

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 149

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

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO HEALTH; ENACTING THE SUPPORTED DECISION-MAKING ACT;  
PROVIDING REQUIREMENTS FOR SUPPORTED DECISION-MAKING  
AGREEMENTS; PROVIDING DUTIES FOR SUPPORTERS; CREATING REPORTING  
REQUIREMENTS; CREATING A SUPPORTED DECISION-MAKING PROGRAM  
WITHIN THE OFFICE OF GUARDIANSHIP IN THE DEVELOPMENTAL  
DISABILITIES COUNCIL Sfl1→; PROVIDING A DEFINITION FOR "HARM TO  
SELF" AND "HARM TO OTHERS" IN THE MENTAL HEALTH AND  
DEVELOPMENTAL DISABILITIES CODE AND THE ASSISTED OUTPATIENT

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**TREATMENT ACT** ←Sf11 HAFC→; ~~MAKING AN APPROPRIATION~~ ←HAFC .

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be cited as the "Supported Decision-Making Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Supported Decision-Making Act:

A. "adult" means a person who is at least eighteen years of age;

B. "decision-maker" means an adult who seeks to enter, or has entered, into a supported decision-making agreement with one or more supporters pursuant to the Supported Decision-Making Act;

C. "decision-making support" means assistance in understanding the options, responsibilities and consequences of a decision-maker's life decisions without making those decisions on behalf of the decision-maker;

D. "supported decision-making agreement" means an agreement entered into between a decision-maker and a supporter pursuant to the provisions of the Supported Decision-Making Act; and

E. "supporter" means an adult who has entered into a supported decision-making agreement with a decision-maker pursuant to the Supported Decision-Making Act.

SECTION 3. [NEW MATERIAL] SUPPORTED DECISION-MAKING

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AGREEMENTS--SCOPE OF AGREEMENTS.--A decision-maker may voluntarily, without undue influence or coercion, enter into a supported decision-making agreement with one or more supporters under which the decision-maker authorizes the supporter to do any or all of the following:

- A. provide decision-making support;
- B. assist the decision-maker in accessing, collecting and obtaining information that is relevant to a given life decision, including medical, psychological, financial, educational or treatment records, from any person;
- C. assist the decision-maker in understanding the information described in Subsection B of this section; and
- D. assist the decision-maker in communicating the decision-maker's decisions to appropriate persons.

SECTION 4. [NEW MATERIAL] SUPPORTED DECISION-MAKING AGREEMENT REQUIREMENTS.--

A. A supported decision-making agreement SJC→~~may be in any form but~~←SJC SJC→shall be in a form promulgated by the supreme court that←SJC shall:

- (1) be in writing;
- (2) be dated;
- (3) be signed voluntarily, without coercion or undue influence, by the decision-maker and the supporter;
- (4) designate a supporter;
- (5) list the types of decisions with which the

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supporter is authorized to assist the decision-maker;

(6) list the types of decisions, if any, with which the supporter is not authorized to assist the decision-maker; and

(7) contain a consent signed by the supporter indicating the supporter's:

- (a) relationship to the decision-maker;
- (b) willingness to act as a supporter;

and

- (c) acknowledgment of the duties of a

supporter.

B. Each party to a supported decision-making agreement shall sign the agreement in the presence of at least two adult witnesses SJC→~~or~~←SJC SJC→whose signatures shall be acknowledged by←SJC a notary public.

SECTION 5. [NEW MATERIAL] PRESUMPTION OF CAPACITY.--

A. All decision-makers are presumed to have capacity SJC→~~and to be capable of managing their affairs unless otherwise determined by a court~~←SJC SJC→until such time as the decision-maker's primary care practitioner and one other qualified health professional with training and experience in the assessment of functional impairment, or a court, determine that the decision-maker is unable to make the decision-maker's own decisions←SJC . A diagnosis of mental illness,

intellectual disability or developmental disability, of itself,

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does not void the presumption of capacity.

B. The manner in which a decision-maker communicates with others is not grounds for determining that the decision-maker is incapable of managing the decision-maker's own affairs.

C. The execution of a supported decision-making agreement may not be used as evidence of capacity or incapacity in any civil or criminal proceeding and does not preclude the ability of the decision-maker who has entered into a supported decision-making agreement to act independently of the agreement.

**SECTION 6. [NEW MATERIAL] SUPPORTER DUTIES AND AUTHORITY--SUPPORTER PROHIBITIONS.--**

A. A supporter shall:

- (1) act in good faith;
- (2) act with the care, competence and diligence ordinarily exercised by SJC→**supporters**←SJC SJC→**a reasonable person**←SJC in similar circumstances;
- (3) act only within the scope of authority granted in the supported decision-making agreement;
- (4) SJC→**avoid**←SJC SJC→**not engage in**←SJC self-dealing; SJC→**and**←SJC
- (5) support the will and preference of the decision-maker rather than the supporter's opinion of the decision-maker's best interests SJC→**.**←SJC SJC→**;**

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(6) not receive compensation as a result of the supporter's duties under a supported decision-making agreement; and

(7) stop serving as a supporter if the supporter questions the capacity of the decision-maker to continue making decisions. ←SJC

B. SJC→A←SJC SJC→In the absence of an applicable power of attorney, a←SJC supporter is prohibited from:

(1) making decisions on behalf of the decision-maker;

SJC→(2) signing legal documents on behalf of the decision-maker;

(3) binding the decision-maker to a legal agreement; ←SJC

SJC→(2)←SJC SJC→(4)←SJC obtaining, without the consent of the decision-maker, information that is not reasonably related to matters with which the supporter is authorized to assist pursuant to the supported decision-making agreement; and

SJC→(3)←SJC SJC→(5)←SJC using, without the consent of the decision-maker, information acquired for a purpose other than assisting the decision-maker to make a decision under the supported decision-making agreement.

SJC→SECTION 7. [NEW MATERIAL] SUPPORTER NOT A FIDUCIARY AGENT.--A supporter is not a fiduciary agent of the decision-

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~~maker.~~ ←SJC

SECTION SJC→8.←SJC SJC→7.←SJC [NEW MATERIAL] SUPPORTER DISQUALIFICATIONS.--The following persons are disqualified from acting as a supporter:

- A. an individual who is the subject of a civil or criminal order prohibiting contact with the decision-maker;
- B. an individual who has been placed on the state's employee abuse registry;
- C. an individual who has been convicted of a crime involving violence or dishonesty within the preceding ten years; and
- D. an individual who is currently incarcerated.

SECTION SJC→9.←SJC SJC→8.←SJC [NEW MATERIAL] ACCESS TO PERSONAL INFORMATION.--

SJC→A.←SJC If a supporter assists a decision-maker in accessing, collecting or obtaining personal information, including financial information, protected health information under the federal Health Insurance Portability and Accountability Act of 1996 or educational records under the federal Family Educational Rights and Privacy Act of 1974, the supporter shall ensure that the information is kept privileged and confidential, as applicable, and is not subject to unauthorized access, use or disclosure.

SJC→B. ~~The existence of a supported decision-making agreement does not preclude a decision-maker from seeking~~

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~~personal information without the assistance of the supporter.~~ ←SJC

SJC→SECTION 9. [NEW MATERIAL] DECISION-MAKER ACCESS TO PERSONAL INFORMATION.--The existence of a supported decision-making agreement does not preclude a decision-maker from seeking personal information without the assistance of the supporter. ←SJC

SECTION 10. [NEW MATERIAL] THIRD PARTY RELIANCE ON SUPPORTED DECISION-MAKING AGREEMENT.--A person who receives an original or a copy of a supported decision-making agreement shall rely on the agreement SJC→, unless the person suspects abuse, neglect or exploitation and makes a report pursuant to Section 13 of the Supported Decision-Making Act ←SJC .

SECTION 11. [NEW MATERIAL] RECOGNITION OF DECISIONS MADE WITH ASSISTANCE OF SUPPORTER.--A decision or request made or communicated with the assistance of a supporter in conformity with the Supported Decision-Making Act shall be recognized for the purposes of any provision of law as the decision or request of the decision-maker.

SECTION 12. [NEW MATERIAL] TERM OF SUPPORTED DECISION-MAKING AGREEMENT--TERMINATION OR REVOCATION OF AGREEMENT.--

A. Except as provided by Subsection B of this section, the supported decision-making agreement extends until terminated by either party or by the terms of the agreement.

B. The supported decision-making agreement is

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terminated as to a particular supporter if:

(1) the adult protective services division of the aging and long-term services department finds that the decision-maker has been abused, neglected or exploited by the supporter;

(2) the supporter is the subject of a civil or criminal order prohibiting contact with the decision-maker;

(3) the supporter has been placed on the state's employee abuse registry;

(4) the supporter has been convicted of a crime involving violence or dishonesty;

(5) the supporter is incarcerated;

(6) the decision-maker gives notice to the supporter orally, in writing, through an assistive technology device or by any other means or act showing a specific intent to terminate the agreement; or

(7) the supporter provides written notice of the supporter's resignation to the decision-maker.

**SECTION 13. [NEW MATERIAL] REPORTING OF SUSPECTED ABUSE, NEGLECT OR EXPLOITATION.--**If a person who receives a copy of a supported decision-making agreement or is aware of the existence of a supported decision-making agreement has cause to believe that the decision-maker is being abused, neglected or exploited by the supporter, the person shall report the alleged abuse, neglect or exploitation to the aging and long-term

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services department's adult protective services division's statewide intake hotline.

**SECTION 14. [NEW MATERIAL] SUPPORTED DECISION-MAKING PROGRAM--CREATED--PROGRAM DUTIES.--**

A. The "supported decision-making program" is created within the office of guardianship in the developmental disabilities council.

B. The supported decision-making program may:

(1) provide information to adults interested in entering into supported decision-making agreements;

(2) facilitate adults in forming, executing and terminating supported decision-making agreements;

(3) monitor supported decision-making agreements to determine if the agreement meets statutory requirements;

(4) provide resources and assistance for a decision-maker who believes a supporter is acting outside the scope of the supported decision-making agreement; and

(5) provide resources to any individual who is seeking information on reporting suspected abuse, neglect or exploitation of the decision-maker.

Sf11→**SECTION 15. Section 43-1-3 NMSA 1978 (being Laws 1977, Chapter 279, Section 2, as amended) is amended to read:**

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

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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 a 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

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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 close 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 electroconvulsive treatment and insulin coma treatment;

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

G. "crisis triage center" means a health facility that:

(1) is licensed by the health care authority;

and

(2) provides stabilization of behavioral health crises and may include residential and nonresidential stabilization;

H. "department" or "division" means the behavioral health services division of the health care authority;

I. "developmental or intellectual disability" means a severe chronic disability attributable to significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior, cerebral palsy, autism or neurological dysfunction that requires similar treatment or habilitation;

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J. "evaluation facility" means a community mental health or developmental disability program, a crisis triage center or a medical facility that has psychiatric or developmental or intellectual disability services available, including the New Mexico behavioral health institute at Las Vegas, or, if none of those is reasonably available or appropriate, the office of a physician or a certified psychologist that is capable of performing a mental status examination adequate to determine the need for involuntary treatment;

K. "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;

L. "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. "habilitation" means the process by which professional persons and their staff assist a client with a developmental or an intellectual disability 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

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physical, mental and social efficiency. "Habilitation" includes but is not limited to programs of formal, structured education and treatment;

~~N. "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 grave passive neglect;~~

~~O. "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;]~~

N. "harm to others" means that within the recent past, the person has inflicted or attempted to inflict serious bodily harm on another or has acted in such a way as to create a substantial risk of serious bodily harm to another and it is more likely than not that the conduct will be repeated in the near future;

O. "harm to self" means that:

(1) 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

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other self-destructive means; or

(2) the person's recent behavior:

(a) demonstrates that the person lacks the capacity to satisfy the person's need for nourishment, personal or medical care, shelter or self-protection and safety and that it is more likely than not that the lack of capacity will result in death, serious bodily injury or serious physical or mental debilitation in the near future if treatment is not ordered; and

(b) makes it more likely than not that the person will suffer serious physical debilitation in the near future unless adequate treatment is provided pursuant to the Mental Health and Developmental Disabilities Code;

P. "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 or intellectual disability;

Q. "mental health or developmental or intellectual disabilities professional" means a physician or other professional who by training or experience is qualified to work with persons with a mental disorder or a developmental or intellectual disability;

R. "physician" or "certified psychologist", when used for the purpose of hospital admittance or discharge, means

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a physician or certified psychologist who has been granted admitting privileges at a hospital licensed by the health care authority, if such privileges are required;

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

- (1) past, present or future physical or mental health or condition of a person;
- (2) provision of health care to a person; or
- (3) payment for the provision of health care to a person;

T. "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,

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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;

U. "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, a clinical nurse specialist with a specialty in mental health or a licensed art therapist, all of whom by training and experience are qualified to work with persons with a mental disorder;

V. "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

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

SECTION 16. Section 43-1B-2 NMSA 1978 (being Laws 2016, Chapter 84, Section 2, as amended) is amended to read:

"43-1B-2. DEFINITIONS.--As used in the Assisted Outpatient Treatment Act:

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

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

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

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

(1) medication;

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

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(3) individual or group therapy;

(4) day or partial-day programming activities;

(5) educational and vocational training or activities;

(6) alcohol and substance abuse treatment and counseling;

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

(8) supervision of living arrangements; and

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

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

F. "guardian" means a judicially appointed guardian having authority to make mental health care decisions for an individual;

G. "least restrictive appropriate alternative" means treatment and conditions that:

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

(2) do not restrict physical movement or

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

~~H. "likely to result in 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;~~

~~I. "likely to result in serious harm to self" 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 grave passive neglect;]~~

H. "harm to others" means that within the recent past, the person has inflicted or attempted to inflict serious bodily harm on another or has acted in such a way as to create a substantial risk of serious bodily harm to another and it is more likely than not that the conduct will be repeated in the near future;

I. "harm to self" means that:

(1) 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

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other self-destructive means; or

(2) the person's recent behavior:

(a) demonstrates that the person lacks the capacity to satisfy the person's need for nourishment, personal or medical care, shelter or self-protection and safety and that it is more likely than not that the lack of capacity will result in death, serious bodily injury or serious physical or mental debilitation in the near future if treatment is not ordered; and

(b) makes it more likely than not that the person will suffer serious physical debilitation in the near future unless adequate treatment is provided pursuant to the Assisted Outpatient Treatment Act;

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

K. "participating municipality or county" means a municipality or county that has entered into a memorandum of understanding with its respective district court with respect to the funding of such district court's administrative expenses, including legal fees, for proceedings pursuant to the Assisted Outpatient Treatment Act;

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

M. "power of attorney for health care" means the designation of an agent to make health care decisions for the

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individual granting the power, made while the individual has capacity;

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

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

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

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

R. "surrogate decision-maker" means:

- (1) an agent designated by the respondent;
- (2) a guardian; or
- (3) a treatment guardian; and

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

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own mental health treatment decisions."←Sf11

HAFC→~~SECTION 15. APPROPRIATION.--Two hundred eighty-nine thousand dollars (\$289,000) is appropriated from the general fund to the developmental disabilities council for expenditure in fiscal year 2026 to carry out the provisions of the Supported Decision-Making Act and to hire full-time employees and contract support to create and administer the supported decision-making program in the office of guardianship in the developmental disabilities council. Any unexpended or unencumbered balance remaining at the end of fiscal year 2026 shall revert to the general fund.~~←HAFC

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