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_____ BILL

57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO ASSISTED OUTPATIENT TREATMENT; ENACTING THE ASSISTED OUTPATIENT TREATMENT ACT; CREATING THE BEHAVIORAL HEALTH FUND.

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.--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:

"[NEW MATERIAL] 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

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1 health treatment made pursuant to the Mental Health Care
2 Treatment Decisions Act;

3 B. "agent" means an individual designated in a
4 power of attorney for health care to make a mental health care
5 decision for the individual granting the power;

6 C. "assertive community treatment" means a team
7 treatment approach designed to provide comprehensive community-
8 based psychiatric treatment, rehabilitation and support to
9 persons with serious and persistent mental disorders;

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

21 (1) medication;

22 (2) periodic blood tests or urinalysis to
23 determine compliance with prescribed medications;

24 (3) individual or group therapy;

25 (4) day or partial-day programming activities;

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1 (5) educational and vocational training or
2 activities;

3 (6) alcohol and substance abuse treatment and
4 counseling;

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

8 (8) supervision of living arrangements; and

9 (9) any other services prescribed to treat the
10 patient's mental disorder and to assist the patient in living
11 and functioning in the community or to attempt to prevent a
12 deterioration of the patient's mental or physical condition;

13 E. "clinically stabilized" means [TBD];

14 F. "covered entity" means a health plan, a health
15 care clearinghouse or a health care provider that transmits any
16 health information in electronic form;

17 G. "disorder class" means [TBD];

18 H. "functional impairment" means an impairment as
19 the result of a mental disorder that impacts a person's ability
20 to live independently, form social relationships or attain
21 vocational skills or the person's physical condition;

22 I. "guardian" means a judicially appointed guardian
23 having authority to make mental health care decisions for an
24 individual;

25 J. "least restrictive appropriate alternative"

1 means treatment and conditions that:

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

4 (2) do not restrict physical movement or
5 require residential care, except as reasonably necessary for
6 the administration of treatment or the protection of the
7 patient;

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

15 L. "likely to result in serious harm to self" means
16 that it is more likely than not that in the near future, a
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 grave passive neglect;

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

22 N. "participating municipality or county" means a
23 municipality or county that has entered into a memorandum of
24 understanding with its respective district court with respect
25 to the funding of the district court's administrative expenses,

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1 including legal fees, for proceedings pursuant to the Assisted
2 Outpatient Treatment Act;

3 O. "patient" means a person receiving assisted
4 outpatient treatment pursuant to a court order;

5 P. "power of attorney for health care" means the
6 designation of an agent to make health care decisions for the
7 individual granting the power, made while the individual has
8 capacity;

9 Q. "provider" means an individual or organization
10 licensed, certified or otherwise authorized or permitted by law
11 to provide a mental or physical health diagnosis or treatment
12 in the ordinary course of business or practice of a profession;

13 R. "qualified professional" means a physician,
14 licensed psychologist, prescribing psychologist, certified
15 nurse practitioner or clinical nurse specialist with a
16 specialty in mental health or a physician assistant with a
17 specialty in mental health;

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

22 T. "respondent" means a person who is the subject
23 of a petition or order for assisted outpatient treatment;

24 U. "severe mental disorder" means a mental disorder
25 that is severe in degree and persistent in duration, that may

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1 cause behavioral functioning that interferes substantially with
2 the primary activities of daily living and that may result in
3 an inability to maintain stable adjustment and independent
4 functioning without treatment, support and rehabilitation for a
5 long or indefinite period of time. Serious mental disorders
6 include schizophrenia, bipolar disorder, posttraumatic stress
7 disorder and other major affective disorders or other severely
8 disabling mental disorders. "Severe mental disorder" shall not
9 be construed to exclude persons with a serious mental disorder
10 and a diagnosis of substance abuse, developmental disability or
11 other physical or mental disorders. "Severe mental disorder"
12 includes that the person:

13 (1) has a mental disorder as identified in the
14 most recent edition of the *Diagnostic and Statistical Manual of*
15 *Mental Disorders* other than a substance use or development
16 disorder or an acquired traumatic brain injury, unless that
17 person also has a severe mental disorder;

18 (2) has substantial functional impairments or
19 symptoms or a psychiatric history demonstrating that without
20 treatment, there is an imminent risk of decompensation to
21 having substantial impairments or symptoms; and

22 (3) is likely to become so disabled as to
23 require public assistance, services or entitlements as a result
24 of a mental functional impairment and circumstances;

25 V. "substance use disorder" means [TBD];

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1 W. "surrogate decision-maker" means:

2 (1) an agent designated by the respondent;

3 (2) a guardian; or

4 (3) a treatment guardian;

5 X. "treatment guardian" means a person appointed
6 pursuant to Section 43-1-15 NMSA 1978 to make mental health
7 treatment decisions for a person who has been found by clear
8 and convincing evidence to be incapable of making the person's
9 own mental health treatment decisions; and

10 Y. "qualified legal service" means [TBD]."

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

13 "[NEW MATERIAL] ELIGIBILITY FOR ASSISTED OUTPATIENT
14 TREATMENT.--A person is eligible to participate in assisted
15 outpatient treatment if:

16 A. the person is eighteen years of age or older;

17 B. the person is currently experiencing a severe
18 mental disorder as defined in Section 2 of the Assisted
19 Outpatient Treatment Act and has a diagnosis identified in the
20 disorder class including the schizophrenia spectrum and other
21 psychotic disorders, as defined in the most current version of
22 the *Diagnostic and Statistical Manual of Mental Disorders*, but
23 does not include a psychotic disorder that is due to a medical
24 condition or is not primarily psychiatric in nature, including
25 physical health conditions such as a traumatic brain injury,

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1 autism, dementia or neurologic conditions;

2 C. the person is not clinically stabilized in
3 ongoing voluntary treatment;

4 D. the person is either:

5 (1) unlikely to survive safely in the
6 community without supervision, and the person's condition is
7 substantially deteriorating; or

8 (2) in need of services or supports in order
9 to prevent a relapse or deterioration that would likely result
10 in grave disability or serious harm to the person or others;

11 E. participation in an assisted outpatient
12 treatment agreement or plan would be the least restrictive
13 alternative necessary to ensure the person's recovery and
14 stability; and

15 F. it is likely that the person will benefit from
16 participation in an assisted outpatient treatment agreement or
17 plan."

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

20 "[NEW MATERIAL] FORM OF PETITION--INITIATING A PETITION.--

21 A. The administrative office of the courts shall
22 develop a mandatory form for use to file a petition with the
23 court and any other forms necessary to initiate the assisted
24 outpatient treatment process. The petition shall be signed
25 under the penalty of perjury and contain all of the following:

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1 (1) the name of the respondent and, if known,
2 the respondent's address;

3 (2) the petitioner's relationship to the
4 respondent;

5 (3) facts that support the petitioner's
6 assertion that the respondent meets the eligibility criteria;
7 and

8 (4) either:

9 (a) an affidavit of a licensed
10 behavioral health professional stating that the licensed
11 behavioral health professional or the licensed behavioral
12 health professional's designee has examined the respondent
13 within ninety days of the submission of the petition or has
14 made multiple attempts to examine, but has not been successful
15 in eliciting the cooperation of the respondent to submit to an
16 examination, within ninety days of the petition, and that the
17 licensed behavioral health professional has determined or has
18 reason to believe, explained with specificity in the affidavit,
19 that the respondent meets the diagnostic criteria for assisted
20 outpatient treatment agreement or plan proceedings; or

21 (b) evidence that the person's mental
22 illness has, at least twice within the last forty-eight months,
23 been a substantial factor in necessitating hospitalization or
24 receipt of services in a forensic or other mental health unit
25 of a state correctional facility or local correctional

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1 facility, including the most recent within the previous ninety
2 days.

3 B. The following persons may file a petition to
4 initiate the proceedings:

5 (1) a person with whom the respondent resides;

6 (2) a spouse, parent, sibling, child,
7 grandparent or other individual who stands in loco parent is to
8 the respondent;

9 (3) the director of a hospital, or the
10 director's designee, in which the respondent is hospitalized,
11 including hospitalization pursuant to the Assisted Outpatient
12 Treatment Act;

13 (4) the director of a public or charitable
14 organization, agency or home, or the director's designee, who
15 has, within the previous thirty days, provided or who is
16 currently providing behavioral health services to the
17 respondent or in whose institution the respondent resides;

18 (5) a licensed behavioral health professional,
19 or the licensed behavioral health professional's designee, who
20 is or has been within the previous thirty days either
21 supervising the treatment of or treating the respondent for a
22 mental illness;

23 (6) a first responder, including a peace
24 officer, firefighter, paramedic, emergency medical technician,
25 mobile crisis response worker or homeless outreach worker, who

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1 has had repeated interactions with the respondent in the form
2 of multiple arrests, multiple detentions and transportation
3 pursuant to the Assisted Outpatient Treatment Act, multiple
4 attempts to engage the respondent in voluntary treatment or
5 other repeated efforts to aid the respondent in obtaining
6 professional assistance;

7 (7) the public guardian or public conservator,
8 or the public guardian's or public conservator's designee, of
9 the county in which the respondent is present or reasonably
10 believed to be present;

11 (8) the director of a county behavioral health
12 agency, or the director's designee, of the county in which the
13 respondent resides or is encountered by the petitioner;

14 (9) the director of county adult protective
15 services, or the director's designee, of the county in which
16 the respondent resides or is encountered by the petitioner;

17 (10) the director of a New Mexico Indian
18 health services program, New Mexico tribal behavioral health
19 department or the director's designee;

20 (11) the judge of a tribal court that is
21 located in New Mexico, or the judge's designee; or

22 (12) the person seeking assisted outpatient
23 treatment.

24 C. For purposes of this section, "two intensive
25 treatments" includes: [TBD].

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1 D. The administrative office of the courts shall
2 periodically review and update the forms as needed."

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

5 "[NEW MATERIAL] HEARING ON THE MERITS.--

6 A. A hearing on the merits of the petition shall be
7 held within ten days of the initiation of proceedings under the
8 Assisted Outpatient Treatment Act. The court shall use a clear
9 and convincing standard when evaluating the claims made on the
10 petition.

11 B. If the court finds that the burden of proof has
12 been met, the county shall have fourteen days to meet with the
13 respondent to agree to an assisted outpatient treatment plan."

14 **SECTION 6.** A new section of the Mental Health and
15 Developmental Disabilities Code is enacted to read:

16 "[NEW MATERIAL] VENUE.--

17 A. Proceedings under this act may be commenced in:

- 18 (1) the judicial district in which the
19 respondent resides;
20 (2) the judicial district where the respondent
21 is encountered by a petitioner; or
22 (3) the judicial district where the respondent
23 is facing criminal or civil proceedings.

24 B. If the respondent does not reside in the county
25 in which proceedings are initiated under this act and assisted

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1 outpatient treatment is available in the judicial district
2 where the respondent resides, the proceeding may, with the
3 respondent's consent, be transferred to the county of residence
4 as soon as reasonably possible. Should the respondent not
5 consent to the transfer, the proceedings shall continue in the
6 county where the proceedings were initiated.

7 C. All proceedings and related documents under the
8 Assisted Outpatient Treatment Act shall be sealed and nonpublic
9 unless the respondent agrees otherwise."

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

12 "[NEW MATERIAL] COUNSEL.--

13 A. A respondent is entitled to a qualified legal
14 service for all hearings and matters related to assisted
15 outpatient treatment, including appeals. If no qualified legal
16 services have agreed to accept an appointment, a public
17 defender shall be appointed, unless the respondent has retained
18 counsel. Unless represented by respondent's own counsel,
19 appointed counsel shall represent the respondent in any
20 proceeding under the Assisted Outpatient Treatment Act and
21 shall represent the respondent as needed in matters related to
22 assisted outpatient treatment agreements and plans and orders
23 of the court.

24 B. If a respondent self-identifies as enrolled in a
25 federally recognized tribe, the court shall provide notice to a

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1 tribal representative. The tribal representative may be
2 present at any related proceedings with the respondent's
3 consent."

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

6 "[NEW MATERIAL] STATUS HEARING--EXPIRATION OF PLAN
7 HEARING.--

8 A. For any respondent referred to assisted
9 outpatient treatment under the Assisted Outpatient Treatment
10 Act, the court shall hold a status hearing at least every sixty
11 days that shall include:

12 (1) progress made by the respondent since the
13 last status hearing;

14 (2) services provided to the respondent;

15 (3) any services the respondent should be but
16 is not receiving, including the reasons why the services are
17 not being rendered; and

18 (4) any problems with the respondent complying
19 with the plan and any changes needed to insure compliance.

20 B. Upon completion of the required treatment, the
21 court shall hold an expiration of treatment hearing to include:

22 (1) assessment of progress and stability of
23 the respondent;

24 (2) all services provided and not provided to
25 the respondent;

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1 (3) any issues with the respondent complying
2 with the treatment; and

3 (4) any next steps required by the court, to
4 include additional resources, if necessary.

5 C. During the expiration of treatment hearing, the
6 respondent may request a graduation plan or may request to stay
7 in the treatment program. The court may refer the respondent
8 to an additional year of treatment if:

9 (1) the respondent did not complete the
10 treatment plan;

11 (2) all services required by the court were
12 offered to the respondent;

13 (3) the respondent would benefit from an
14 additional year in treatment; and

15 (4) the respondent is still eligible to
16 receive treatment."

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

19 "[NEW MATERIAL] CASE MANAGEMENT.--

20 A. If all parties agree to assisted outpatient
21 treatment, the court shall set a hearing to approve the
22 agreement no more than sixty days after the court is made aware
23 of the agreement. An assisted treatment plan may be for up to
24 one year or as otherwise provided by law and shall include:

25 (1) a clinical diagnosis of the respondent;

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1 (2) all pertinent information to assist the
2 court in making decisions regarding treatment;

3 (3) acknowledgment of whether the respondent
4 has the capacity to consent to medication; and

5 (4) recommended services, programs, housing,
6 medication and interventions for the respondent.

7 B. If the parties do not agree to an assisted
8 outpatient treatment plan, the court shall order the county to
9 obtain a clinical evaluation, unless one exists that has been
10 completed in the last sixty days. The clinical evaluation
11 shall include all elements provided in Subsection A of this
12 section.

13 C. The court shall hold a hearing to review the
14 clinical evaluation no later than twenty-one days after the
15 order, unless the parties agree to an extension. If the court
16 finds that the evaluation has met the burden of proof, the
17 court shall order the county and respondent to develop an
18 assisted outpatient treatment plan within fourteen days.
19 Tribal health care providers or a tribal court shall be
20 involved if the respondent qualifies.

21 D. The court shall hold a hearing to review the
22 assisted outpatient treatment plan no later than fourteen days
23 after the order. The court may adopt the plan as a whole or
24 may only adopt the portions that the court finds necessary.
25 The court may require medication to be prescribed but shall not

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1 require the respondent to take the prescribed medication.
2 Failure of the respondent to take the prescribed medication
3 shall not be grounds for termination of the plan or any form of
4 penalty."

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

7 "[NEW MATERIAL] FAILURE OF COUNTIES TO PROVIDE SERVICES.--
8 If a county has failed to provide the services required by the
9 Assisted Outpatient Treatment Act, a respondent may file an
10 order to show cause. If the judge finds the county has failed
11 to provide the services, the county may be fined up to one
12 thousand dollars (\$1,000) per day in which services are not
13 provided, up to twenty-five thousand dollars (\$25,000) per
14 respondent. All fines shall be deposited in the behavioral
15 health fund."

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

18 "[NEW MATERIAL] FAILURE TO COMPLY WITH ASSISTED OUTPATIENT
19 TREATMENT.--

20 A. If a qualified professional determines that a
21 respondent has materially failed to comply with the assisted
22 outpatient treatment as ordered by the court, such that the
23 qualified professional believes that the respondent's condition
24 is likely to result in serious harm to self or others and that
25 immediate detention is necessary to prevent such harm, the

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1 qualified professional shall certify the need for detention and
2 transport of the respondent for an emergency mental health
3 evaluation and care pursuant to the provisions of the Assisted
4 Outpatient Treatment Act.

5 B. A respondent's failure to comply with an order
6 of assisted outpatient treatment is not grounds for involuntary
7 civil commitment or a finding of contempt of court or for the
8 use of physical force or restraints to administer medication to
9 the respondent."

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

12 "[NEW MATERIAL] QUALIFIED PROTECTIVE ORDER.--

13 A. A motion seeking a qualified protective order
14 shall accompany each petition for an order authorizing assisted
15 outpatient treatment.

16 B. In considering the motion, the court shall
17 determine which parties to the proceeding and their attorneys
18 are authorized to receive, subpoena and transmit protected
19 health information pertaining to the respondent for purposes of
20 the proceeding. If the petitioner is a party identified in
21 Section [TBD] of the Assisted Outpatient Treatment Act, the
22 court may bar or limit the disclosure of the respondent's
23 protected health information.

24 C. Covered entities shall only disclose protected
25 health information pertaining to the respondent in accordance

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1 with the court's order, except as otherwise provided by state
2 and federal health care privacy laws.

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

6 E. Within forty-five days after the later of the
7 exhaustion of all appeals or the date on which the respondent
8 is no longer receiving assisted outpatient treatment, the
9 parties and their attorneys and any person or entity in
10 possession of protected health information received from a
11 party or the party's attorney in the course of the proceeding
12 shall destroy all copies of protected health information
13 pertaining to the respondent, except that counsel are not
14 required to secure the return or destruction of protected
15 health information submitted to the court.

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

20 G. Nothing in the court's order shall authorize any
21 party to obtain medical records or information through means
22 other than formal discovery requests, subpoenas, depositions or
23 other lawful processes or pursuant to a patient authorization."

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] EXPEDITIOUS APPEAL.--There shall be a
2 right to an expeditious appeal from a final order in a
3 proceeding under the Assisted Outpatient Treatment Act."

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

6 "[NEW MATERIAL] WORKING GROUP--DATA COLLECTION.--

7 A. The health care authority and the department of
8 health shall convene a working group with various stakeholders
9 in assisted outpatient treatment to assist with the
10 implementation of the Assisted Outpatient Treatment Act.

11 B. Stakeholders participating in the working group
12 shall include: [TBD].

13 C. The health care authority and the department of
14 health shall collect data from health care providers regarding
15 participants in assisted outpatient treatment and shall post an
16 annual report on the respective department's website."

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

19 "[NEW MATERIAL] BEHAVIORAL HEALTH FUND CREATED.--The
20 "behavioral health fund" is created as a nonreverting fund in
21 the state treasury. The fund consists of distributions,
22 appropriations, gifts, fines, grants and donations. Income
23 from investment of the fund shall be credited to the fund.
24 Money in the fund shall be expended only as provided in the
25 Assisted Outpatient Treatment Act."

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SECTION 16. REPEAL.--Sections 43-1B-1 through 43-1B-14
NMSA 1978 (being Laws 2016, Chapter 84, Sections 1 through 14,
as amended) are repealed.