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HOUSE BILL 418

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Gail C. Beam

AN ACT

RELATING TO HEALTH; AMENDING PROVISIONS OF THE MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES CODE REGARDING ADMINISTRATION OF PSYCHOTROPIC MEDICATIONS; DECLARING AN EMERGENCY.

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

Section 1. Section 43-1-15 NMSA 1978 (being Laws 1977, Chapter 279, Section 14, as amended by Laws 1993, Chapter 240, Section 8 and also by Laws 1993, Chapter 240, Section 8) is amended to read:

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

A. No psychotropic medication, psychosurgery, convulsive therapy, experimental treatment or behavior modification program involving aversive stimuli or substantial deprivations shall be administered to any client without proper 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, his consent shall be obtained
3 before the treatment is performed. A client shall not be
4 presumed to be incapable of giving consent for administration
5 of psychotropic medications solely because he has been
6 involuntarily committed to a treatment facility or is awaiting
7 a hearing on whether he should be involuntarily committed to a
8 treatment facility.

9 B. If the mental health or developmental
10 disabilities professional or physician who is proposing this
11 or any other course of treatment or any other interested
12 person believes that the client is incapable of informed
13 consent, he may petition the court for the appointment of a
14 treatment guardian to make a substitute decision for the
15 client. This petition shall be served on the client and his
16 attorney. A hearing on the petition shall be held within
17 three court days. At the hearing, the client shall be
18 represented by counsel and shall have the right to be present,
19 to present witnesses and to cross-examine opposing witnesses.
20 If after the hearing the court finds that the client is not
21 capable of making his own treatment decisions, the court may
22 order the appointment of a treatment guardian. The treatment
23 guardian shall make a decision on behalf of the client whether
24 to accept treatment, depending on whether the treatment
25 appears to be in the client's best interest and is the least

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1 drastic means for accomplishing the treatment objective. In
2 making his decision, the treatment guardian shall consult with
3 the client and consider his expressed opinions, if any, even
4 if those opinions do not constitute valid consent or rejection
5 of treatment. He shall give consideration to any previous
6 decisions made by the client in similar circumstances when the
7 client was able to make treatment decisions. If a client, who
8 is not a resident of a medical facility and for whom a
9 treatment guardian has been appointed, refuses to comply with
10 the decision of the treatment guardian, the treatment guardian
11 may apply to the court for an enforcement order. Such an
12 order may authorize any peace officer to take the client into
13 custody and to transport him to an evaluation facility and may
14 authorize the facility forcibly to administer treatment. The
15 treatment guardian shall consult with the physician or other
16 professional who is proposing treatment, the client's attorney
17 and interested friends or relatives of the client as he deems
18 appropriate in making his decision. If the client, physician
19 or other professional wishes to appeal the decision of the
20 treatment guardian, he may do so, filing an appeal with the
21 court within three calendar days of receiving notice of the
22 treatment guardian's decision. In such a decision, the client
23 shall be represented by counsel. The court may overrule the
24 treatment guardian's decision if it finds that decision to be
25 against the best interest of the client.

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1 C. When the court appoints a treatment guardian,
2 it shall specify the length of time during which he may
3 exercise his powers, up to a maximum period of one year. If
4 at the end of his guardianship period the treatment guardian
5 believes that the client is still incapable of making his own
6 treatment decisions, he shall petition the court for
7 reappointment or for appointment of a new treatment guardian.
8 The guardianship shall be extended or a new guardian shall be
9 appointed only if the court finds the client is, at the time
10 of the hearing, incapable of understanding and expressing an
11 opinion regarding treatment decisions. The client shall be
12 represented by counsel and shall have the right to be present
13 and present evidence at all such hearings.

14 D. If during a period of a treatment guardian's
15 power the treatment guardian, the client, the treatment
16 provider, a member of the client's family or the client's
17 attorney believes that the client has regained competence to
18 make his own treatment decisions, he shall petition the court
19 for a termination of the treatment guardianship. If the court
20 finds the client is capable of making his own treatment
21 decisions, it shall terminate the power of the treatment
22 guardian and restore to the client the power to make his own
23 treatment decisions.

24 E. A treatment guardian shall only have those
25 powers enumerated in the code, unless the treatment guardian

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1 has also been appointed a guardian under the Uniform Probate
2 Code pursuant to provisions of Section 45-5-303 NMSA 1978.
3 Any person carrying out the duties of a treatment guardian as
4 provided in this section shall not be liable in any civil or
5 criminal action so long as the treatment guardian is not
6 acting in bad faith or with malicious purpose.

7 F. If a licensed physician believes that the
8 administration of psychotropic medication is necessary to
9 protect the client from serious harm which would occur while
10 the provisions of Subsection B of this section are being
11 satisfied, he may administer the medication on an emergency
12 basis. When medication is administered to a client on an
13 emergency basis, the treating physician shall prepare and
14 place in the client's medical records a report explaining the
15 nature of the emergency and the reason that no treatment less
16 drastic than administration of psychotropic medication without
17 proper consent would have protected the client from serious
18 harm. A licensed physician may also administer psychotropic
19 medication to a client while the provisions of Subsection B of
20 this section for appointment of a treatment guardian are being
21 satisfied, if the client consents to receive such medication
22 and the licensed physician determines and documents in the
23 client's medical records that administration of such
24 medication is likely to prevent the need to administer the
25 medication to the client on an emergency basis. "

1 **FORTY-FOURTH LEGISLATURE**
2 **FIRST SESSION, 1999**
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6 **February 16, 1999**
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8 **Mr. Speaker:**
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10 **Your CONSUMER AND PUBLIC AFFAIRS COMMITTEE, to**
11 **whom has been referred**
12

13 **HOUSE BILL 418**
14

15 **has had it under consideration and reports same with**
16 **recommendation that it DO PASS, amended as follows:**

17 1. On page 5, line 18, after the period strike the
18 remainder of the line, strike lines 19 through 25 and insert
19 in lieu thereof "Upon the sworn application of the treating
20 physician, the court may issue an order permitting the
21 treating physician to continue to administer psychotropic
22 medication until a treatment guardian is appointed, if the
23 requirements of Subsection B of this section for appointment
24 of a treatment guardian are in the process of being
25 satisfied in a timely manner."".

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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

HCPAC/HB 418

Page 8

Respectfully submitted,

Patsy Trujillo Knauer,
Chairwoman

Adopted _____

Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 7 For 0 Against

Yes: 7

Excused: None

Absent: None

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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

1 HCPAC/HB 418

Page 9

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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

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March 8, 1999

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Mr. President:

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Your JUDICIARY COMMITTEE, to whom has been referred

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HOUSE BILL 418, as amended

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14

has had it under consideration and reports same with
recommendation that it DO PASS.

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Respectfully submitted,

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Michael S. Sanchez, Chairman

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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

1 HCPAC/HB 418

Page 10

2 Adopted _____ Not

3 Adopted _____

4 (Chief Clerk)

(Chief Clerk)

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Date _____

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The roll call vote was 6 For 0 Against

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Yes: 6

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No: None

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Excused: Aragon, Davis

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Absent: None

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