

# New Mexico Adult Mental Health and Developmental Disabilities Code



Disability Rights New Mexico  
1720 Louisiana Blvd., NE, Suite 204  
Albuquerque, NM 87110  
Telephone: (505) 256-3100  
Fax: (505) 256-3184  
Statewide Toll-free 1-800-432-4682  
Website: [www.drn.org](http://www.drn.org)  
E-mail: [info@drnm.org](mailto:info@drnm.org)

August 2015

**“Mental Health and Developmental Disabilities Act”  
NMSA 1978, §§43-1-1 to 25  
(2000 & Supp. 2013)**

- Applies to adults
- Legal presumption = we all have right to refuse treatment
- Admission to a hospital in and of itself is not a basis for a finding of lack of capacity to make treatment decisions
- Unless certain circumstances exist
- Least drastic means principle: No more intrusive than necessary
- Right to representation at all court proceedings under the code

## **§43-1-3 Definitions**

### **As used in the Mental Health and Developmental Disabilities Code**

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;

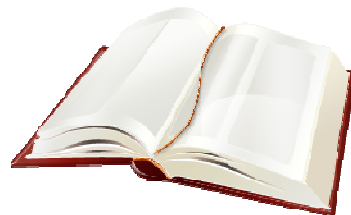
M. "likelihood of serious harm to oneself" means that it is more likely than not that in the near future the person will attempt to commit suicide or will cause serious bodily harm to the person's self by violent or other self-destructive means, including but not limited to grave passive neglect;

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;

S. "qualified mental health professional licensed for independent practice" means an independent social worker, a licensed professional clinical mental health counselor, a marriage and family therapist, a certified nurse practitioner or a clinical nurse specialist with a specialty in mental health, all of whom by training and experience are qualified to work with persons with a mental disorder.

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



# Procedures

## Emergency Mental Health Evaluation and Care §43-1-10



Law enforcement may detain and transport only if:

1. Subject to lawful arrest, or
2. Believed to have attempted suicide, or
3. Likelihood (more likely than not in the near future) of serious harm to self or others, or
4. Certification from a physician or psychologist, or a qualified mental health professional licensed for independent practice who is affiliated with a community mental health center or core service agency, that immediate detention is necessary to prevent harm

If can't be immediately transported to evaluation facility, can be held in jail for no more than 24 hours but:

- Not held in cell with detainees
- Protected from suicide attempts

## **Upon arrival at treatment facility informed of rights purpose & possible consequences**

- Allegations in petition
- Right to hearing w/in 7 court days (unless waived & counsel)
- Right to counsel
- Right to independent evaluation
- Right to receive necessary & appropriate treatment
- Increased due process rights w/increased length detention



## Thirty Day Commitment §43-1-11



After hearing, up to 30 days, if clear & convincing evidence

1. Likelihood serious harm self or others
2. Needs & will benefit from proposed treatment AND
3. Least drastic means of treatment
4. Court appointed guardians have standing to appear and testify (added in 2009)
5. Court also decides if capable of informed consent
6. Court appointed guardian has automatic standing to appear

# **Non-emergency Petition for 30 day Commitment §43-1-11**

1. Any interested person who believes adult presents likelihood of serious harm, but doesn't require emergency care, may petition
2. Ask DA to investigate & determine whether there are reasonable grounds to petition the court for a hearing
3. DA has 72 hours to file the petition and ask court to issue summons to proposed client
4. If proposed client doesn't appear for hearing, the court may order proposed client be detained for evaluation



# Treatment Guardianships §43-1-15

- If believe person incapable informed consent, petition for treatment guardian, court appoints decision maker
- Even then, treatment guardian SHALL consult w/person & consider wishes
- If not an inpatient and refuses to comply, treatment guardian must seek court order to forcibly medicate
- Person has right to appeal and shall be represented by counsel
- While in process but no treatment guardian yet, if necessary to protect person from serious harm, MD may administer meds on emergency basis, and only if least drastic means

# Extended Commitment §43-1-12

- Hearing prior to end of 30 days (petition after 21 days)
- Right to trial by six person jury, if requested, and right to expedited appeal
- No more than 6 months, except after two consecutive commitments, may be up to a year
- Right to hearing each time
- Person can petition for reexamination after 60 days



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

- Guardian appointed under the Uniform Probate Code, agent or surrogate under the Uniform Health-Care Decisions Act or agent under the Mental Health Care Treatment Decisions Act **cannot** consent to admission of an individual to a mental health care facility.
- If guardian has full power or limited power that includes medical or mental health treatment or, if 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.





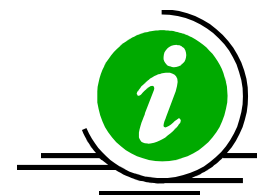
- A Person voluntarily admitted to residential treatment or habilitation has the right to immediate discharge from the residential facility upon request.
- If doctor decides Person meets criteria for involuntary residential treatment, can detain and file petition for commitment. Hearing must be held within five court days of request for release.

# Disclosure of Information §43-1-19

## Person must consent in writing to disclosure

### Exceptions:

- Sharing information among treatment providers within a treatment setting or to refer to another mental health services treatment provider
- Necessary to protect against a clear and substantial risk of imminent serious physical injury or death inflicted by Person on self or other
- To primary care giver, only enough to care for Person (i.e. not therapy session notes)
- Insurer to pay, limited to identifying data
- Person has right to see/copy records and submit corrections
- Clinician can deny access if “not in best interests”
- Treatment guardian may authorize release if person lacks capacity to provide informed consent to records disclosure



# The Right to Refuse Treatment §43-1-15 (A)

Informed consent:

- Appreciate nature and consequences of proposed mental health treatment, including significant risks, benefits and alternatives, an ability to make and communicate decision
- Voluntary
- Person shall not be presumed to be incapable of giving consent for administration of medications solely because the person is in a hospital
- Even when hospitalized, person provides consent unless a court determines the person lacks capacity to provide informed consent



# Personal Rights of Residential clients §43-1-6

- Receive visitors of own choosing, subject to restriction for good cause
- Right to writing material, stamps, private telephone access
- Can't restrict access to attorney, other clinicians
- Practice/abstain from religion
- Humane psychological and physical environment
- Reasonable daily outdoor time and exercise
- Well balanced appetizing diet
- Prompt and adequate medical attention
- Right to be free from excessive and unnecessary medication, not used for punishment, staff convenience, not in quantities that interfere, not as substitute for treatment programs



## Individualized Treatment Plan §43-1-9

- Involved in planning
- Full assessment
- Specific Individual needs
- Description of goals
- Who is supposed to provide which service
- Criteria for release



## Violation of Client's Rights §43-1-23

- Right to go to court to appeal any action under the Code