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SENATE BILL 113

**52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016**

INTRODUCED BY

Mary Kay Papen

AN ACT

RELATING TO HEALTH CARE; ENACTING THE ASSISTED OUTPATIENT  
TREATMENT ACT; PROVIDING FOR ASSISTED OUTPATIENT TREATMENT  
PROCEEDINGS; PROVIDING FOR SEQUESTRATION AND CONFIDENTIALITY OF  
RECORDS; PROVIDING FOR PENALTIES; AMENDING THE MENTAL HEALTH  
AND DEVELOPMENTAL DISABILITIES CODE TO REQUIRE DATA COLLECTION  
FOR CERTAIN PROCEEDINGS.

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

**SECTION 1.** A new section of the Mental Health and  
Developmental Disabilities Code is enacted to read:

"[NEW MATERIAL] SHORT TITLE.--Sections 1 through 15 of  
this act may be cited as the "Assisted Outpatient Treatment  
Act"."

**SECTION 2.** A new section of the Mental Health and  
Developmental Disabilities Code is enacted to read:

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1            "[NEW MATERIAL] DEFINITIONS.--As used in the Assisted  
2 Outpatient Treatment Act:

3            A. "advance directive for mental health treatment"  
4 means an individual instruction or power of attorney for mental  
5 health treatment made pursuant to the Mental Health Care  
6 Treatment Decisions Act;

7            B. "agent" means an individual designated in a  
8 power of attorney for health care to make a mental health care  
9 decision for the individual granting the power;

10           C. "assertive community treatment" means a team  
11 treatment approach designed to provide comprehensive community-  
12 based psychiatric treatment, rehabilitation and support to  
13 persons with serious and persistent mental disorders;

14           D. "assisted outpatient treatment" means categories  
15 of outpatient services ordered by a district court, including  
16 case management services, care coordination or assertive  
17 community treatment team services, prescribed to treat a  
18 patient's mental disorder and to assist a patient in living and  
19 functioning in the community or to attempt to prevent a relapse  
20 or deterioration that may reasonably be predicted to result in  
21 harm to the patient or another or the need for hospitalization.

22 Assisted outpatient treatment may include:

- 23            (1) medication;
- 24            (2) periodic blood tests or urinalysis to  
25 determine compliance with prescribed medications;

- 1 (3) individual or group therapy;
- 2 (4) day or partial-day programming activities;
- 3 (5) educational and vocational training or
- 4 activities;
- 5 (6) alcohol and substance abuse treatment and
- 6 counseling;
- 7 (7) periodic blood tests or urinalysis for the
- 8 presence of alcohol or illegal drugs for a patient with a
- 9 history of alcohol or substance abuse;
- 10 (8) supervision of living arrangements; and
- 11 (9) any other services prescribed to treat the
- 12 patient's mental disorder and to assist the patient in living
- 13 and functioning in the community, or to attempt to prevent a
- 14 deterioration of the patient's mental or physical condition;
- 15 E. "covered entity" means a health plan, a health
- 16 care clearinghouse or a health care provider that transmits any
- 17 health information in electronic form;
- 18 F. "guardian" means a judicially appointed guardian
- 19 having authority to make mental health care decisions for an
- 20 individual;
- 21 G. "least restrictive appropriate alternative"
- 22 means treatment and conditions that:
- 23 (1) are no more harsh, hazardous or intrusive
- 24 than necessary to achieve acceptable treatment objectives; and
- 25 (2) do not restrict physical movement or

1 require residential care, except as reasonably necessary for  
2 the administration of treatment or the protection of the  
3 patient;

4 H. "likely to result in serious harm to others"  
5 means that it is more likely than not that in the near future a  
6 person will inflict serious, unjustified bodily harm on another  
7 person or commit a criminal sexual offense, as evidenced by  
8 behavior causing, attempting or threatening such harm, which  
9 behavior gives rise to a reasonable fear of such harm from the  
10 person;

11 I. "likely to result in serious harm to self" means  
12 that it is more likely than not that in the near future the  
13 person will attempt to commit suicide or will cause serious  
14 bodily harm to the person's self by violent or other self-  
15 destructive means, including grave passive neglect;

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

18 K. "participating municipality or county" means a  
19 municipality or county that has entered into a memorandum of  
20 understanding with its respective district court with respect  
21 to the funding of such district court's administrative expenses  
22 for proceedings pursuant to the Assisted Outpatient Treatment  
23 Act;

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

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1 M. "power of attorney for health care" means the  
2 designation of an agent to make health care decisions for the  
3 individual granting the power, made while the individual has  
4 capacity;

5 N. "provider" means an individual or organization  
6 licensed, certified or otherwise authorized or permitted by law  
7 to provide mental or physical health diagnosis or treatment in  
8 the ordinary course of business or practice of a profession;

9 O. "qualified professional" means a physician,  
10 licensed psychologist, prescribing psychologist, certified  
11 nurse practitioner or clinical nurse specialist with a  
12 specialty in mental health, or a physician assistant with a  
13 specialty in mental health;

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

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

20 R. "surrogate decision-maker" means an agent  
21 designated by the respondent, a guardian or a treatment  
22 guardian; and

23 S. "treatment guardian" means a person appointed  
24 pursuant to Section 43-1-15 NMSA 1978 to make mental health  
25 treatment decisions for a person who has been found by clear

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1 and convincing evidence to be incapable of making the person's  
2 own mental health treatment decisions."

3 SECTION 3. A new section of the Mental Health and  
4 Developmental Disabilities Code is enacted to read:

5 "[NEW MATERIAL] ASSISTED OUTPATIENT TREATMENT--CRITERIA.--

6 A person may be ordered to participate in assisted outpatient  
7 treatment if the court finds by clear and convincing evidence  
8 that the person:

9 A. is eighteen years of age or older and is a  
10 resident of a participating municipality or county;

11 B. has a primary diagnosis of a mental disorder;

12 C. has demonstrated a history of lack of compliance  
13 with treatment for a mental disorder that has:

14 (1) at least twice within the last forty-eight  
15 months, been a significant factor in necessitating  
16 hospitalization or necessitating receipt of services in a  
17 forensic or other mental health unit or a jail, prison or  
18 detention center; provided that the forty-eight-month period  
19 shall be extended by the length of any hospitalization,  
20 incarceration or detention of the person that occurred within  
21 the forty-eight-month period;

22 (2) resulted in one or more acts of serious  
23 violent behavior toward self or others or threats of, or  
24 attempts at, serious physical harm to self or others within the  
25 last forty-eight months; provided that the forty-eight-month

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1 period shall be extended by the length of any hospitalization,  
2 incarceration or detention of the person that occurred within  
3 the forty-eight-month period; or

4 (3) resulted in the person being hospitalized,  
5 incarcerated or detained for six months or more and the person  
6 is to be discharged or released within the next thirty days or  
7 was discharged or released within the past sixty days;

8 D. is unwilling or unlikely, as a result of a  
9 mental disorder, to participate voluntarily in outpatient  
10 treatment that would enable the person to live safely in the  
11 community without court supervision;

12 E. is in need of assisted outpatient treatment as  
13 the least restrictive appropriate alternative to prevent a  
14 relapse or deterioration likely to result in serious harm to  
15 self or likely to result in serious harm to others; and

16 F. will likely benefit from, and the person's best  
17 interests will be served by, receiving assisted outpatient  
18 treatment."

19 SECTION 4. A new section of the Mental Health and  
20 Developmental Disabilities Code is enacted to read:

21 "[NEW MATERIAL] PETITION TO THE COURT.--

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

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1 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 shall 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 or  
11 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 for  
20 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 of  
23 \_\_\_\_\_" and 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 D. The petition shall be accompanied by an  
10 affidavit of a qualified professional and shall state that:

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

18 (2) no more than ten days prior to the filing  
19 of the petition, the qualified professional or the qualified  
20 professional's designee has unsuccessfully attempted to  
21 persuade the respondent to submit to an examination, that the  
22 qualified professional has reason to believe that the  
23 respondent meets the criteria for assisted outpatient treatment  
24 and that the qualified professional is willing and able to  
25 examine the respondent and testify at the hearing on the

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

3 SECTION 5. A new section of the Mental Health and  
4 Developmental Disabilities Code is enacted to read:

5 "[NEW MATERIAL] QUALIFIED PROTECTIVE 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. In considering the motion, the court shall  
10 determine which parties to the proceeding and their attorneys  
11 are authorized to receive, subpoena and transmit protected  
12 health information pertaining to the respondent for purposes of  
13 the proceeding. If the petitioner is a party identified in  
14 Paragraph (1), (2) or (3) of Subsection B of Section 4 of the  
15 Assisted Outpatient Treatment Act, the court may bar or limit  
16 the disclosure of the respondent's protected health  
17 information.

18 C. Covered entities shall only disclose protected  
19 health information pertaining to the respondent in accordance  
20 with the court's order, except as otherwise provided by state  
21 and federal health care privacy laws.

22 D. Parties and their attorneys are only authorized  
23 to use the protected health information of the respondent as  
24 directed by the court's order.

25 E. Within forty-five days after the later of the

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1 exhaustion of all appeals or the date on which the respondent  
2 is no longer receiving assisted outpatient treatment, the  
3 parties and their attorneys and any person or entity in  
4 possession of protected health information received from a  
5 party or the party's attorney in the course of the proceeding  
6 shall destroy all copies of protected health information  
7 pertaining to the respondent, except that counsel are not  
8 required to secure the return or destruction of protected  
9 health information submitted to the court.

10 F. Nothing in the order controls or limits the use  
11 of protected health information pertaining to the respondent  
12 that comes into the possession of a party or the party's  
13 attorney from a source other than a covered entity.

14 G. Nothing in the court's order shall authorize any  
15 party to obtain medical records or information through means  
16 other than formal discovery requests, subpoenas, depositions or  
17 other lawful process, or pursuant to a patient authorization."

18 SECTION 6. A new section of the Mental Health and  
19 Developmental Disabilities Code is enacted to read:

20 "[NEW MATERIAL] HEARING--EXAMINATION BY A QUALIFIED  
21 PROFESSIONAL.--

22 A. Upon receipt of a petition for an order  
23 authorizing assisted outpatient treatment, the court shall fix  
24 a date for a hearing:

25 (1) no sooner than three or later than seven

1 days after the date of service or as stipulated by the parties  
2 or, upon a showing of good cause, no later than thirty days  
3 after the date of service; or

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

9 B. A copy of the petition and notice of hearing  
10 shall be served, in the same manner as a summons, on the  
11 petitioner, the respondent, the qualified professional whose  
12 affidavit accompanied the petition and a current provider, if  
13 any.

14 C. If, on the date that the petition is filed, the  
15 respondent has a surrogate decision-maker, a copy of the  
16 petition and notice of hearing shall be served, in the same  
17 manner as a summons, on the surrogate decision-maker.

18 D. The respondent shall be represented by counsel  
19 at all stages of the proceedings.

20 E. If the respondent fails to appear at the hearing  
21 after notice, the court may conduct the hearing in the  
22 respondent's absence; provided that the respondent's counsel is  
23 present.

24 F. If the respondent has refused to be examined by  
25 the qualified professional whose affidavit accompanied the

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1 petition, the court may order a mental examination of the  
2 respondent as provided by Rule 1-035 (A) NMRA. The examination  
3 of the respondent may be performed by the qualified  
4 professional whose affidavit accompanied the petition. If the  
5 examination is performed by another qualified professional, the  
6 examining qualified professional shall be authorized to consult  
7 with the qualified professional whose affidavit accompanied the  
8 petition.

9 G. If the respondent has refused to be examined by  
10 a qualified professional and the court finds reasonable grounds  
11 to believe that the allegations of the petition are true, the  
12 court may issue a written order directing a peace officer who  
13 has completed crisis intervention training to detain and  
14 transport the respondent to a provider for examination by a  
15 qualified professional. A respondent detained pursuant to this  
16 subsection shall be detained no longer than necessary to  
17 complete the examination and in no event longer than twenty-  
18 four hours.

19 H. The court shall not order assisted outpatient  
20 treatment for the respondent unless a qualified professional,  
21 who has personally examined the respondent within ten days of  
22 the filing of the petition, testifies at the hearing in person  
23 or by contemporaneous transmission from a different location.  
24 The qualified professional shall provide testimony in support  
25 of the finding that the respondent meets all of the criteria

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1 for assisted outpatient treatment and testimony on the written  
2 proposed treatment plan developed pursuant to Section 7 of the  
3 Assisted Outpatient Treatment Act, including:

4 (1) the recommended assisted outpatient  
5 treatment, the rationale for the recommended assisted  
6 outpatient treatment and the facts that establish that such  
7 treatment is the least restrictive appropriate alternative;

8 (2) information regarding the respondent's  
9 access to, and the availability of, recommended assisted  
10 outpatient treatment in the community or elsewhere; and

11 (3) if the recommended assisted outpatient  
12 treatment includes medication, the types or classes of  
13 medication that should be authorized, the beneficial and  
14 detrimental physical and mental effects of such medication and  
15 whether such medication should be self-administered or  
16 administered by a specified provider."

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

19 "[NEW MATERIAL] WRITTEN PROPOSED TREATMENT PLAN.--

20 A. The court shall not order assisted outpatient  
21 treatment unless a qualified professional provides a written  
22 proposed treatment plan to the court. The plan shall state all  
23 treatment services recommended for the respondent and, for each  
24 such service, shall specify a provider that has agreed to  
25 provide the service.

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1           B. In developing a written proposed treatment plan,  
2 the qualified professional shall take into account, if  
3 existing, an advance directive for mental health treatment and  
4 provide the following persons with an opportunity to  
5 participate:

- 6                   (1) the respondent;  
7                   (2) all current treating providers;  
8                   (3) upon the request of the respondent, an  
9 individual significant to the respondent, including any  
10 relative, close friend or individual otherwise concerned with  
11 the welfare of the respondent; and  
12                   (4) any surrogate decision-maker.

13           C. The written proposed treatment plan shall  
14 include case management services or an assertive community  
15 treatment team to provide care coordination and assisted  
16 outpatient treatment services recommended by the qualified  
17 professional. If the plan includes medication, it shall state  
18 whether such medication should be self-administered or  
19 administered by a specified provider and shall specify type and  
20 dosage range of medication. In no event shall the plan  
21 recommend the use of physical force or restraints to administer  
22 medication to the respondent.

23           D. If the written proposed treatment plan includes  
24 alcohol or substance abuse counseling and treatment, the plan  
25 may include a provision requiring relevant testing for either

1 alcohol or abused substances; provided that the qualified  
2 professional's clinical basis for recommending such plan  
3 provides sufficient facts for the court to find that:

4 (1) the respondent has a history of co-  
5 occurring alcohol or substance abuse; and

6 (2) such testing is necessary to prevent a  
7 relapse or deterioration that would be likely to result in  
8 serious harm to self or likely to result in serious harm to  
9 others."

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

12 "[NEW MATERIAL] DISPOSITION.--

13 A. After a hearing and consideration of all  
14 relevant evidence, the court shall order the respondent to  
15 receive assisted outpatient treatment if it finds by clear and  
16 convincing evidence that the respondent meets all criteria set  
17 forth in Section 3 of the Assisted Outpatient Treatment Act.

18 B. The court's order shall:

19 (1) provide for a period of outpatient  
20 treatment not to exceed one year;

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

23 (3) direct one or more specified providers to  
24 provide or arrange for all assisted outpatient treatment for  
25 the patient throughout the period of the order.



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1           C. If the court order includes medication, it shall  
2 state the type or types of medication and the dosage range  
3 found to be necessary, based on the treatment plan and evidence  
4 presented. The court may order the respondent to self-  
5 administer medication or accept the administration of such  
6 medication by a specified provider. In no event shall the  
7 court require or authorize the use of physical force or  
8 restraints to administer medication to the respondent.

9           D. The court may not order treatment that has not  
10 been recommended by the qualified professional and included in  
11 the written proposed treatment plan, nor direct the  
12 participation of a provider that has not been specified in such  
13 plan.

14           E. Nothing in the Assisted Outpatient Treatment  
15 Act, nor in the court's order, shall require any of the  
16 following to make payment for any services or items not  
17 otherwise a covered benefit under the terms of the applicable  
18 program or contract of insurance:

- 19                   (1) a health maintenance organization;  
20                   (2) a managed health care plan;  
21                   (3) a health insurance company;  
22                   (4) a group health plan that provides medical  
23 care to employees or their dependents under the federal  
24 Employee Retirement Income Security Act of 1974 directly or  
25 through insurance, reimbursement or other means; or

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1 (5) the state medicaid program.

2 F. If the respondent has a surrogate decision-maker  
3 or an advance directive for mental health treatment, the court  
4 shall follow the decisions of the surrogate decision-maker or  
5 the advance directive in determining the treatment ordered,  
6 unless there is good cause shown to order otherwise.

7 G. The court shall not order assisted outpatient  
8 treatment for a respondent with a surrogate decision-maker  
9 without notice to such surrogate decision-maker and an  
10 opportunity for hearing as provided in Section 6 of the  
11 Assisted Outpatient Treatment Act.

12 H. The court may order assisted outpatient  
13 treatment:

14 (1) in lieu of involuntary inpatient  
15 commitment if it finds assisted outpatient treatment to be the  
16 least restrictive appropriate alternative; or

17 (2) as a means of jail diversion."

18 SECTION 9. A new section of the Mental Health and  
19 Developmental Disabilities Code is enacted to read:

20 "[NEW MATERIAL] EXPEDITIOUS APPEAL.--There shall be a  
21 right to an expeditious appeal from a final order in a  
22 proceeding under the Assisted Outpatient Treatment Act."

23 SECTION 10. A new section of the Mental Health and  
24 Developmental Disabilities Code is enacted to read:

25 "[NEW MATERIAL] EFFECT OF DETERMINATION THAT RESPONDENT IS

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1 IN NEED OF ASSISTED OUTPATIENT TREATMENT.--An assisted  
2 outpatient treatment order shall not be construed as a  
3 determination that the respondent is incompetent."

4 SECTION 11. A new section of the Mental Health and  
5 Developmental Disabilities Code is enacted to read:

6 "[NEW MATERIAL] APPLICATIONS FOR CONTINUED PERIODS OF  
7 TREATMENT.--

8 A. Prior to the expiration of the period of  
9 assisted outpatient treatment, a party or the respondent's  
10 surrogate decision-maker may apply to the court for a  
11 subsequent order authorizing continued assisted outpatient  
12 treatment for a period not to exceed one year. The application  
13 shall be served upon those persons required to be served with  
14 notice of a petition for an order authorizing assisted  
15 outpatient treatment and every specified provider.

16 B. If the court's disposition of the application  
17 does not occur prior to the expiration date of the current  
18 order, the current order shall remain in effect until the  
19 court's disposition. The disposition of the application shall  
20 occur no later than ten calendar days following the filing of  
21 the application.

22 C. A respondent may be ordered to participate in  
23 continued assisted outpatient treatment if the court finds by  
24 clear and convincing evidence that the respondent:

25 (1) continues to have a primary diagnosis of a

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1 mental disorder;

2 (2) is unwilling or unlikely, as a result of a  
3 mental disorder, to participate voluntarily in outpatient  
4 treatment that would enable the respondent to live safely in  
5 the community without court supervision;

6 (3) is in need of continued assisted  
7 outpatient treatment as the least restrictive appropriate  
8 alternative in order to prevent a relapse or deterioration  
9 likely to result in serious harm to self or likely to result in  
10 serious harm to others; and

11 (4) will likely benefit from, and the  
12 respondent's best interests will be served by, receiving  
13 continued assisted outpatient treatment."

14 SECTION 12. A new section of the Mental Health and  
15 Developmental Disabilities Code is enacted to read:

16 "[NEW MATERIAL] APPLICATION TO STAY, VACATE, MODIFY OR  
17 ENFORCE AN ORDER.--

18 A. In addition to any other right or remedy  
19 available by law with respect to the court order for assisted  
20 outpatient treatment, a party or the respondent's surrogate  
21 decision-maker may apply to the court to stay, vacate, modify  
22 or enforce the order. The application shall be served upon  
23 those persons required to be served with notice of a petition  
24 for an order authorizing assisted outpatient treatment and  
25 every specified provider. The disposition of the application

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1 shall occur no later than ten calendar days following the  
2 filing of the application.

3 B. A specified provider shall apply to the court  
4 for approval before instituting a proposed material change in  
5 mandated services or assisted outpatient treatment unless such  
6 change is contemplated in the order. The application shall be  
7 served upon those persons required to be served with notice of  
8 a petition for an order authorizing assisted outpatient  
9 treatment and every specified provider. The disposition of the  
10 application shall occur no later than ten calendar days  
11 following the filing of the application. Nonmaterial changes  
12 may be instituted by the provider without court approval. For  
13 purposes of this subsection, "material change" means an  
14 addition or deletion of a category of assisted outpatient  
15 treatment and does not include a change in medication or dosage  
16 contemplated in the order that, based upon the clinical  
17 judgment of the provider, is in the best interest of the  
18 patient.

19 C. A court order requiring periodic blood tests or  
20 urinalysis for the presence of alcohol or abused substances  
21 shall be subject to review after six months by a qualified  
22 professional, who shall be authorized to terminate such blood  
23 tests or urinalysis without further action by the court."

24 SECTION 13. A new section of the Mental Health and  
25 Developmental Disabilities Code is enacted to read:

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1           "[NEW MATERIAL] FAILURE TO COMPLY WITH ASSISTED OUTPATIENT  
2 TREATMENT.--

3           A. If a qualified professional determines that a  
4 respondent has materially failed to comply with the assisted  
5 outpatient treatment as ordered by the court, such that the  
6 qualified professional believes that the respondent's condition  
7 is likely to result in serious harm to self or likely to result  
8 in serious harm to others and that immediate detention is  
9 necessary to prevent such harm, the qualified professional  
10 shall certify the need for detention and transport of the  
11 respondent for emergency mental health evaluation and care  
12 pursuant to the provisions of Paragraph (4) of Subsection A of  
13 Section 43-1-10 NMSA 1978.

14           B. A respondent's failure to comply with an order  
15 of assisted outpatient treatment is not grounds for involuntary  
16 civil commitment or a finding of contempt of court, or for the  
17 use of physical force or restraints to administer medication to  
18 the respondent."

19           **SECTION 14.** A new section of the Mental Health and  
20 Developmental Disabilities Code is enacted to read:

21           "[NEW MATERIAL] SEQUESTRATION AND CONFIDENTIALITY OF  
22 RECORDS.--

23           A. All records or information containing protected  
24 health information relating to the respondent, including all  
25 pleadings and other documents filed in the matter, social

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

8 B. The records described in Subsection A of this  
9 section may only be disclosed to the parties and:

- 10 (1) court personnel;
- 11 (2) court-appointed special advocates;
- 12 (3) attorneys representing parties to the  
13 proceeding;
- 14 (4) surrogate decision-makers;
- 15 (5) peace officers requested by the  
16 court to perform any duties or functions related to the  
17 respondent as deemed appropriate by the court;
- 18 (6) qualified professionals and providers  
19 involved in the evaluation or treatment of the respondent;
- 20 (7) public health authorities or entities  
21 conducting public health surveillance or research, if  
22 authorized by law; and
- 23 (8) any other person or entity, by order of  
24 the court, having a legitimate interest in the case or the work  
25 of the court.

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1           C. A person who intentionally releases any  
2 information or records closed to the public pursuant to the  
3 Assisted Outpatient Treatment Act or who releases or makes  
4 other use of the records in violation of that act is guilty of  
5 a fourth degree felony and shall be punished in accordance with  
6 the provisions of Section 31-18-15 NMSA 1978."

7           **SECTION 15.** A new section of the Mental Health and  
8 Developmental Disabilities Code is enacted to read:

9           "[NEW MATERIAL] EDUCATIONAL MATERIALS.--The division and  
10 the interagency behavioral health purchasing collaborative, in  
11 consultation with the administrative office of the courts,  
12 shall prepare educational and training materials on the  
13 provisions of the Assisted Outpatient Treatment Act, which  
14 shall be made available no later than January 1, 2017 to  
15 providers, judges, court personnel, peace officers and the  
16 general public."

17           **SECTION 16.** Section 43-1-3 NMSA 1978 (being Laws 1977,  
18 Chapter 279, Section 2, as amended) is amended to read:

19           "43-1-3. DEFINITIONS.--As used in the Mental Health and  
20 Developmental Disabilities Code:

21           A. "aversive stimuli" means anything that, because  
22 it is believed to be unreasonably unpleasant, uncomfortable or  
23 distasteful to the client, is administered or done to the  
24 client for the purpose of reducing the frequency of a behavior,  
25 but does not include verbal therapies, physical restrictions to

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1 prevent imminent harm to self or others or psychotropic  
2 medications that are not used for purposes of punishment;

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

10 C. "code" means the Mental Health and Developmental  
11 Disabilities Code;

12 D. "consistent with the least drastic means  
13 principle" means that the habilitation or treatment and the  
14 conditions of habilitation or treatment for the client,  
15 separately and in combination:

16 (1) are no more harsh, hazardous or intrusive  
17 than necessary to achieve acceptable treatment objectives for  
18 the client;

19 (2) involve no restrictions on physical  
20 movement and no requirement for residential care except as  
21 reasonably necessary for the administration of treatment or for  
22 the protection of the client or others from physical injury;  
23 and

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

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

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

6           G. "department" or "division" means the behavioral  
7 health services division of the human services department;

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

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

22           J. "experimental treatment" means any mental health  
23 or developmental disabilities treatment that presents  
24 significant risk of physical harm, but does not include  
25 accepted treatment used in competent practice of medicine and

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1 psychology and supported by scientifically acceptable studies;

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

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

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

21 N. "likelihood of serious harm to others" means  
22 that it is more likely than not that in the near future a  
23 person will inflict serious, unjustified bodily harm on another  
24 person or commit a criminal sexual offense, as evidenced by  
25 behavior causing, attempting or threatening such harm, which

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1 behavior gives rise to a reasonable fear of such harm from the  
2 person;

3 O. "mental disorder" means substantial disorder of  
4 a person's emotional processes, thought or cognition that  
5 grossly impairs judgment, behavior or capacity to recognize  
6 reality, but does not mean developmental disability;

7 P. "mental health or developmental disabilities  
8 professional" means a physician or other professional who by  
9 training or experience is qualified to work with persons with a  
10 mental disorder or a developmental disability;

11 Q. "physician" or "certified psychologist", when  
12 used for the purpose of hospital admittance or discharge, means  
13 a physician or certified psychologist who has been granted  
14 admitting privileges at a hospital licensed by the department  
15 of health, if such privileges are required;

16 R. "protected health information" means  
17 individually identifiable health information transmitted by or  
18 maintained in an electronic form or any other form or media  
19 that relates to the:

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

22 (2) provision of health care to an individual;

23 or

24 (3) payment for the provision of health care  
25 to an individual;

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1           [R-] S. "psychosurgery":

2                   (1) means those operations currently referred  
3 to as lobotomy, psychiatric surgery and behavioral surgery and  
4 all other forms of brain surgery if the surgery is performed  
5 for the purpose of the following:

6                           (a) modification or control of thoughts,  
7 feelings, actions or behavior rather than the treatment of a  
8 known and diagnosed physical disease of the brain;

9                           (b) treatment of abnormal brain function  
10 or normal brain tissue in order to control thoughts, feelings,  
11 actions or behavior; or

12                           (c) treatment of abnormal brain function  
13 or abnormal brain tissue in order to modify thoughts, feelings,  
14 actions or behavior when the abnormality is not an established  
15 cause for those thoughts, feelings, actions or behavior; and

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

18           [S-] T. "qualified mental health professional  
19 licensed for independent practice" means an independent social  
20 worker, a licensed professional clinical mental health  
21 counselor, a marriage and family therapist, a certified nurse  
22 practitioner or a clinical nurse specialist with a specialty in  
23 mental health, all of whom by training and experience are  
24 qualified to work with persons with a mental disorder;

25           [F-] U. "residential treatment or habilitation

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1 program" means diagnosis, evaluation, care, treatment or  
2 habilitation rendered inside or on the premises of a mental  
3 health or developmental disabilities facility, hospital,  
4 clinic, institution or supervisory residence or nursing home  
5 when the client resides on the premises; and

6 ~~[U-]~~ V. "treatment" means any effort to accomplish  
7 a significant change in the mental or emotional condition or  
8 behavior of the client."

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

11 "43-1-19. DISCLOSURE OF INFORMATION.--

12 A. Except as otherwise provided in the code, no  
13 person shall, without the authorization of the client, disclose  
14 or transmit any confidential information from which a person  
15 well acquainted with the client might recognize the client as  
16 the described person, or any code, number or other means that  
17 can be used to match the client with confidential information  
18 regarding the client.

19 B. Authorization from the client shall not be  
20 required for the disclosure or transmission of confidential  
21 information in the following circumstances:

22 (1) when the request is from a mental health  
23 or developmental disability professional or from an employee or  
24 trainee working with a person with a mental disability or  
25 developmental disability, to the extent that the practice,

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1 employment or training on behalf of the client requires access  
2 to such information is necessary;

3 (2) when such disclosure is necessary to  
4 protect against a clear and substantial risk of imminent  
5 serious physical injury or death inflicted by the client on the  
6 client's self or another;

7 (3) when the disclosure is made pursuant to  
8 the provisions of the Assisted Outpatient Treatment Act, using  
9 reasonable efforts to limit protected health information to  
10 that which is minimally necessary to accomplish the intended  
11 purpose of the use, disclosure or request;

12 [~~3~~] (4) when the disclosure of such  
13 information is to the primary caregiver of the client and the  
14 disclosure is only of information necessary for the continuity  
15 of the client's treatment in the judgment of the treating  
16 physician or certified psychologist who discloses the  
17 information; or

18 [~~4~~] (5) when such disclosure is to an  
19 insurer contractually obligated to pay part or all of the  
20 expenses relating to the treatment of the client at the  
21 residential facility. The information disclosed shall be  
22 limited to data identifying the client, facility and treating  
23 or supervising physician and the dates and duration of the  
24 residential treatment. It shall not be a defense to an  
25 insurer's obligation to pay that the information relating to

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

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

7 (1) is in writing and signed; and

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

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

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1 right to petition the court for an order granting such access.

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

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

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

20 H. A person appointed as a treatment guardian in  
21 accordance with the Mental Health and Developmental  
22 Disabilities Code may act as the client's personal  
23 representative pursuant to the federal Health Insurance  
24 Portability and Accountability Act of 1996, Sections 1171-1179  
25 of the Social Security Act, 42 U.S.C. Section 1320d, as

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1 amended, and applicable federal regulations to obtain access to  
2 the client's protected health information, including mental  
3 health information and relevant physical health information,  
4 and may communicate with the client's health care providers in  
5 furtherance of such treatment."

6 SECTION 18. A new section of the Mental Health and  
7 Developmental Disabilities Code is enacted to read:

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

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

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

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

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

25 (4) the number of petitions for involuntary

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1 commitment of developmentally disabled adults to residential  
2 care pursuant to Section 43-1-13 NMSA 1978 filed with the  
3 court;

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

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

11 B. Beginning September 1, 2016, the administrative  
12 office of the courts shall quarterly provide the information  
13 reported to it pursuant to Subsection A of this section to the:

14 (1) department; and

15 (2) interagency behavioral health purchasing  
16 collaborative.

17 C. The provisions of Subsections A and B of this  
18 section do not require the production of protected health  
19 information, information deemed confidential under Subsection A  
20 of Section 14 of the Assisted Outpatient Treatment Act or  
21 information protected from disclosure under Section 43-1-19  
22 NMSA 1978."

23 SECTION 19. DELAYED REPEAL.--Sections 1 through 15 of  
24 this act are repealed on July 1, 2021.

25 SECTION 20. EFFECTIVE DATE.--The effective date of the

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1 provisions of this act is July 1, 2016.

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