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AN ACT

RELATING TO MENTAL HEALTH CARE; ADDING ACTIVITIES TO THE  
DEFINITION OF "ASSISTED OUTPATIENT TREATMENT"; REPEALING A  
DELAYED REPEAL.

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

SECTION 1. Section 43-1B-2 NMSA 1978 (being Laws 2016,  
Chapter 84, Section 2) 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

1 community support services, intensive outpatient services,  
2 care coordination or assertive community treatment team  
3 services, prescribed to treat a patient's mental disorder and  
4 to assist a patient in living and functioning in the  
5 community or to attempt to prevent a relapse or deterioration  
6 that may reasonably be predicted to result in harm to the  
7 patient or another or the need for hospitalization. Assisted  
8 outpatient 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  
14 activities;
- 15 (5) educational and vocational training or  
16 activities;
- 17 (6) alcohol and substance abuse treatment  
18 and counseling;
- 19 (7) periodic blood tests or urinalysis for  
20 the presence of alcohol or illegal drugs for a patient with a  
21 history of alcohol or substance abuse;
- 22 (8) supervision of living arrangements; and
- 23 (9) any other services prescribed to treat  
24 the patient's mental disorder and to assist the patient in  
25 living and functioning in the community, or to attempt to

1 prevent a deterioration of the patient's mental or physical  
2 condition;

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

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

9 G. "least restrictive appropriate alternative"  
10 means treatment and conditions that:

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

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

18 H. "likely to result in serious harm to others"  
19 means that it is more likely than not that in the near future  
20 a person will inflict serious, unjustified bodily harm on  
21 another person or commit a criminal sexual offense, as  
22 evidenced by behavior causing, attempting or threatening such  
23 harm, which behavior gives rise to a reasonable fear of such  
24 harm from the person;

25 I. "likely to result in serious harm to self"

1 means that it is more likely than not that in the near future  
2 the person will attempt to commit suicide or will cause  
3 serious bodily harm to the person's self by violent or other  
4 self-destructive means, including grave passive neglect;

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

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

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

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

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

24 O. "qualified professional" means a physician,  
25 licensed psychologist, prescribing psychologist, certified

1 nurse practitioner or clinical nurse specialist with a  
2 specialty in mental health, or a physician assistant with a  
3 specialty in mental health;

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

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

10 R. "surrogate decision-maker" means:

11 (1) an agent designated by the respondent;

12 (2) a guardian; or

13 (3) a treatment guardian; and

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

19 SECTION 2. Section 43-1B-4 NMSA 1978 (being Laws 2016,  
20 Chapter 84, Section 4) is amended to read:

21 "43-1B-4. PETITION TO THE COURT.--

22 A. A petition for an order authorizing assisted  
23 outpatient treatment may be filed in the district court for  
24 the county in which the respondent is present or reasonably  
25 believed to be present; provided that such district court is

1 a party to a memorandum of understanding with a participating  
2 municipality or county.

3 B. A petition for an order authorizing assisted  
4 outpatient treatment may be filed only by the following  
5 persons:

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

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

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

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

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

17 (6) a qualified professional who either  
18 supervises the treatment of or treats the respondent for a  
19 mental disorder or has supervised or treated the respondent  
20 for a mental disorder within the past forty-eight months; or

21 (7) a surrogate decision-maker.

22 C. The petition shall be entitled "In the Matter  
23 of \_\_\_\_\_" and shall include:

24 (1) each criterion for assisted outpatient  
25 treatment as set forth in Section 43-1B-3 NMSA 1978;

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

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

8                   D. The petition shall be accompanied by an  
9 affidavit of a qualified professional that shall state that:

10                   (1) the qualified professional has  
11 personally examined the respondent no more than ten days  
12 prior to the filing of the petition, that the qualified  
13 professional recommends assisted outpatient treatment for the  
14 respondent and that the qualified professional is willing and  
15 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  
19 filing of the petition, the qualified professional or the  
20 qualified professional's designee has unsuccessfully  
21 attempted to persuade the respondent to submit to an  
22 examination, that the qualified professional has reason to  
23 believe that the respondent meets the criteria for assisted  
24 outpatient treatment and that the qualified professional is  
25 willing and able to examine the respondent and testify at the

1 hearing on the petition either in person or by  
2 contemporaneous transmission from a different location."

3 SECTION 3. REPEAL.--Laws 2016, Chapter 84, Section 17  
4 is repealed. \_\_\_\_\_

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