

West's New Mexico Statutes Annotated [Currentness](#)

[Chapter 43](#). Commitment Procedures

→ [Article 1](#). Mental Health and Developmental Disabilities ([Refs & Annos](#))

→ § 43-1-1. **Mental condition of criminal defendants; evaluation; treatment**

A. Whenever a district court finds it necessary to obtain an evaluation of the mental condition of a defendant in a criminal case, the court shall order an evaluation from a qualified professional available to the local facilities of the court or from a qualified professional at a local mental health center designated by the secretary of health, and whenever the court finds it desirable to use state personnel or facilities to assist in making the evaluation, the court shall in its order for an evaluation require service upon the secretary of health of the court's order for evaluation. The secretary of health shall arrange for a qualified professional furnished by the state to visit the defendant in local facilities available to the court or shall designate suitable available facilities. If the secretary of health designates a local mental health center or a state facility for the defendant's evaluation within forty-eight hours of service of the evaluation order, the secretary of health shall notify the court of such designation. The court shall then enter an appropriate transport order which also provides for the return of the defendant to the local facilities of the court. The defendant shall be transported by the county to facilities designated by the secretary of health for the purpose of making an evaluation. Misdemeanor defendants shall be evaluated locally.

B. If the secretary of health elects to have the defendant retained at the district court's local facilities, the qualified professional furnished by the state shall visit the local facilities not later than two weeks from the time of service of the court's evaluation order upon the secretary of health and:

(1) after the evaluation of the defendant is completed, the qualified professional furnished by the state shall be available for deposition to declare his findings. The usual rules of evidence governing the use and admission of the deposition shall prevail; and

(2) if the secretary of health finds that the qualified professional will be unable to initiate the evaluation within two weeks from the time of service of the court's evaluation order upon the secretary of health, the secretary of health shall call upon the county sheriff of the county in which the defendant is incarcerated and have the defendant transported to facilities designated by the secretary of health for the purpose of conducting the evaluation.

C. If the secretary of health elects to have the defendant transported to the facilities designated by the secretary of health for the purpose of evaluation, the evaluation shall be commenced as soon as possible after the admission of the defendant to the facility, but, in no event, shall the evaluation be commenced later than seventy-two hours after the admission. The defendant, at the conclusion of the evaluation, shall be returned by the county sheriff to the local facilities of the court upon not less than three days' notice. After the evaluation is completed, the qualified professional furnished by the state shall be available for deposition to declare his findings. The usual rules of evidence governing the use and admissibility of the deposition shall prevail.

D. Documents reasonably required by the secretary of health to show the medical and forensic history of the defendant shall be furnished by the court when required.

E. After an evaluation and upon reasonable notice, the district court may commit a dangerous defendant charged with a felony pursuant to [Section 31-9-1.2 NMSA](#) 1978 or may dismiss the charges without prejudice and refer the defendant to the district attorney for possible initiation of proceedings under the Mental Health and Developmental Disabilities Code. A defendant so committed under the Mental Health and Developmental Disabilities Code shall be treated as any other patient committed involuntarily. Whenever the secretary of health determines that he does not have the ability to meet the medical needs of a defendant committed pursuant to [Sections 31-9-1.2](#)

through [31-9-1.5 NMSA 1978](#), the secretary or his designee shall serve upon the district court and the parties a written certification of the lack of ability to meet the medical needs of the defendant. The court shall set a hearing upon the certification within ten days of its filing and shall, after the hearing, make a determination regarding disposition of the criminal case. When deemed by the secretary of health to be medically appropriate, a dangerous defendant committed pursuant to [Section 31-9-1.2 NMSA 1978](#) may be returned by the county sheriff to the custody of the court upon not less than three days' notice. The secretary shall provide written notification to the court and parties within three days of the defendant's discharge.

F. All acts to be performed by the secretary of health pursuant to provisions of this section may be performed by the secretary's designee.

§ 43-1-2. Short title

Chapter 43, Article 1 NMSA 1978 may be cited as the "Mental Health and Developmental Disabilities Code".

§ 43-1-3. Definitions

As used in the Mental Health and Developmental Disabilities Code:

A. "aversive stimuli" means anything that, because it is believed to be unreasonably unpleasant, uncomfortable or distasteful to the client, is administered or done to the client for the purpose of reducing the frequency of a behavior, but does not include verbal therapies, physical restrictions to prevent imminent harm to self or others or psychotropic medications that are not used for purposes of punishment;

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

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

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

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

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

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

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

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

- G. “department” or “division” means the behavioral health services division of the human services department;
- H. “developmental disability” means a disability of a person that is attributable to mental retardation, cerebral palsy, autism or neurological dysfunction that requires treatment or habilitation similar to that provided to persons with mental retardation;
- I. “evaluation facility” means a community mental health or developmental disability program or a medical facility that has psychiatric or developmental disability services available, including the New Mexico behavioral health institute at Las Vegas, the Los Lunas medical center or, if none of the foregoing is reasonably available or appropriate, the office of a licensed physician or a certified psychologist, and that is capable of performing a mental status examination adequate to determine the need for involuntary treatment;
- J. “experimental treatment” means any mental health or developmental disabilities treatment that presents significant risk of physical harm, but does not include accepted treatment used in competent practice of medicine and psychology and supported by scientifically acceptable studies;
- K. “grave passive neglect” means failure to provide for basic personal or medical needs or for one’s own safety to such an extent that it is more likely than not that serious bodily harm will result in the near future;
- L. “habilitation” means the process by which professional persons and their staff assist the developmentally disabled client in acquiring and maintaining those skills and behaviors that enable the person to cope more effectively with the demands of the person’s self and environment and to raise the level of the person’s physical, mental and social efficiency. “Habilitation” includes but is not limited to programs of formal, structured education and treatment;
- M. “likelihood of serious harm to oneself” means that it is more likely than not that in the near future the person will attempt to commit suicide or will cause serious bodily harm to the person’s self by violent or other self-destructive means, including but not limited to grave passive neglect;
- N. “likelihood of serious harm to others” means that it is more likely than not that in the near future a person will inflict serious, unjustified bodily harm on another person or commit a criminal sexual offense, as evidenced by behavior causing, attempting or threatening such harm, which behavior gives rise to a reasonable fear of such harm from the person;
- O. “mental disorder” means substantial disorder of a person’s emotional processes, thought or cognition that grossly impairs judgment, behavior or capacity to recognize reality, but does not mean developmental disability;
- P. “mental health or developmental disabilities professional” means a physician or other professional who by training or experience is qualified to work with individuals with mental disorders or developmental disabilities;
- Q. “physician” or “certified psychologist”, when used for the purpose of hospital admittance or discharge, means a physician or certified psychologist who has been granted admitting privileges at a hospital licensed by the department of health, if such privileges are required;
- R. “psychosurgery”:

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

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

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

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

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

S. “residential treatment or habilitation program” means diagnosis, evaluation, care, treatment or habilitation rendered inside or on the premises of a mental health or developmental disabilities facility, hospital, clinic, institution or supervisory residence or nursing home when the client resides on the premises; and

T. “treatment” means any effort to accomplish a significant change in the mental or emotional condition or behavior of the client.

§ 43-1-4. Legal representation of clients

A. Clients shall be represented by counsel at all proceedings under the code and shall be entitled to obtain advice of counsel at any time regarding their status under the code.

B. The court shall appoint counsel to represent a client who has not retained counsel and is unable to do so. When appointing counsel, the court shall give preference to nonprofit organizations offering representation to persons with a mental illness or a developmental disability. A client shall be liable for the cost of legal representation unless the client is indigent.

§ 43-1-5. Competence

Neither the fact that a person has been accepted at or admitted to a hospital or institutional facility, nor the receiving of mental health or developmental disability treatment services, shall constitute a sufficient basis for a finding of incompetence or the denial of any right or benefit of whatever nature which he would have otherwise.

§ 43-1-6. Personal rights of residential clients

All clients who receive residential treatment or habilitation services shall have the rights provided in this section.

A. Subject to restrictions by a physician for good cause, each resident client has the right to receive visitors of his own choosing daily. Hours during which visitors may be received shall be limited only in the interest of effective treatment and the reasonable efficiency of the supervised residential facility and shall be sufficiently flexible to accommodate the individual needs of the resident client and his visitors. Notwithstanding the above, each resident client has the right to receive visits from his attorney, physician, psychologist, clergyman or social worker in pri-

vate at any reasonable time, irrespective of visiting hours, provided the visitor shows reasonable cause for visiting at times other than normal visiting hours.

B. Writing material and postage stamps shall be reasonably available for the resident clients' use in writing letters and other communications. Reasonable assistance shall be provided for writing, addressing and posting letters and other documents upon request. The resident client has the right to send and receive sealed and uncensored mail. The resident client has the right to reasonable private access to telephones and, in cases of personal emergencies when other means of communication are not satisfactory, he shall be afforded reasonable use of long distance calls. Provided that for other than mail or telephone calls to a court or an attorney, a physician or certified psychologist may, for good cause, restrict mailing or telephone privileges. A resident client who is indigent shall be furnished such writing, postage and telephone facilities without charge.

C. Each resident client has the right to follow or abstain from the practice of religion. The supervised residential facility shall provide appropriate assistance in this connection including reasonable accommodations for religious worship and transportation to nearby religious services. Clients who do not wish to participate in religious practice shall be free from pressure to do so or to accept religious beliefs.

D. Each resident client has the right to a humane psychological and physical environment. He shall be provided a comfortable bed and adequate changes of linen and reasonable storage space for his personal possessions. Except when curtailed for reason of safety or therapy as documented in his record by his physician, he shall be afforded reasonable privacy in his sleeping and personal hygiene practices.

E. Each resident client shall have reasonable daily opportunities for physical exercise and outdoor exercise and shall have reasonable access to recreational areas and equipment.

F. Each resident client has the right to a nourishing, well-balanced, varied and appetizing diet.

G. Each resident client has the right to prompt and adequate medical attention for any physical ailments and shall receive a complete physical examination upon admission and at least once every twelve months thereafter; provided, however, that clients who have received a complete physical examination within two days prior to the current admission shall not receive a complete physical examination unless the physician deems it necessary.

H. All resident clients have the right to a clean, safe, comfortable environment in a structure which complies with generally applicable fire safety requirements.

I. All resident clients have a right to be free from unnecessary or excessive medication. No medication shall be administered unless at the written order of a licensed physician or by a verbal order, noted promptly in the patient's medical record and signed by the physician within twenty-four hours. Medication shall be administered only by a licensed physician, registered nurse or licensed practical nurse or by a medical or nursing student under the direct supervision of a licensed physician or registered nurse. The attending physician shall be responsible for all medication given or administered to a resident client. Notation of each individual's medication shall be kept in his medical records and shall include a notation by the physician of the behavioral or symptomatic baseline data upon which the medication order was made. The attending physician shall review on a regular basis the drug regimen of each resident client under his care. All prescriptions for psychotropic medications shall be written with a termination date which shall not exceed thirty days. Medication shall not be used as a punishment, for the convenience of staff, as a substitute for programs or in quantities that interfere with the client's treatment or habilitation program.

§ 43-1-7. Right to treatment

Each resident client receiving mental health services shall have the right to prompt treatment pursuant to an individualized treatment plan and consistent with the least drastic means principle.

§ 43-1-8. Right to habilitation

Each resident client receiving developmental disabilities services shall have the right to prompt habilitation services pursuant to an individualized habilitation plan and consistent with the least drastic means principle.

§ 43-1-9. Individualized treatment or habilitation plans

A. An individualized treatment or habilitation plan shall be prepared within fourteen days of a client's admission to residential treatment or services.

B. Each client shall, to the maximum extent possible, be involved in the preparation of his own individualized treatment or habilitation plan.

C. Each individualized treatment or habilitation plan shall include:

- (1) a statement of the nature of the specific problem and the specific needs of the client;
- (2) a statement of the least restrictive conditions necessary to achieve the purposes of treatment or habilitation;
- (3) a description of intermediate and long-range goals, with the projected timetable for their attainment;
- (4) a statement and rationale for the plan of treatment or habilitation for achieving these intermediate and long-range goals;
- (5) specification of staff responsibility and a description of the proposed staff involvement with the client in order to attain these goals; and
- (6) criteria for release to less restrictive settings for treatment or habilitation, criteria for discharge and a projected date for discharge.

D. A treatment or habilitation plan for resident clients shall include:

- (1) mental status examination;
- (2) intellectual function assessment;
- (3) psychological assessment, which may include the use of psychological testing;
- (4) educational assessment;
- (5) vocational assessment;

- (6) social assessment;
- (7) medication assessment; and
- (8) physical assessment.

E. The individualized treatment or habilitation plan shall be available upon request to the following persons: the client; the client's attorney; any mental health or developmental disabilities professional designated by the client; and the client's guardian or treatment guardian if one has been appointed. The client's progress in attaining the goals and objectives set forth in his individualized treatment or habilitation plan shall be monitored and noted in his records, and revisions in the plan may be made as circumstances require; provided that the persons authorized by this subsection to have access to the individualized plan shall be informed of major changes and shall have the opportunity to participate in such decision. Nothing in this subsection shall require disclosure of information to a client or to his parent when the attending physician or certified psychologist believes that disclosure of that particular information would be damaging to the client and so records in the client's medical record.

§ 43-1-10. Emergency mental health evaluation and care

A. A peace officer may detain and transport a person for emergency mental health evaluation and care in the absence of a legally valid order from the court only if:

- (1) the person is otherwise subject to lawful arrest;
- (2) the peace officer has reasonable grounds to believe the person has just attempted suicide;
- (3) the peace officer, based upon his own observation and investigation, has reasonable grounds to believe that the person, as a result of a mental disorder, presents a likelihood of serious harm to himself or others and that immediate detention is necessary to prevent such harm. Immediately upon arrival at the evaluation facility, the peace officer shall be interviewed by the admitting physician or his designee; or
- (4) a licensed physician or a certified psychologist has certified that the person, as a result of a mental disorder, presents a likelihood of serious harm to himself or others and that immediate detention is necessary to prevent such harm. Such certification shall constitute authority to transport the person.

B. An emergency evaluation under this section shall be accomplished upon the request of a peace officer, or jail or detention facility administrator or his designee, or upon the certification of a licensed physician or certified psychologist as described in Subsection C of this section. A court order is not required under this section. If an application is made to a court, the court's power to act in furtherance of an emergency admission shall be limited to ordering that:

- (1) the client be seen by a certified psychologist or psychiatrist prior to transport to an evaluation facility; and
- (2) a peace officer transport the person to an evaluation facility.

C. An evaluation facility may accept for an emergency based admission any person when a licensed physician or certified psychologist certifies that such person, as a result of a mental disorder, presents a likelihood of serious harm to himself or others and that immediate detention is necessary to prevent such harm. Such certification shall

constitute authority to transport the person.

D. Any person detained under this section shall, whenever possible, be taken immediately to an evaluation facility. Detention facilities shall be used as temporary shelter for such persons only in cases of extreme emergency for protective custody, and no person taken into custody under the provisions of the code shall remain in a detention facility longer than necessary and in no case longer than twenty-four hours. If use of a detention facility is necessary, the proposed client:

- (1) shall not be held in a cell with prisoners;
- (2) shall not be identified on records used to record custody of prisoners;
- (3) shall be provided adequate protection from possible suicide attempts; and
- (4) shall be treated with the respect and dignity due every citizen who is neither accused nor convicted of a crime.

E. The admitting physician or certified psychologist shall evaluate whether reasonable grounds exist to detain the proposed client for evaluation and treatment, and, if such reasonable grounds are found, the proposed client shall be detained. If the admitting physician or certified psychologist determines that reasonable grounds do not exist to detain the client for evaluation and treatment, the client shall not be detained.

F. Upon arrival at an evaluation facility, the proposed client shall be informed orally and in writing by the evaluation facility of the purpose and possible consequences of the proceedings, the allegations in the petition, his right to a hearing within seven days, his right to counsel and his right to communicate with an attorney and an independent mental health professional of his own choosing, and shall have the right to receive necessary and appropriate treatment.

G. A peace officer who transports any client to an evaluation facility under the provisions of this section shall not require a court order to be reimbursed by the referring county.

§ 43-1-11. Commitment of adults for thirty-day period

A. Every adult client involuntarily admitted to an evaluation facility pursuant to [Section 43-1-10 NMSA 1978](#) has the right to a hearing within seven days of admission unless waived after consultation with counsel. If a physician or evaluation facility decides to seek commitment of the client for evaluation and treatment, a petition shall be filed with the court within five days of admission requesting the commitment. The petition shall include a description of the specific behavior or symptoms of the client that evidence a likelihood of serious harm to the client or others and shall include an initial screening report by the evaluating physician individually or with the assistance of a mental health professional or, if a physician is not available, by a mental health professional acceptable to the court. The petition shall list the prospective witnesses for commitment and a summary of the matters to which they will testify. Copies of the petition shall be served on the client, the client's guardian, and treatment guardian if one has been appointed, and the client's attorney.

B. At the hearing, the client shall be represented by counsel and shall have the right to present evidence on the client's behalf, including testimony by an independent mental health professional of the client's own choosing, to cross-examine witnesses and to be present at the hearing. The presence of the client may be waived upon a showing to the court that the client knowingly and voluntarily waives the right to be present. A complete record of all

proceedings shall be made.

C. A court-appointed guardian for an adult involved in an involuntary commitment proceeding shall have automatic standing to appear at all stages of the proceeding and shall be allowed to testify by telephone or through affidavit if circumstances make live testimony too burdensome.

D. The court shall include in its findings the guardian's opinion regarding the need for involuntary treatment or a statement detailing the efforts made to ascertain the guardian's opinion.

E. Upon completion of the hearing, the court may order a commitment for evaluation and treatment not to exceed thirty days if the court finds by clear and convincing evidence that:

(1) as a result of a mental disorder, the client presents a likelihood of serious harm to the client's own self or others;

(2) the client needs and is likely to benefit from the proposed treatment; and

(3) the proposed commitment is consistent with the treatment needs of the client and with the least drastic means principle.

F. Once the court has made the findings set forth in Subsection E of this section, the court shall hear further evidence as to whether the client is capable of informed consent. If the court determines that the client is incapable of informed consent, the court shall appoint for the client a treatment guardian who shall have only those powers enumerated in [Section 43-1-15 NMSA 1978](#).

G. An interested person who reasonably believes that an adult is suffering from a mental disorder and presents a likelihood of serious harm to the adult's own self or others, but does not require emergency care, may request the district attorney to investigate and determine whether reasonable grounds exist to commit the adult for a thirty-day period of evaluation and treatment. The applicant may present to the district attorney any medical reports or other evidence immediately available to the applicant, but shall not be required to obtain a medical report or other particular evidence in order to make a petition. The district attorney shall act on the petition within seventy-two hours. If the district attorney determines that reasonable grounds exist to commit the adult, the district attorney may petition the court for a hearing. The court may issue a summons to the proposed client to appear at the time designated for a hearing, which shall be not less than five days from the date the petition is served. If the proposed client is summoned and fails to appear at the proposed time and upon a finding of the court that the proposed client has failed to appear, or appears without having been evaluated, the court may order the proposed client to be detained for evaluation as provided for in [Subsection C of Section 43-1-10 NMSA 1978](#).

H. Any hearing provided for pursuant to Subsection G of this section shall be conducted in conformance with the requirements of Subsection B of this section.

§ 43-1-12. Extended commitment of adults

A. A physician or evaluation facility may file a petition for extended commitment within twenty-one days after the beginning of the thirty-day commitment. The petition shall explain the necessity for extended commitment, specify the treatment that has been provided during the evaluation and include an individual treatment plan for the proposed commitment period. The petition shall list the prospective witnesses for commitment and a summary of

the matters to which they will testify. Copies of the petition shall be served on the client, the client's guardian, and treatment guardian if one has been appointed, and the client's attorney.

B. A hearing shall be held upon the petition prior to the expiration of the thirty-day commitment period, at which the client shall have all rights granted to the client under [Section 43-1-11 NMSA 1978](#) and in addition shall have a right to a trial by a six-person jury, if requested, and to an expeditious appeal, unless waived.

C. A court-appointed guardian for an adult involved in an involuntary commitment proceeding shall have automatic standing to appear at all stages of the proceeding and shall be allowed to testify by telephone or through affidavit if circumstances make live testimony too burdensome.

D. The court shall include in its findings the guardian's opinion regarding the need for involuntary treatment or a statement detailing the efforts made to ascertain the guardian's opinion.

E. If, at the conclusion of the hearing, the fact-finder determines by clear and convincing evidence that the client presents a likelihood of harm to the client's self or to others, that extended treatment is likely to improve the client's condition and that the proposed extended commitment is consistent with the least drastic means principle, the court shall order commitment of the client for a period not to exceed six months, except that when the client has been committed for two consecutive periods of commitment, any commitment commencing thereafter shall not exceed one year. At the expiration of the commitment order, the client may be detained only after a new commitment hearing, unless waived after consultation with the client's attorney, and entry of a new order for commitment not to exceed six months.

F. A client involuntarily referred for treatment pursuant to this section shall be entitled to a reexamination of the order for the client's involuntary referral for treatment on the client's own petition, or that of the client's legal guardian, parent, spouse, relative or friend, to the district court of the county in which the client resides or is detained. Upon receipt of the petition, the court shall conduct a proceeding in accordance with this section, except that a proceeding shall not be required to be conducted if the petition is filed sooner than sixty days after the issuance of the order for involuntary referral for treatment or sooner than sixty days after the filing of a previous petition under this subsection.

G. Nothing in this section shall limit the right of a client to petition the court for a writ of habeas corpus.

H. Nothing in this code shall prohibit a client from seeking voluntary admission under [Section 43-1-14 NMSA 1978](#).

I. No mental health treatment facility is required to detain, treat or provide services to a client when the client does not require such detention, treatment or services.

§ 43-1-13. Involuntary commitment of developmentally disabled adults to residential care

A. A guardian appointed pursuant to the Uniform Probate Code may file an application with an evaluation facility seeking residential habilitation services for the protected person. The application shall set forth the basis for the guardian's belief that residential habilitation is necessary and shall include a copy of pertinent medical and psychological evaluations that have been completed.

B. Upon receipt of an application filed according to Subsection A of this section, an evaluation facility may accept

the proposed client for a period of evaluation and treatment not to exceed fourteen days. An evaluation facility shall prepare an individualized habilitation plan that shall be consistent with the least drastic means principle.

C. If the habilitation plan recommends residential services, the evaluation facility shall file with the court a petition for extended residential placement. Upon receipt of the petition, the court shall appoint an attorney to represent the proposed client. Notice of the hearing scheduled on the petition and a copy of the habilitation plan shall be given to the proposed client, the client's attorney and the client's guardian. The petition shall contain a list of the names and addresses of proposed witnesses.

D. At the hearing on the petition, the proposed client shall be represented by counsel and shall have the right to present evidence on the proposed client's behalf, including testimony of a developmental disability professional of the proposed client's choosing; to cross-examine witnesses; to be present at the hearing; and to trial by a six-person jury, if requested. A complete record of the hearing shall be made. There shall be a right to an expeditious appeal.

E. The guardian of an adult involved in a commitment proceeding for extended residential habilitation services shall have automatic standing to appear at all stages of the proceeding and shall be allowed to testify by telephone or through affidavit if circumstances make live testimony too burdensome.

F. The court shall include in its findings the guardian's opinion regarding the need for residential habilitation services or a statement detailing the efforts made to ascertain the guardian's opinion.

G. The court shall order residential placement of the proposed client if it is established by clear and convincing evidence that the proposed client has a developmental disability that creates an imminent likelihood of serious harm to the proposed client's self or to others, or the person is so greatly disabled that residential services would be in the person's best interest and that such residential placement is, in the person's case, the least drastic means. The court's order of residential placement shall be for a period not to exceed six months. At the expiration of the commitment order, the client may be detained only after a new commitment hearing, unless waived after consultation with the client's attorney, and entry of a new order for commitment not to exceed six months.

H. The court shall order placement that is least restrictive to the client and may order attendance and participation as a nonresident in habilitation programs conducted at residential or nonresidential facilities.

I. Any client involuntarily referred for habilitation treatment shall be entitled to a reexamination of the order for the client's involuntary referral for habilitation and treatment on the client's own petition, or that of the client's legal guardian, parent, spouse, relative or friend, to the district court of the county in which the client resides or is detained. Upon receipt of the petition, the court shall conduct or cause to be conducted by a special commissioner a proceeding in accordance with this section, except that a proceeding shall not be required to be conducted if the petition is filed sooner than sixty days after the issuance of the order for involuntary referral for habilitation and treatment or sooner than sixty days after the filing of a previous petition under this subsection.

J. Nothing in this section shall limit the right of a client to petition the court for a writ of habeas corpus.

K. No developmental disabilities treatment or habilitation facility is required to detain, treat or provide services to a client when the client does not appear to require detention, treatment or habilitation.

§ 43-1-14. Voluntary admission to residential treatment or habilitation

A. A person may voluntarily seek admission to residential treatment or habilitation.

B. A guardian appointed under the Uniform Probate Code, an agent or surrogate under the Uniform Health-Care Decisions Act or an agent under the Mental Health Care Treatment Decisions Act shall not consent to the admission of an individual to a mental health care facility. If a guardian has full power or limited power that includes medical or mental health treatment or, if the individual's written advance health-care directive or advance directive for mental health treatment expressly permits treatment in a mental health care facility, the guardian, agent or surrogate may present the person to a facility only for evaluation for admission pursuant to [Subsection E of Section 43-1-10 NMSA 1978](#).

C. Nothing in this section shall be construed as depriving voluntary clients of any right given to involuntary clients.

D. A client voluntarily admitted to residential treatment or habilitation has the right to immediate discharge from the residential facility upon request, unless the director of the facility or a physician determines that the client requires continued confinement and meets the criteria for involuntary residential treatment or habilitation under the code. If the director or physician so determines, the director or physician shall, on the first business day following the client's request for release, request the district attorney to initiate commitment proceedings under the code. The client has a right to a hearing on the client's confinement within five days of the client's request for release.

§ 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 a client without proper consent. If the client is capable of understanding the proposed nature of treatment and its consequences and is capable of informed consent, the client's consent shall be obtained before the treatment is performed. A client shall not be presumed to be incapable of giving consent for administration of psychotropic medications solely because the client has been involuntarily committed to a treatment facility or is awaiting a hearing on whether the client should be involuntarily committed to a treatment facility.

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

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

D. When appointing a treatment guardian for an adult, the court shall give priority to a court-appointed guardian or, if no guardian has been appointed by a court, to an agent designated or nominated by the client when the client had capacity.

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

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

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

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

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

J. When the court appoints a treatment guardian, it shall specify the length of time during which the treatment guardian may exercise the treatment guardian's powers, up to a maximum period of one year. If at the end of the guardianship period the treatment guardian believes that the client is still incapable of making the client's own treatment decisions, the treatment guardian shall petition the court for reappointment or for appointment of a new treatment guardian. The petition shall be served on the client, the client's attorney and the previously appointed treatment guardian if filed by another party. The guardianship shall be extended or a new guardian shall be appointed only if the court finds the client is, at the time of the hearing, incapable of understanding and expressing an opinion regarding treatment decisions. The client shall be represented by counsel and shall have the right to be present and present evidence at all such hearings.

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

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

M. If a licensed physician believes that the administration of psychotropic medication is necessary to protect the client from serious harm that would occur while the provisions of Subsection B of this section are being satisfied, the licensed physician may administer the medication on an emergency basis. When medication is administered to

a client on an emergency basis, the treating physician shall prepare and place in the client's medical records a report explaining the nature of the emergency and the reason that no treatment less drastic than administration of psychotropic medication without proper consent would have protected the client from serious harm. Upon the sworn application of the treating physician, the court may issue an order permitting the treating physician to continue to administer psychotropic medication until a treatment guardian is appointed, if the requirements of Subsection B of this section for appointment of a treatment guardian are in the process of being satisfied in a timely manner.

§§ 43-1-16 to 43-1-18. Repealed by L. 1993, Ch. 77, § 234F, eff. July 1, 1993

§§ 43-1-16 to 43-1-18. Repealed by L. 1993, Ch. 77, § 234F, eff. July 1, 1993

§ 43-1-19. Disclosure of information

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

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

(1) when the request is from a mental health or developmental disability professional or from an employee or trainee working with a person with a mental disability or developmental disability, to the extent that the practice, employment or training on behalf of the client requires access to such information is necessary;

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

(3) when the disclosure of such information is to the primary caregiver of the client and the disclosure is only of information necessary for the continuity of the client's treatment in the judgment of the treating physician or certified psychologist who discloses the information; or

(4) when such disclosure is to an insurer contractually obligated to pay part or all of the expenses relating to the treatment of the client at the residential facility. The information disclosed shall be limited to data identifying the client, facility and treating or supervising physician and the dates and duration of the residential treatment. It shall not be a defense to an insurer's obligation to pay that the information relating to the residential treatment of the client, apart from information disclosed pursuant to this section, has not been disclosed to the insurer.

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

(1) is in writing and signed; and

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

D. The client has a right of access to confidential information and has the right to make copies of any information and to submit clarifying or correcting statements and other documentation of reasonable length for inclusion with the confidential information. The statements and other documentation shall be kept with the relevant confidential information, shall accompany it in the event of disclosure and shall be governed by the provisions of this section to the extent they contain confidential information. Nothing in this subsection shall prohibit the denial of access to such records when a physician or other mental health or developmental disabilities professional believes and notes in the client's medical records that such disclosure would not be in the best interests of the client. In any such case, the client has the right to petition the court for an order granting such access.

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

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

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

H. A person appointed as a treatment guardian in accordance with the Mental Health and Developmental Disabilities Code may act as the client's personal representative pursuant to the federal Health Insurance Portability and Accountability Act of 1996, Sections 1171-1179 of the Social Security Act, [42 U.S.C. Section 1320d](#), as amended, and applicable federal regulations to obtain access to the client's protected health information, including mental health information and relevant physical health information, and may communicate with the client's health-care providers in furtherance of such treatment.

§ 43-1-20. Special commissioner

The court may conduct the proceedings required by this code, or may, by general or special order, appoint a special commissioner to do so. The special commissioner must be a licensed attorney. Upon conclusion of the hearing the special commissioner shall file his findings and recommendations with the court promptly.

§ 43-1-21. Convalescent status; rehospitalization

A. The head of a residential facility may release an improved involuntary client on convalescent status when he believes that such release is in the best interests of the client. Release on convalescent status shall include provisions for continuing responsibility to and of the hospital. Prior to the expiration of the client's commitment period, the director of the residential facility shall re-examine the facts relating to the commitment of the client on convalescent status and, if he determines that in view of the condition of the client, commitment is no longer appropriate he shall discharge the client.

B. Prior to such discharge, the director of the residential facility from which the client is given convalescent status may at any time readmit the client. If there is reason to believe that the client requires rehospitalization, the director of the residential facility may issue an order for the immediate return of the client. Such an order, if not voluntarily complied with, shall, upon order by a judge of the district court of the county in which the client is resident or present, authorize any health or police officer to take the client into custody and transport him to the residential

facility.

§ 43-1-22. Transportation

Whenever a proposed patient is to be committed to a residential mental health or developmental disability facility, or to be returned to such a facility during commitment, the court ordering the commitment or authorizing the return of the patient may direct the sheriff, the state police or other appropriate persons to furnish suitable transportation in order to effect such commitment or return, contacting the department for directions as to the destination of the patient.

§ 43-1-23. Violation of clients' rights

Any client who believes that his rights, as established by this code or by the constitution of the United States or of New Mexico, have been violated shall have a right to petition the court for redress. The client shall be represented by counsel. The court shall grant relief as is appropriate, subject to the provisions of the Tort Claims Act.

§ 43-1-24. Appeals; court of appeals

Appeals taken pursuant to this code shall be taken to the court of appeals according to the rules of appellate procedure of the supreme court.

§ 43-1-25. Cost of care

Clients who are indigent may receive care and treatment at state-operated facilities without charge. The governing authorities of such facilities may require payment for the cost of care and treatment from all others pursuant to established fee schedules based on ability to pay.

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