willing and
2 able to testify at the hearing on the petition; or

3 (2) no more than ten days prior to the filing
4 of the petition, the physician or the physician's designee has
5 made appropriate attempts to elicit the cooperation of the
6 subject but has not been successful in persuading the subject
7 to submit to an examination, that the physician has reason to
8 suspect that the subject meets the criteria for assisted
9 outpatient treatment and that the physician is willing and able
10 to examine the subject and testify at the hearing on the
11 petition.

12 Section 6. HEARING--EXAMINATION BY A PHYSICIAN.--

13 A. Upon receipt of the petition, the court shall
14 fix a date for a hearing no later than seven days after the
15 date the petition was filed. A copy of the petition and notice
16 of hearing, including the date fixed by the court and appointed
17 counsel, shall be served on the petitioner, the subject, the
18 physician whose affirmation or affidavit accompanied the
19 petition, the appropriate provider and any other person the
20 court deems advisable. Adjournments shall be permitted only
21 for good cause shown. In granting adjournments, the court
22 shall consider the need for further examination by a physician
23 or the potential need to provide assisted outpatient treatment
24 expeditiously.

25 B. The subject shall be represented by counsel at

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1 all stages of the proceeding regardless of the subject's
2 wishes. When a subject has not retained his own attorney and
3 is unable to do so, the court shall appoint counsel to
4 represent him. When appointing counsel, the court shall give
5 preference to nonprofit organizations offering representation
6 to mentally ill and developmentally disabled persons. When a
7 subject is not indigent, he shall be liable for the cost of his
8 legal representation. At the hearing, the subject shall have
9 the right to present evidence and to cross-examine witnesses.
10 A complete record of the hearing shall be made, and there shall
11 be a right to an expeditious appeal.

12 C. At the hearing, the court shall hear all
13 relevant testimony and may examine the subject in open court
14 or, if advisable, may examine the subject out of court. If the
15 subject fails to appear at the hearing, and attempts to elicit
16 the attendance of the subject have failed, the court may
17 conduct the hearing in the subject's absence. If the hearing
18 is conducted without the subject present, the court shall set
19 forth the factual basis for conducting the hearing without the
20 presence of the subject.

21 D. The court shall not order assisted outpatient
22 treatment for the subject unless a physician, who has
23 personally examined the subject of the petition within ten days
24 prior to the filing of the petition, testifies in person at the
25 hearing. The physician shall:

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1 (1) state the facts that support the
2 allegation that the subject meets each criterion for assisted
3 outpatient treatment and that the treatment is the least
4 restrictive alternative;

5 (2) state the recommended assisted outpatient
6 treatment and the rationale for the recommended assisted
7 outpatient treatment; and

8 (3) describe, if the recommended assisted
9 outpatient treatment includes medication, the types or classes
10 of medication that should be authorized and the beneficial and
11 detrimental physical and mental effects of such medication. In
12 addition, the physician shall recommend whether such medication
13 should be self-administered or should be administered by an
14 authorized professional.

15 E. If the subject has refused to be examined by a
16 physician, the court may request that the subject consent to an
17 examination by a physician appointed by the court. If the
18 subject does not consent and the court finds reasonable grounds
19 to believe that the allegations of the petition are true, the
20 court may order a law enforcement officer to take the subject
21 into custody and transport the subject to a hospital for
22 examination by a physician. The examination of the subject may
23 be performed by the physician whose affidavit accompanied the
24 petition. If the examination is performed by another
25 physician, the examining physician shall be authorized to

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1 consult with the physician whose affidavit accompanied the
2 petition regarding the allegations in the petition and whether
3 the subject meets the criteria for assisted outpatient
4 treatment. No subject taken into custody pursuant to this
5 subsection shall be detained longer than twenty-four hours.

6 Section 7. WRITTEN LICENSED PHYSICIAN TREATMENT PLAN.--

7 A. The court shall not order assisted outpatient
8 treatment unless an examining physician:

9 (1) appointed by the appropriate provider
10 develops and provides to the court a proposed written treatment
11 plan; and

12 (2) testifies to explain the written proposed
13 treatment plan.

14 B. In developing a treatment plan, the physician
15 shall provide the following persons with an opportunity to
16 actively participate in the development of the plan:

17 (1) the subject;
18 (2) the treating physician; and
19 (3) upon the request of the subject, an
20 individual significant to the subject, including any relative,
21 close friend or individual otherwise concerned with the welfare
22 of the subject. If the petitioner is a provider, the plan
23 shall be provided to the court no later than the date of the
24 hearing on the petition.

25 C. The written treatment plan shall include case

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1 management services or assertive community treatment teams to
2 provide care coordination and all types of assisted outpatient
3 treatment services that the physician recommends the subject
4 should receive. If the written treatment plan includes
5 medication, it shall state whether such medication should be
6 self-administered or should be administered by an authorized
7 professional and shall specify type and dosage range of
8 medication most likely to provide maximum benefit for the
9 subject. If the written treatment plan includes alcohol or
10 substance abuse counseling and treatment, such plan may include
11 a provision requiring relevant testing for either alcohol or
12 illegal substances; provided that the physician's clinical
13 basis for recommending such plan provides sufficient facts for
14 the court to find that:

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

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

21 D. An examining physician's testimony explaining
22 the written treatment program shall:

23 (1) state the recommended assisted outpatient
24 treatment, the rationale for the recommended assisted
25 outpatient treatment and the facts that establish that such

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1 treatment is the least restrictive alternative; and

2 (2) describe, if the recommended assisted
3 outpatient treatment includes medication, the types or classes
4 of medication that should be authorized and the beneficial and
5 detrimental physical and mental effects of such medication. In
6 addition, the physician shall recommend whether such medication
7 should be self-administered or should be administered by an
8 authorized professional. If the petitioner is a provider, the
9 testimony shall be given at the hearing on the petition.

10 Section 8. DISPOSITION.--

11 A. If after hearing all relevant evidence, the
12 court finds that grounds for assisted outpatient treatment have
13 not been established and the subject does not meet the criteria
14 for assisted outpatient treatment, the court shall dismiss the
15 petition.

16 B. If after hearing all relevant evidence, the
17 court finds that grounds for assisted outpatient treatment have
18 been established by clear and convincing proof and there is no
19 appropriate and feasible less restrictive alternative, it shall
20 be authorized to order the subject to receive assisted
21 outpatient treatment for an initial period not to exceed six
22 months. In its order, the court shall state the assisted
23 outpatient treatment that the subject is to receive. A court
24 may order the subject to self-administer psychotropic drugs or
25 accept the administration of such drugs by an authorized

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1 professional as part of an assisted outpatient treatment
2 program. The order may specify the type and dosage range of
3 such psychotropic drugs and shall be effective for the duration
4 of the subject's assisted outpatient treatment. The court may
5 not order treatment that has not been recommended by the
6 examining physician and included in the written treatment plan
7 for assisted outpatient treatment. Assisted outpatient
8 treatment may include:

- 9 (1) medication;
- 10 (2) periodic blood tests or urinalysis to
11 determine compliance with prescribed medications;
- 12 (3) individual or group therapy;
- 13 (4) day or partial day programming activities;
- 14 (5) educational and vocational training or
15 activities;
- 16 (6) alcohol or substance abuse treatment and
17 counseling and periodic tests for the presence of alcohol or
18 illegal drugs for persons with a history of alcohol or
19 substance abuse; or
- 20 (7) supervision of living arrangements.

21 C. If after hearing all relevant evidence, the
22 court finds that grounds for assisted outpatient treatment
23 services have been established by clear and convincing proof
24 and there is no appropriate and feasible less restrictive
25 alternative, but the court has yet to be provided with a

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1 written proposed treatment plan and testimony pursuant to
2 Section 9 of Kendra's Law, the court shall order the provider
3 to provide the court with a written treatment plan and
4 testimony no later than three days after the date of the order.
5 Upon receiving the written treatment plan and testimony, the
6 court may order assisted outpatient treatment as provided in
7 Subsection B of this section.

8 D. The determination by a court that a subject is
9 in need of assisted outpatient treatment shall not be construed
10 as or deemed to be a determination that the subject is
11 incapacitated.

12 E. If the petitioner is a provider that operates an
13 assisted outpatient treatment program, the court order shall
14 direct the provider to provide or arrange for all assisted
15 outpatient treatment for the patient throughout the period of
16 the order.

17 F. The provider shall apply to the court for
18 approval before instituting a proposed material change in the
19 assisted outpatient treatment order unless such change is
20 contemplated in the order. An application for approval shall
21 be served upon those persons required to be served with notice
22 of a petition for an order authorizing assisted outpatient
23 treatment pursuant to this section. Nonmaterial changes may be
24 instituted by the assisted outpatient treatment program without
25 court approval.

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1 G. For purposes of this section, "material change"
2 means an addition or deletion of a category of assisted
3 outpatient treatment from the order of the court or any
4 deviation without the patient's consent from the terms of an
5 existing order relating to the administration of psychotropic
6 drugs.

7 Section 9. APPLICATIONS FOR ADDITIONAL PERIODS OF
8 TREATMENT.--

9 A. If a provider determines that the condition of a
10 patient requires further assisted outpatient treatment, the
11 provider shall apply, prior to the expiration of the period of
12 assisted outpatient treatment ordered by the court, for a
13 second or subsequent order authorizing continued assisted
14 outpatient treatment for a period not to exceed one year from
15 the date of the second or subsequent order. If the court's
16 disposition of the application does not occur prior to the
17 expiration date of the current order, the current order shall
18 remain in effect until the court's disposition. An order for
19 an additional period of treatment shall be obtained pursuant to
20 the provisions of Kendra's Law.

21 B. A court order requiring periodic blood tests or
22 urinalysis for the presence of alcohol or illegal drugs shall
23 be subject to review after six months by the physician who
24 developed the written treatment plan or another physician
25 designated by the provider, and the physician shall be

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1 authorized to terminate such blood tests or urinalysis without
2 further action by the court.

3 Section 10. APPLICATION FOR AN ORDER TO STAY, VACATE OR
4 MODIFY.--In addition to any other right or remedy available by
5 law with respect to the order for assisted outpatient
6 treatment, the patient, the patient's counsel or anyone acting
7 on the patient's behalf may apply to the court to stay, vacate
8 or modify the order. A copy of the application shall be served
9 on the appropriate provider and the original petitioner.

10 Section 11. APPEALS.--Appeals taken pursuant to Kendra's
11 Law shall be taken to the court of appeals according to the
12 rules of appellate procedure of the supreme court.

13 Section 12. FAILURE TO COMPLY WITH ASSISTED OUTPATIENT
14 TREATMENT.--

15 A. A physician may request a provider to direct the
16 removal of a patient to an appropriate hospital for an
17 examination to determine if the patient has a mental illness
18 for which hospitalization is necessary if, in the clinical
19 judgment of the physician:

20 (1) the patient has failed or has refused to
21 comply with the treatment ordered by the court;

22 (2) efforts were made to solicit compliance;
23 and

24 (3) the patient may be in need of involuntary
25 admission to a hospital for immediate observation, care and

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1 treatment.

2 B. If the patient refuses to take medications or
3 refuses to take or fails a blood test, urinalysis or alcohol or
4 drug test as required by the court order, the physician may
5 consider such refusal or failure when determining whether the
6 assisted outpatient is in need of an examination to determine
7 whether the patient has a mental illness for which
8 hospitalization is necessary.

9 C. Upon the request of a physician, a provider may
10 direct a law enforcement officer to take the patient into
11 custody and transport the patient to the hospital operating the
12 assisted outpatient treatment program or to any hospital
13 authorized by the department to receive such persons. A law
14 enforcement officer shall carry out a provider's directive
15 pursuant to this section.

16 D. Upon the request of a physician, a provider
17 shall be authorized to take into custody and transport a
18 patient to the hospital operating the assisted outpatient
19 treatment program or to any other hospital authorized by the
20 department to receive such persons. The patient may be
21 retained for observation, care, treatment and further
22 examination in the hospital for up to seventy-two hours to
23 permit a physician to determine whether the patient has a
24 mental illness and is in need of involuntary care and treatment
25 pursuant to Kendra's Law. Any continued involuntary retention

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1 in a hospital beyond the initial seventy-two-hour period shall
2 be in accordance with the provisions of Kendra's Law relating
3 to the involuntary admission and retention of a person. If at
4 any time during the seventy-two-hour period the person is
5 determined not to meet the involuntary admission and retention
6 provisions of Kendra's Law and the person does not agree to
7 stay in the hospital as a voluntary or informal patient, the
8 patient must be released.

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

12 Section 13. CRIMINAL PROSECUTION.--A person who makes a
13 false statement or provides false information or false
14 testimony in a petition or hearing pursuant to the provisions
15 of Kendra's Law is subject to criminal prosecution.

16 Section 14. EDUCATIONAL MATERIALS.--The department, in
17 consultation with the administrative office of the courts,
18 shall prepare educational and training materials on the
19 provisions of Kendra's Law that shall be made available to
20 providers, judges, court personnel, law enforcement officials
21 and the general public.

22 Section 15. EFFECTIVE DATE.--The effective date of the
23 provisions of this act is July 1, 2006.