

1 SENATE BILL 152

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

3 INTRODUCED BY

4 Elizabeth "Liz" Stefanics

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8 FOR THE LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

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10 AN ACT

11 RELATING TO CIVIL RIGHTS; AMENDING A SECTION OF THE MENTAL
12 HEALTH AND DEVELOPMENTAL DISABILITIES CODE TO REQUIRE THE
13 DEPARTMENT OF HEALTH TO ESTABLISH A GRIEVANCE PROCEDURE FOR THE
14 PROMPT AND FAIR RESOLUTION OF CLIENT CONCERNS RELATING TO
15 CONSENT TO TREATMENT.

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

18 SECTION 1. Section 43-1-15 NMSA 1978 (being Laws 1977,
19 Chapter 279, Section 14, as amended) is amended to read:

20 "43-1-15. CONSENT TO TREATMENT--ADULT CLIENTS.--

21 A. No psychotropic medication, psychosurgery,
22 convulsive therapy, experimental treatment or behavior
23 modification program involving aversive stimuli or substantial
24 deprivations shall be administered to a client without proper
25 consent. If the client is capable of understanding the

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1 proposed nature of treatment and its consequences and is
2 capable of informed consent, the client's consent shall be
3 obtained before the treatment is performed. A client shall not
4 be presumed to be incapable of giving consent for
5 administration of psychotropic medications solely because the
6 client has been involuntarily committed to a treatment facility
7 or is awaiting a hearing on whether the client should be
8 involuntarily committed to a treatment facility.

9 B. If the mental health or developmental
10 disabilities professional or physician who is proposing this or
11 any other course of treatment or any other interested person
12 believes that the client is incapable of informed consent, the
13 mental health or developmental disabilities professional or
14 physician or other interested person may petition the court for
15 the appointment of a treatment guardian to make a substitute
16 decision for the client.

17 C. This original petition shall be served on the
18 client and the client's attorney. A hearing on the petition
19 shall be held within three court days. At the hearing, the
20 client shall be represented by counsel and shall have the right
21 to be present, to present witnesses and to cross-examine
22 opposing witnesses.

23 D. When appointing a treatment guardian for an
24 adult, the court shall give priority to a court-appointed
25 guardian or, if no guardian has been appointed by a court, to

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1 an agent designated or nominated by the client when the client
2 had capacity.

3 E. If after the hearing the court finds by clear
4 convincing evidence that the client is not capable of making
5 the client's own treatment decisions, the court may order the
6 appointment of a treatment guardian.

7 F. The treatment guardian shall make a decision on
8 behalf of the client whether to accept treatment, depending on
9 whether the treatment appears to be in the client's best
10 interest and is the least drastic means for accomplishing the
11 treatment objective. In making a decision, the treatment
12 guardian shall consult with the client and consider the
13 client's expressed opinions, if any, even if those opinions do
14 not constitute valid consent or rejection of treatment. The
15 treatment guardian shall give consideration to previous
16 decisions made by the client in similar circumstances when the
17 client was able to make treatment decisions.

18 G. If a client, who is not a resident of a medical
19 facility and for whom a treatment guardian has been appointed,
20 refuses to comply with the decision of the treatment guardian,
21 the treatment guardian may apply to the court for an
22 enforcement order. Such an order may authorize a peace officer
23 to take the client into custody and to transport the client to
24 an evaluation facility and may authorize the facility forcibly
25 to administer treatment.

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1 H. The treatment guardian shall consult with the
2 physician or other professional who is proposing treatment, the
3 client's attorney and interested friends, relatives or other
4 agents or guardians of the client to the extent reasonably
5 practical in making a decision.

6 I. If the client, physician or other professional
7 wishes to appeal the decision of the treatment guardian, the
8 client, physician or other professional may do so, filing an
9 appeal with the court within three calendar days of receiving
10 notice of the treatment guardian's decision. In such a
11 decision, the client shall be represented by counsel. The
12 court may overrule the treatment guardian's decision if it
13 finds that decision to be against the best interest of the
14 client.

15 J. When the court appoints a treatment guardian, it
16 shall specify the length of time during which the treatment
17 guardian may exercise the treatment guardian's powers, up to a
18 maximum period of one year. If at the end of the guardianship
19 period the treatment guardian believes that the client is still
20 incapable of making the client's own treatment decisions, the
21 treatment guardian shall petition the court for reappointment
22 or for appointment of a new treatment guardian. The petition
23 shall be served on the client, the client's attorney and the
24 previously appointed treatment guardian if filed by another
25 party. The guardianship shall be extended or a new guardian

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1 shall be appointed only if the court finds the client is, at
2 the time of the hearing, incapable of understanding and
3 expressing an opinion regarding treatment decisions. The
4 client shall be represented by counsel and shall have the right
5 to be present and present evidence at all such hearings.

6 K. If during a period of a treatment guardian's
7 power, the treatment guardian, the client, the treatment
8 provider, a member of the client's family or the client's
9 attorney or another person believes that the client has
10 regained competence to make the client's own treatment
11 decisions, that person shall petition the court for a
12 termination of the treatment guardianship. If the court finds
13 the client is capable of making the client's own treatment
14 decisions, it shall terminate the power of the treatment
15 guardian and restore to the client the power to make the
16 client's own treatment decisions.

17 L. A treatment guardian shall only have those
18 powers enumerated in the code, unless the treatment guardian
19 has also been appointed a guardian under the Uniform Probate
20 Code pursuant to provisions of Section 45-5-303 NMSA 1978. A
21 person carrying out the duties of a treatment guardian as
22 provided in this section shall not be liable in any civil or
23 criminal action so long as the treatment guardian is not acting
24 in bad faith or with malicious purpose.

25 M. If a licensed physician believes that the

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1 administration of psychotropic medication is necessary to
2 protect the client from serious harm that would occur while the
3 provisions of Subsection B of this section are being satisfied,
4 the licensed physician may administer the medication on an
5 emergency basis. When medication is administered to a client
6 on an emergency basis, the treating physician shall prepare and
7 place in the client's medical records a report explaining the
8 nature of the emergency and the reason that no treatment less
9 drastic than administration of psychotropic medication without
10 proper consent would have protected the client from serious
11 harm. Upon the sworn application of the treating physician,
12 the court may issue an order permitting the treating physician
13 to continue to administer psychotropic medication until a
14 treatment guardian is appointed, if the requirements of
15 Subsection B of this section for appointment of a treatment
16 guardian are in the process of being satisfied in a timely
17 manner.

18 N. The department of health shall adopt rules to
19 establish and shall implement a prompt and fair grievance
20 procedure for resolving client complaints and providing
21 resolution of any concerns that a client raises regarding the
22 client's rights pursuant to this section."