

1 SENATE BILL 53

2 **52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

3 INTRODUCED BY

4 Mary Kay Papen and Paul A. Pacheco

5  
6  
7 FOR THE LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE  
8 AND THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

9  
10 AN ACT

11 RELATING TO HEALTH CARE; ENACTING THE ASSISTED OUTPATIENT  
12 TREATMENT ACT; PROVIDING FOR ASSISTED OUTPATIENT TREATMENT  
13 PROCEEDINGS; REQUIRING PUBLIC HEALTH SURVEILLANCE AND  
14 OVERSIGHT; PROVIDING FOR SEQUESTRATION AND CONFIDENTIALITY OF  
15 RECORDS; PROVIDING FOR PENALTIES; AMENDING THE MENTAL HEALTH  
16 AND DEVELOPMENTAL DISABILITIES CODE TO REQUIRE DATA COLLECTION  
17 FOR CERTAIN PROCEEDINGS; MAKING APPROPRIATIONS.

18  
19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

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

25 A. "advance directive for mental health treatment"

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

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

8 C. "assisted outpatient treatment" means categories  
9 of outpatient services ordered by a district court, including  
10 case management services or assertive community treatment team  
11 services, prescribed to treat a patient's mental illness and to  
12 assist a patient in living and functioning in the community or  
13 to attempt to prevent a relapse or deterioration that may  
14 reasonably be predicted to result in harm to the patient or  
15 another or the need for hospitalization. Assisted outpatient  
16 treatment may include:

- 17 (1) medication;
- 18 (2) periodic blood tests or urinalysis to  
19 determine compliance with prescribed medications;
- 20 (3) individual or group therapy;
- 21 (4) day or partial-day programming activities;
- 22 (5) educational and vocational training or  
23 activities;
- 24 (6) alcohol and substance abuse treatment and  
25 counseling;

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1                   (7) periodic blood tests or urinalysis for the  
2 presence of alcohol or illegal drugs for a patient with a  
3 history of alcohol or substance abuse;

4                   (8) supervision of living arrangements; and

5                   (9) any other services prescribed to treat the  
6 patient's mental illness and to assist the patient in living  
7 and functioning in the community, or to attempt to prevent a  
8 deterioration of the patient's mental or physical condition;

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

12                   E. "department" means the department of health;

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

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

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

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

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

25                   I. "patient" means a person receiving assisted

1 outpatient treatment pursuant to a court order;

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

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

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

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

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

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

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

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

1 own mental health treatment decisions.

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

6 A. is eighteen years of age or older;

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

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

11 D. has:

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

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

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

25 (b) resulted in one or more acts of

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

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

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

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

20 G. will likely benefit from assisted outpatient  
21 treatment.

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

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

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

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

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

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

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

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

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

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

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

23 B. The petition shall include:

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

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

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

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

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

4 SECTION 5. [NEW MATERIAL] APPLICATION FOR QUALIFIED  
5 PROTECTIVE ORDER--CONTENTS OF 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. The qualified protective order shall provide  
10 that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11                   (1) the respondent;

12                   (2) the treating physician;

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

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

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

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

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

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

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

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

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

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

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

7                   **SECTION 8. [NEW MATERIAL] DISPOSITION.--**

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

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

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

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

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

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

8 D. The court's order shall:

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

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

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

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

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

25 G. The court may order assisted outpatient



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25           **SECTION 14. [NEW MATERIAL] COMBINATION OR COORDINATION OF**

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

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

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

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

11 A. A petition for an order authorizing assisted  
12 outpatient treatment shall be entitled "In the Matter of  
13 \_\_\_\_\_" and shall set forth with  
14 specificity:

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

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

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

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

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

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

- 9 (1) court personnel;
- 10 (2) court-appointed special advocates;
- 11 (3) attorneys representing parties to the  
12 proceeding;
- 13 (4) the respondent's personal representative,  
14 agent, surrogate, guardian or individual designated by the  
15 respondent to make health care decisions;
- 16 (5) the respondent's treatment guardian;
- 17 (6) peace officers requested by the  
18 court to perform any duties or functions related to the  
19 respondent as deemed appropriate by the court;
- 20 (7) providers involved in the evaluation or  
21 treatment of the respondent;
- 22 (8) public health authorities or entities  
23 conducting public health surveillance or research or as  
24 otherwise authorized by law; and
- 25 (9) any other person or entity, by order of the

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

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

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

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

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

23 "43-1-3. DEFINITIONS.--As used in the Mental Health and  
24 Developmental Disabilities Code:

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

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

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

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

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

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

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1 protection of the client or others from physical injury; and

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

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

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

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

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

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

25 J. "experimental treatment" means any mental health

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

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

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

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

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

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

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

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

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

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

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

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1 that relates to the:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 "43-1-19. DISCLOSURE OF INFORMATION.--

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

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

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

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

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

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

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

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

8 (1) is in writing and signed; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 15 (1) department of health; and
- 16 (2) interagency behavioral health purchasing  
17 collaborative.

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

24 SECTION 21. APPROPRIATIONS.--

25 A. Three million dollars (\$3,000,000) is  
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1 appropriated from the general fund to the department of health  
2 for expenditure in fiscal year 2016 to conduct public health  
3 surveillance and oversight of assisted outpatient treatment  
4 programs pursuant to the Assisted Outpatient Treatment Act  
5 through each county public health office. Any unexpended or  
6 unencumbered balance remaining at the end of fiscal year 2016  
7 shall revert to the general fund.

8           B. Two hundred seventy-five thousand dollars  
9 (\$275,000) is appropriated from the general fund to the  
10 administrative office of the courts for expenditure in fiscal  
11 year 2016 to hire personnel and to conduct necessary training  
12 to compile and report data relating to court-ordered mental  
13 health treatment and proceedings to appoint treatment guardians  
14 as required by the Mental Health and Developmental Disabilities  
15 Code; and to contract for attorney services required by the  
16 Assisted Outpatient Treatment Act. Any unexpended or  
17 unencumbered balance remaining at the end of fiscal year 2016  
18 shall revert to the general fund.

19           C. Two hundred thousand dollars (\$200,000) is  
20 appropriated from the general fund to the board of regents of  
21 the university of New Mexico for expenditure in fiscal years  
22 2016 through 2018 to contract for a study to evaluate the  
23 implementation and effectiveness of assisted outpatient  
24 treatment in New Mexico for the period of July 1, 2015 through  
25 December 31, 2017 conducted under the auspices of the

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

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

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