

# **CHAPTER 43**

## **Commitment Procedures**

### **ARTICLE 1**

#### **Mental Health and Developmental Disabilities**

##### **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 [this article]. 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.

**History:** 1953 Comp., § 34-2-26, enacted by Laws 1976, ch. 43, § 1; 1977, ch. 253, § 45; 1989, ch. 94, § 2; 1989, ch. 128, § 1; 1993, ch. 240, § 7; 1993, ch. 249, § 7; 1999, ch. 149, § 6.

## ANNOTATIONS

**Cross references.** — For the Children's Mental Health and Developmental Disabilities Act, see 32A-6A-1 NMSA 1978.

For procedures relating to evaluation of persons charged with criminal offenses, see Rules 5-602 and 7-507 NMRA. See *also* 31-9-1.5 NMSA 1978.

For the evaluation of children accused of committing delinquent acts, see Rule 10-241 NMRA.

**The 1999 amendment**, effective June 18, 1999, deleted "or of a defendant found incompetent to proceed in a criminal case in a proceeding for involuntary hospitalization pursuant to the Mental Health and Development Disabilities Code" following "a criminal case" in Subsection A, substituted "shall" for "will" in Subsection B, deleted "then" following "secretary of health" in Subsection B(2), in Subsection E inserted "charged with a felony" in the first sentence and added the third, fourth and sixth sentences, and inserted "provisions of" in Subsection F.

**The 1993 amendment**, effective June 18, 1993, rewrote the section to the extent that a detailed comparison was impracticable. Laws 1993, ch. 240, § 7 and Laws 1993, ch. 249, § 7 enacted identical amendments to this section. The section was set out as amended by Laws 1993, ch. 249, § 7. See 12-1-8 NMSA 1978.

**The 1989 amendment**, effective June 16, 1989, substituted "secretary of health and environment" for "secretary of the health and environment department" in the first sentence of Subsection A and in Subsection F; added the last sentence of Subsection A; and made minor stylistic changes in Subsection B. Laws 1989, ch. 94, § 2, effective July 1, 1989, also amended this section. The section was set out as amended by Laws 1989, ch. 128, § 1. See 12-1-8 NMSA 1978.

**No statutory duty of medical professionals to third party.** — Where the decedent was struck and killed by an automobile driven by the perpetrator during a high-speed chase with police officers; the perpetrator had an extensive history of psychiatric illness; several months before the decedent was killed, the perpetrator had been charged with a misdemeanor assault in municipal court; at a competency hearing in district court, the parties stipulated that the perpetrator was not competent to stand trial and the misdemeanor assault charge was remanded to municipal court for dismissal; at the competency hearing, the state intervened to seek an evaluation of the perpetrator for a civil commitment; the district court ordered that the perpetrator be transported to the hospital for evaluation; the doctor who performed the evaluation discharged the perpetrator after five days, because the perpetrator did not meet the criteria for continued commitment; the transport order did not require that the perpetrator be returned to the facilities of the district court after discharge from the hospital; the perpetrator was not transported to the hospital in connection with a criminal matter; there was no finding by the district court that the perpetrator was a danger to others; and the decedent was killed twelve days after the perpetrator was discharged from the hospital, the hospital and the doctor did not have a statutory duty to the decedent under 43-1-1 NMSA 1978 either to detain the perpetrator beyond the time required for the evaluation or to return the perpetrator to the court facilities. *Ross v. City of Las Cruces*, 2010-NMCA-015, 148 N.M. 81, 229 P.3d 1253.

**Civil commitment of mentally retarded, dangerous defendant.** — Defendants with mental retardation who are dangerous, incompetent, and without a substantial

probability of gaining competence may not be criminally committed under the New Mexico Mental Illness and Competency Code, 39-1-1 NMSA 1978 et seq., but may be civilly committed under the Mental Health and Developmental Disabilities Act at the discretion of the district court and the district attorney. *State v. Trujillo*, 2009-NMSC-012, 146 N.M. 14, 206 P.3d 125.

**Temporary restraint not violative of due process.** — Persons may be deprived of their liberty for the good of society or themselves. This is not a deprivation of due process of law, but a temporary restraint on liberty, based on the extent of the illness, the need for treatment and hospitalization, as well as the protection of society. *State v. Sanchez*, 80 N.M. 438, 457 P.2d 370 (1969), appeal dismissed, 396 U.S. 276, 90 S. Ct. 588, 24 L. Ed. 2d 469 (1970).

**Prescription of judicial methods deemed proper legislative function.** — The right to prescribe, within constitutional bounds, a judicial method of determining a person to be a lunatic or non compos mentis, and regulating the custody and control of his person and property, is a proper legislative function. *State v. Sanchez*, 80 N.M. 438, 457 P.2d 370 (1969), appeal dismissed, 396 U.S. 276, 90 S. Ct. 588, 24 L. Ed. 2d 469 (1970).

**Strict statutory compliance required.** — Cases conducted for the purpose of determining the sanity of a citizen are required to be in strict compliance with statutory requirements. *State v. Sanchez*, 80 N.M. 438, 457 P.2d 370 (1969), appeal dismissed, 396 U.S. 276, 90 S. Ct. 588, 24 L. Ed. 2d 469 (1970).

**Code does not distinguish between private and public mental health facilities** in the method of commitment. The procedures are the same. 1988 Op. Att'y Gen. No. 88-02.

**Law reviews.** — For note, "Statutory Proposals for Expanding Outpatient Treatment in New Mexico," see 2 Nat. Res. J. 153 (1962).

For note, "Implementing the Right to Treatment for Involuntarily Confined Mental Patients: *Wyatt v. Stickney*," see 3 N.M.L. Rev. 338 (1973).

For note, "Constitutional Problems of Civil Commitment Procedures in New Mexico," see 6 N.M.L. Rev. 113 (1975).

For article, "Disclosure of Medical Information - Criminal Prosecution of Medicaid Fraud in New Mexico," see 9 N.M.L. Rev. 321 (1979).

For article, "Treating Children Under the New Mexico Mental Health and Developmental Disabilities Code," see 10 N.M.L. Rev. 279 (1980).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 21 Am. Jur. 2d Criminal Law §§ 49, 794 et seq.

When finding or adjudication as to one's mental condition by official or body not clearly judicial is conclusive evidence or has effect of a judgment as regards legal mental status, 108 A.L.R. 47.

Validity and construction of statutes providing for psychiatric examination of accused to determine mental condition, 32 A.L.R.2d 434.

Validity of conditions imposed when releasing person committed to institution as consequence of acquittal of crime on ground of insanity, 2 A.L.R.4th 934.

### **43-1-2. Short title.**

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

**History:** 1953 Comp., § 34-2A-1, enacted by Laws 1977, ch. 279, § 1; 1989, ch. 128, § 2.

## **ANNOTATIONS**

**The 1989 amendment**, effective June 16, 1989, substituted "Chapter 43, Article 1 NMSA 1978" for "Sections 1 through 19 and 21 through 23 of this act".

**Assisted outpatient treatment ordinance preempted by state law.** — The Mental Health and Developmental Disabilities Code, 43-1-1 NMSA 1978 et seq., and the Mental Health Care Treatment Decisions Act, 24-7B-1 NMSA 1978 et seq., create a comprehensive scheme governing the treatment of individuals with mental illness, with or without the consent of those individuals, which together preempt home-rule municipalities from enacting a separate ordinance regulating individuals with mental illness. *Protection and Advocacy Sys. v. City of Albuquerque*, 2008-NMCA-149, 145 N.M. 156, 195 P.3d 1, cert. denied, 2008-NMCERT-009, 145 N.M. 257, 196 P.3d 488.

### **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 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 a client with a developmental 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 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 persons with a mental disorder or a developmental disability;

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. "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. "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

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

History: 1953 Comp., § 34-2A-2, enacted by Laws 1977, ch. 279, § 2; 1978, ch. 161, § 1; 1979, ch. 213, § 1; 1979, ch. 396, § 1; 1989, ch. 128, § 3; 1993, ch. 77, § 231; 2005, ch. 313, § 11; 2007, ch. 46, § 42; 2007, ch. 325, § 9; 2013, ch. 39, § 1.

## ANNOTATIONS

**The 2013 amendment**, effective June 14, 2013, defined "qualified mental health professional licensed for independent practice"; in Subsection I, after "the office of a", deleted "licensed"; in Subsection O, after "mental", deleted "disability" and added "disorder"; in Subsection P, after "persons with a mental", deleted "disability" and added "disorder"; and added Subsection S.

**The 2007 amendment**, effective June 15, 2007, changed "department of health" to "human services department".

**The 2005 amendment**, effective June 17, 2005, in Subsection G, defined "division"; in Subsection I, changed the name of the Las Vegas medical center to the New Mexico behavioral institute at Las Vegas and changed the name of the Los Lunas hospital and training school to the Los Lunas medical center ; and deleted Subsection U, which defined "division".

**The 1993 amendment**, effective July 1, 1993, substituted "department of health" for "health and environment department" in Subsections G, Q, and U; substituted "shall be capable" for "must be capable" near the end of Subsection I; deleted former Subsection



U, defining "residential treatment program for mental disorders"; and redesignated former Subsection V as present Subsection U.

**The 1989 amendment**, effective June 16, 1989, in Subsection I substituted "including the Las Vegas Medical Center" for "the New Mexico state hospital" and added all of the language following "physician"; added present Subsection K; redesignated former Subsections K through O as present Subsections L through P; deleted "as evidenced by behavior causing, attempting or threatening the infliction of serious bodily harm to himself" at the end of present Subsection M; added "but does not mean developmental disability" at the end of present Subsection O; added present Subsection Q; redesignated former Subsections P through U as present Subsections R through V; and made minor stylistic changes throughout the section.

**Behavior threatening harm sufficient.** — The behavior at issue in Subsections M and N does not have to have caused the requisite harm; behavior threatening the requisite harm is sufficient. *State v. Pernell*, 92 N.M. 490, 590 P.2d 638 (Ct. App. 1979).

**Law reviews.** — For article, "Treating Children Under the New Mexico Mental Health and Developmental Disabilities Code," see 10 N.M.L. Rev. 279 (1980).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Test or criterion of mental condition within contemplation of statute providing for commitment of persons because of mental condition, 158 A.L.R. 1220.

Standard of proof required under statute providing for commitment of sexual offenders or sexual psychopaths, 96 A.L.R.3d 840.

#### **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.

History: 1953 Comp., § 34-2A-3, enacted by Laws 1977, ch. 279, § 3; 1978, ch. 161, § 2; 2007, ch. 46, § 43.

#### **ANNOTATIONS**

**Compiler's notes.** — For the meaning of "code", see 43-1-3C and 43-1-2 NMSA 1978.

**The 2007 amendment**, effective June 15, 2007, made non-substantive language changes.

**Attorney's fees for appointed counsel on appeal.** — Upon a finding by the trial court that the client is indigent, an award of attorney's fees for the services of counsel on appeal is proper. *State v. Clayton*, 95 N.M. 644, 625 P.2d 99 (Ct. App. 1981).

**Law reviews.** — For article, "Treating Children Under the New Mexico Mental Health and Developmental Disabilities Code," see 10 N.M.L. Rev. 279 (1980).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53 Am. Jur. 2d Mentally Impaired Persons §§ 3, 24, 35 et seq.

Right to counsel in insanity or incompetency adjudication proceedings, 87 A.L.R.2d 950.

Right of party to have his attorney or physician, or a court reporter, present during his physical or mental examination by a court-appointed expert, 7 A.L.R.3d 881.

Right to notice and hearing prior to revocation of conditional release status of mental patient, 29 A.L.R.4th 394.

57 C.J.S. Mental Health § 31.

### **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.

**History:** 1953 Comp., § 34-2A-4, enacted by Laws 1977, ch. 279, § 4.

## **ANNOTATIONS**

**Section does not bar consideration of history of hospitalizations along with other evidence**, in reaching a conclusion as to a patient's current condition. *State v. Pernell*, 92 N.M. 490, 590 P.2d 638 (Ct. App. 1979).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Admissibility and probative force on issue as to mental condition, of evidence that one had been adjudged incompetent or insane, or had been confined in insane asylum, 7 A.L.R. 568, 68 A.L.R. 1309.

### **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 private 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.

**History:** 1953 Comp., § 34-2A-5, enacted by Laws 1977, ch. 279, § 5; 1978, ch. 161, § 3; 1989, ch. 128, § 4.

## ANNOTATIONS

**The 1989 amendment,** effective June 16, 1989, substituted "client has" for "client shall have" throughout the section, inserted "or certified psychologist" in the fifth sentence of Subsection B, and substituted "twelve months" for "six months" in Subsection G.

**Law reviews.** — For article, "Treating Children Under the New Mexico Mental Health and Developmental Disabilities Code," see 10 N.M.L. Rev. 279 (1980).

For comment, "Mental Health Law - Temporary Detention of 'Voluntary' Patients by Hospital Authorities: Due Process Issues," see 12 N.M.L. Rev. 791 (1982).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Nonconsensual treatment of involuntarily committed mentally ill persons with neuroleptic or antipsychotic drugs as violative of state constitutional guaranty, 74 A.L.R.4th 1099.

Right of state prison authorities to administer neuroleptic or antipsychotic drugs to prisoner without his or her consent - state cases, 75 A.L.R.4th 1124.

Validity, construction, application and effect of Civil Rights of Institutionalized Persons Act, 42 USCS §§ 1997-1997j, 93 A.L.R. Fed. 706.

### **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.

**History:** 1953 Comp., § 34-2A-6, enacted by Laws 1977, ch. 279, § 6.

#### **ANNOTATIONS**

**Law reviews.** — For article, "Treating Children Under the New Mexico Mental Health and Developmental Disabilities Code," see 10 N.M.L. Rev. 279 (1980).

### **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.

**History:** 1953 Comp., § 34-2A-7, enacted by Laws 1977, ch. 279, § 7.

### **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.

**History:** 1953 Comp., § 34-2A-8, enacted by Laws 1977, ch. 279, § 8; 1989, ch. 128, § 5; 1993, ch. 77, § 232.

### ANNOTATIONS

**The 1993 amendment**, effective July 1, 1993, deleted "the client's parent if the client is a minor and the parent has custody of the client" following "the client" in the first sentence of Subsection E.

**The 1989 amendment**, effective June 16, 1989, added present Subsection D; redesignated former Subsection D as present Subsection E; inserted "or certified

psychologist" in the last sentence of present Subsection E; and made minor stylistic changes throughout the section.

**Law reviews.** — For article, "Treating Children Under the New Mexico Mental Health and Developmental Disabilities Code," see 10 N.M.L. Rev. 279 (1980).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Nonconsensual treatment of involuntarily committed mentally ill persons with neuroleptic or antipsychotic drugs as violative of state constitutional guaranty, 74 A.L.R.4th 1099.

### **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 the peace officer's 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 herself or to 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 the admitting physician's designee; or
- (4) a physician, a psychologist or a qualified mental health professional licensed for independent practice who is affiliated with a community mental health center or core service agency has certified that the person, as a result of a mental disorder, presents a likelihood of serious harm to himself or herself or to 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 that person's designee or upon the certification of a physician, a psychologist or a qualified mental health professional licensed for independent practice who is affiliated with a community mental health center or core service agency. 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 physician or certified psychologist certifies that such person, as a result of a mental disorder, presents a likelihood of serious harm to himself or herself or to others and that immediate detention is necessary to prevent such harm. Such certification shall constitute authority to transport the person.

D. A 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 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 proposed client for evaluation and treatment, the proposed 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 right to a hearing within seven days, the right to counsel and the right to communicate with an attorney and a mental health professional of the proposed client's own choosing and shall have the right to receive necessary and appropriate treatment.

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

**History:** 1953 Comp., § 34-2A-9, enacted by Laws 1977, ch. 279, § 9; 1978, ch. 161, § 4; 1979, ch. 396, § 2; 1989, ch. 128, § 6; 2013, ch. 39, § 2.

## ANNOTATIONS



**The 2013 amendment**, effective June 14, 2013, allowed qualified mental health professionals licensed for independent practice to certify that a person presents a danger to that person or others and that immediate detention is necessary to prevent harm and authorized transport of that person to an evaluation facility; in Paragraph (4) of Subsection A, after "a", deleted "licensed", after "physician", deleted "or" and after "a physician, a" deleted "certified" and after "psychologist", added "or a qualified mental health professional licensed for independent practice who is affiliated with a community mental health center or core service agency"; in Subsection B, in the first sentence, after "upon the certification of a" deleted "licensed", after "certification of a physician", deleted "or certified" and added "a", after "psychologist", deleted "as described in Subsection G of this section" and added "or a qualified mental health professional licensed for independent practice who is affiliated with a community mental health center or core service agency"; in Subsection C, after "any person when a", deleted "licensed"; in Subsection E, in the second sentence, after "do not exist to detain the", added "proposed" and after "evaluation and treatment, the" added "proposed"; in Subsection F, after "consequences of the proceedings", deleted "the allegations in the petition, his" and added "the"; after "an attorney and", deleted "an independent" and added "a", and after "mental health professional of", deleted "his" and added "the proposed client's"; and in Subsection G, after "who transports", deleted "any" and added "a proposed".

**The 1989 amendment**, effective June 16, 1989, substituted the present catchline for "Residential mental health treatment of adults - involuntary - emergency"; in Subsection A inserted "and transport" in the introductory paragraph, inserted "likelihood of" in the first sentence of Paragraph (3), and added Paragraph (4); added present Subsection B; redesignated former Subsections B through E as present Subsections C through F; inserted "or certified psychologist" in present Subsections C and E; in present Subsection C substituted "for an emergency based admission" for "on an emergency basis" in the first sentence and added the second sentence; and added Subsection G.

**Protection against unreasonable seizure.** — To the extent that the involuntary seizure of a person for an emergency mental health evaluation mirrors a criminal arrest, the Fourth Amendment's protection against unreasonable searches and seizures more specifically applies to the involuntary seizure for emergency mental health purposes than the Fourteenth Amendment's general substantive and procedural due process guarantees. *Pino v. Higgs*, 75 F.3d 1461 (10th Cir. 1996).

**Probable cause analysis applies.** — In the criminal arrest context, a Fourth Amendment seizure is reasonable if it is based on "probable cause"; because similar underlying interests arise in the context of a detention for an emergency health evaluation, the "probable cause" doctrine applies in determining the validity of the government's seizure of a person for mental health reasons. *Pino v. Higgs*, 75 F.3d 1461 (10th Cir. 1996).

**Twenty-four hour detention limitation.** — The provisions of Subsection D are clear and unambiguous - mentally ill persons being held in detention facilities pending

transfer to a proper evaluation facility may not be so confined for a period longer than twenty-four hours. By including this specific time limitation and failing to make exceptions for weekends and legal holidays, the legislature intended the twenty-four hour limitation to apply in all instances, including weekends and legal holidays. 1990 Op. Att'y Gen. No. 90-15.

**Requirements for criminal bail do not apply as basis for considering stay of commitment order.** State v. Pernell, 92 N.M. 490, 590 P.2d 638 (Ct. App. 1979).

**Court may consider circumstances.** — In considering the question of a release during commitment proceedings, the trial court may consider the circumstances alleged, and after ordering a commitment may consider the circumstances as well as the length of the commitment ordered. State v. Pernell, 92 N.M. 490, 590 P.2d 638 (Ct. App. 1979).

**"Right" to stay of commitment order is not absolute.** State v. Pernell, 92 N.M. 490, 590 P.2d 638 (Ct. App. 1979).

**Appellate review for abuse of discretion.** — Appellate review is on the basis of whether the trial court's order in connection with a stay was an abuse of discretion. State v. Pernell, 92 N.M. 490, 590 P.2d 638 (Ct. App. 1979).

**Private physician's 42 U.S.C. 1983 liability.** — A private physician who certifies a person for purposes of Subsection A is not subject to Section 1983 liability simply because a state police officer responds by transporting or detaining that person. Pino v. Higgs, 75 F.3d 1461 (10th Cir. 1996).

**Law reviews.** — For comment, "Mental Health Law - Temporary Detention of 'Voluntary' Patients by Hospital Authorities: Due Process Issues," see 12 N.M.L. Rev. 791 (1982).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53 Am. Jur. 2d Mentally Impaired Persons § 3 et seq.

Modern status of rules as to standard of proof required in civil commitment proceedings, 97 A.L.R.3d 780.

Necessity and sufficiency of statements informing one under investigation for involuntary commitment of right to remain silent, 23 A.L.R.4th 563.

57 C.J.S. Mental Health § 21 et seq.

### **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.

History: 1953 Comp., § 34-2A-10, enacted by Laws 1977, ch. 279, § 10; 1978, ch. 161, § 5; 1979, ch. 396, § 3; 1989, ch. 128, § 7; 2009, ch. 159, § 14.

## ANNOTATIONS

**The 2009 amendment**, effective June 19, 2009, in Subsection A, in the second sentence, deleted "the division" and added the article "A"; and in the last sentence, added "the client's guardian, and treatment guardian if one has been appointed"; and added Subsections C and D.

**The 1989 amendment**, effective June 16, 1989, substituted the present language of Subsection D for "If the court finds that the client meets the criteria for commitment set forth in Subsection C of this section but does not require residential care, it may order the client to undergo such nonresidential treatment as may be appropriate and necessary", and made minor stylistic changes throughout the section.

**Civil commitment interests generally.** — In the civil commitment situation, the interests of the state are pitted against restrictions on the liberty of the individual. The language of 34-2-5, 1953 Comp. (now repealed) indicated that the aim of the state is first to protect society from the mentally ill, a manifestation of the state's police power, and also to protect the mentally ill from themselves, while providing care and treatment. In re Valdez, 88 N.M. 338, 540 P.2d 818 (1975).

**Nature of commitment process.** — The civil commitment process, though technically a civil proceeding, has elements of both criminal and civil proceedings, with some of the

rights guaranteed to criminal defendants applicable to defendants in commitment hearings. In re Valdez, 88 N.M. 338, 540 P.2d 818 (1975).

**Compliance with due process mandated.** — Compliance with due process requirements, as far as the burden of proof in commitment proceedings for the mentally ill is concerned, is mandated. In re Valdez, 88 N.M. 338, 540 P.2d 818 (1975).

**Proof beyond reasonable doubt too stringent.** — Although the highest standard of proof would be desirable, in the civil commitment process, proof beyond a reasonable doubt is too stringent a standard to be applied. In re Valdez, 88 N.M. 338, 540 P.2d 818 (1975).

**Proof that is clear, cogent and convincing is highest standard** of proof possible at the current state of the medical arts. For evidence to be clear and convincing, it must instantly tilt the scales in the affirmative when weighed against the evidence in opposition and the fact finder's mind must be left with an abiding conviction that the evidence is true. In re Valdez, 88 N.M. 338, 540 P.2d 818 (1975).

The state's interests are sufficient and the realities of treatment are adequate to justify subjecting individuals to possible commitment based on a "clear and convincing" standard of proof. In re Valdez, 88 N.M. 338, 540 P.2d 818 (1975).

**Preponderance of evidence is definitely constitutionally unacceptable** for civil commitment hearings, in view of the fact that fundamental liberties of the patient are so often at stake. In re Valdez, 88 N.M. 338, 540 P.2d 818 (1975)(decided under former law).

**The seven-day hearing requirement was constitutional.** — The seven-day time limitation within this section is not constitutionally required; moreover, the 14-day delay in this case did not violate the respondent's due process rights. N.M. Dep't of Health v. Compton, 2001-NMSC-032, 131 N.M. 204, 34 P.3d 593.

**Hearing may be postponed for good cause.** — Seven-day hearing requirement in Subsection A is subject to postponement for good cause and should be narrowly prescribed and allowed only for so long as necessity demands; a determination of good cause should consider: (1) any objection by the client; (2) the client's substantial interest in not being mistakenly confined against his or her will; and (3) the legislature's intent to require a prompt hearing on a thirty-day commitment petition. N.M. Dep't of Health v. Compton, 2001-NMSC-032, 131 N.M. 204, 34 P.3d 593.

**Hearing deadline violation remedy.** — In light of the urgent need for treatment in civil commitment cases, the potentially harmful consequences to either the individual or to others for an improper release, the express provision of a statutory remedy, and the availability of the alternative remedy of habeas corpus, the legislature did not intend dismissal of the petition as a proper remedy for a violation of the time requirements in

this section. N.M. Dep't of Health v. Compton, 2001-NMSC-032, 131 N.M. 204, 34 P.3d 593.

**Hearing to be set with time for counsel to prepare case.** — To ensure the effectiveness of the right to counsel guaranteed by Subsection B, the hearing required by Subsection A to be held within seven days must be set so that counsel has sufficient time to prepare his client's case; even if the hearing must be held beyond the seven-day limit. State v. Bunnell, 100 N.M. 242, 668 P.2d 1119 (Ct. App. 1983).

**Need for preliminary hearing if hearing not within seven days.** — If the hearing required by Subsection A cannot be held within seven days because of a client's counsel's need for time to prepare the case, the trial court must hold a preliminary hearing to determine whether the state can present sufficient evidence to justify holding the client beyond the seven-day emergency period allowed under 43-1-10 NMSA 1978. State v. Bunnell, 100 N.M. 242, 668 P.2d 1119 (Ct. App. 1983).

**No requirement that persons making screening report testify at hearing.** — There is no implicit requirement that the person or persons making the initial screening report required by Subsection A testify at the hearing. State v. Dean, 94 N.M. 45, 607 P.2d 132 (Ct. App.), cert. denied, 94 N.M. 628, 614 P.2d 545 (1980).

**Right to appeal commitment.** — A person involuntarily committed to a mental hospital under this section has a right to appeal under N.M. Const., art. VI, § 2, even though no appeal is provided for by statute. State v. Pernell, 92 N.M. 490, 590 P.2d 638 (Ct. App. 1979).

**Entitlement to independent mental health professional.** — The language of Subsections B and D of 43-1-12 NMSA 1978, when read along with the provisions of this section, clearly evinces a legislative intent to accord to a client the right to the assistance of an independent mental health professional. Dominguez v. State, 110 N.M. 618, 798 P.2d 219 (Ct. App. 1990).

**Effective treatment to be afforded.** — Mental illness is not a crime, and thus patients must be afforded some type of effective treatment since their liberty is abridged. In re Valdez, 88 N.M. 338, 540 P.2d 818 (1975).

**Mere custodial care is not sufficient.** In re Valdez, 88 N.M. 338, 540 P.2d 818 (1975).

**Only district attorneys may file petitions.** — A private attorney may not petition a court for involuntary commitment of an adult to a mental health facility. Only district attorneys may file petitions for involuntary commitment of adults. 1988 Op. Att'y Gen. No. 88-02.

**Law reviews.** — For article, "Treating Children Under the New Mexico Mental Health and Developmental Disabilities Code," see 10 N.M.L. Rev. 279 (1980).

For comment, "Mental Health Law - Temporary Detention of 'Voluntary' Patients by Hospital Authorities: Due Process Issues," see 12 N.M.L. Rev. 791 (1982).

For article, "The Guilty But Mentally Ill Verdict and Plea in New Mexico," see 13 N.M.L. Rev. 99 (1983).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Test or criterion of mental condition within contemplation of statute providing for commitment of persons because of mental condition, 158 A.L.R. 1220.

Modern status of rules as to standard of proof required in civil commitment proceedings, 97 A.L.R.3d 780.

Necessity and sufficiency of statements informing one under investigation for involuntary commitment of right to remain silent, 23 A.L.R.4th 563.

### **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.

History: 1953 Comp., § 34-2A-11, enacted by Laws 1977, ch. 279, § 11; 1978, ch. 161, § 6; 2009, ch. 159, § 15.

## ANNOTATIONS

**Compiler's notes.** — For the meaning of "code", see 43-1-3C and 43-1-2 NMSA 1978.

**The 2009 amendment**, effective June 19, 2009, in Subsection A, at the beginning of the sentence, deleted "The department" and added the article "A" and in the last sentence, added "the client's guardian, and treatment guardian if one has been appointed"; in Subsection B, changed 34-2A-10 NMSA 1978 to 43-1-11 NMSA 1978; added Subsections C and D; and in Subsection H, changed 34-2A-13 NMSA 1978 to 43-1-14 NMSA 1978.

**Entitlement to independent mental health professional.** — The language of Subsections B and D, when read along with the provisions of 43-1-11 NMSA 1978, clearly evinces a legislative intent to accord to a client the right to the assistance of an independent mental health professional. *Dominguez v. State*, 110 N.M. 618, 798 P.2d 219 (Ct. App. 1990).



**Payment of cost for independent mental health professional.** — The state is required to defray the reasonable cost of providing an independent mental health professional for an indigent client. *Dominguez v. State*, 110 N.M. 618, 798 P.2d 219 (Ct. App. 1990).

**Law reviews.** — For article, "Treating Children Under the New Mexico Mental Health and Developmental Disabilities Code," see 10 N.M.L. Rev. 279 (1980).

For article, "Habeas Corpus in New Mexico," see 11 N.M.L. Rev. 291 (1981).

For comment, "Mental Health Law - Temporary Detention of 'Voluntary' Patients by Hospital Authorities: Due Process Issues," see 12 N.M.L. Rev. 791 (1982).

For article, "The Guilty But Mentally Ill Verdict and Plea in New Mexico," see 13 N.M.L. Rev. 99 (1983).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Standard of proof required under statute providing for commitment of sexual offenders or sexual psychopaths, 96 A.L.R.3d 840.

Modern status of rules as to standard of proof required in civil commitment proceedings, 97 A.L.R.3d 780.

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

A. A guardian appointed pursuant to the Uniform Probate Code [Chapter 45 NMSA 1978] 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.

History: 1953 Comp., § 34-2A-12, enacted by Laws 1977, ch. 279, § 12; 1978, ch. 161, § 7; 2009, ch. 159, § 16.

## ANNOTATIONS

**Cross references.** — For Office of Guardianship Act, see 28-16B-1 NMSA 1978.

**The 2009 amendment,** effective June 19, 2009, in Subsection A, deleted "the department or" and changed "ward" to "the protected person"; in Subsection B, deleted "the department or" and added "an"; in Subsection C, deleted "department or"; and added Subsections E and F.

**Petition for court order provides adversary hearing.** — A petition for a court order under this section does not involve a judicial review of administrative action. Rather it provides for an adversary hearing between the health and environment department (now the department of health) and the patient. *State v. Clayton*, 95 N.M. 644, 625 P.2d 99 (Ct. App. 1981).

**Court may order specific placement.** — Subsections E and F authorize the district court to order the specific placement of an individual client within an adequate habilitation program. *State v. Clayton*, 95 N.M. 644, 625 P.2d 99 (Ct. App. 1981).

**Commitment facility as site for hearing.** — Absent a showing by the "developmentally disabled" person that his substantive rights have in any way been abridged if his involuntary commitment hearing is not held at the county seat, the district court is not precluded from adopting the practice of holding such hearings at the commitment facility when, in its discretion, such practice would better serve the public convenience. 1979 Op. Att'y Gen. No. 79-20.

**Law reviews.** — For article, "Treating Children Under the New Mexico Mental Health and Developmental Disabilities Code," see 10 N.M.L. Rev. 279 (1980).

For article, "Habeas Corpus in New Mexico," see 11 N.M.L. Rev. 291 (1981).

For comment, "Mental Health Law - Temporary Detention of 'Voluntary' Patients by Hospital Authorities: Due Process Issues," see 12 N.M.L. Rev. 791 (1982).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Modern status of rules as to standard of proof required in civil commitment proceedings, 97 A.L.R.3d 780.

Necessity and sufficiency of statements informing one under investigation for involuntary commitment of right to remain silent, 23 A.L.R.4th 563.

**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 [Chapter 45 NMSA 1978], an agent or surrogate under the Uniform Health-Care Decisions Act [Chapter 24, Article 7A NMSA 1978] or an agent under the Mental Health Care Treatment Decisions Act [Chapter 24, Article 7B NMSA 1978] 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.

History: 1953 Comp., § 34-2A-13, enacted by Laws 1977, ch. 279, § 13; 1978, ch. 161, § 8; 2009, ch. 159, § 17.

## ANNOTATIONS

**Compiler's notes.** — For the meaning of "code", see 43-1-3C and 43-1-2 NMSA 1978.

**The 2009 amendment,** effective June 19, 2009, in Subsection A, at the beginning of the sentence, deleted "Consistent with the provisions of Section 34-2A-15 NMSA 1978, any"; and added Subsection B.

**Law reviews.** — For article, "Treating Children Under the New Mexico Mental Health and Developmental Disabilities Code," see 10 N.M.L. Rev. 279 (1980).

For comment, "Mental Health Law - Temporary Detention of 'Voluntary' Patients by Hospital Authorities: Due Process Issues," see 12 N.M.L. Rev. 791 (1982).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53 Am. Jur. 2d Mentally Impaired Persons §§ 3, 5, 152.

**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 [Chapter 45 NMSA 1978] 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.

History: 1953 Comp., § 34-2A-14, enacted by Laws 1977, ch. 279, § 14; 1978, ch. 161, § 9; 1979, ch. 140, § 1; 1989, ch. 128, § 8; 1993, ch. 240, § 8; 1993, ch. 249, § 8; 1999, ch. 239, § 1; 2009, ch. 159, § 18.

## ANNOTATIONS

**Compiler's notes.** — For the meaning of "code", see 43-1-3C and 43-1-2 NMSA 1978.

**The 2009 amendment**, effective June 19, 2009, in Subsection B, added "the mental health or developmental disabilities professional or physician or other interested person"; added Subsection D; in Subsection E, added "by clear convincing evidence"; in Subsection E, at the beginning of the third sentence, added "The treatment guardian"; in Subsection H, added "or other agents or guardians" and deleted "as he deems appropriate", and added "to the extent reasonably practical"; in Subsection I, added "the client, physician or other professional"; and in Subsection J, added the third sentence.

**The 1999 amendment**, effective April 7, 1999, in Subsection A inserted "psychotropic medication" in the first sentence and added the third sentence, and added the third sentence in Subsection F.

**The 1993 amendment**, effective June 18, 1993, added the second sentence of Subsection E. Laws 1993, ch. 240, § 8 and Laws 1993, ch. 249, § 8 enacted identical amendments to this section. The section was set out as amended by Laws 1993, ch. 249, § 8. See 12-1-8 NMSA 1978.

**The 1989 amendment**, effective June 16, 1989, in Subsection A substituted "informed consent" for "expressing a decision regarding its acceptance or refusal" in the second sentence; in Subsection B substituted "client" for "patient" in the second sentence, deleted "to be represented by counsel" following "present," in the fourth sentence, and added the present ninth and tenth sentences; substituted "client" for "patient" in Subsection D; substituted "the code" for "this code" in Subsection E; and made minor stylistic changes throughout the section.

**Burden of proof.** — The burden of proof in cases seeking to appoint a treatment guardian is on the party seeking to have the guardianship approved, and the moving party must establish such need by clear and convincing evidence. *Sanders v. N.M. Health & Env't Dept'*, 108 N.M. 434, 773 P.2d 1241 (Ct. App. 1989).

Subsection D (now J) requires that the petitioner make a prima facie showing that he is capable of making informed treatment decisions in any action initiated by him seeking to terminate the appointment of a treatment guardianship during the period of the existing guardianship. To establish a prima facie case petitioner is required to establish that he is capable of understanding the proposed treatment and its consequences and capable of expressing a decision thereon. *Sanders v. N.M. Health & Env't Dep't*, 108 N.M. 434, 773 P.2d 1241 (Ct. App. 1989).

**Hearing postponement permissible.** — Where a patient's hearing on the petition for a treatment guardian was delayed one week due to the judge's illness, the computed delay of five days did not substantially interfere with the patient's right to prompt treatment; good cause existed, and the patient's liberty interest was not implicated. *N.M. Dep't of Health v. Compton*, 2001-NMSC-032, 131 N.M. 204, 34 P.3d 593.

**Hearing deadline violation remedy.** — In light of the urgent need for treatment in civil commitment cases, the potentially harmful consequences to either the individual or to others for an improper release, the express provision of a statutory remedy, the legislature did not intend dismissal of the petition as a proper remedy for a violation of the time requirements in this section. *N.M. Dep't of Health v. Compton*, 2001-NMSC-032, 131 N.M. 204, 34 P.3d 593.

**Law reviews.** — For article, "Treating Children Under the New Mexico Mental Health and Developmental Disabilities Code," see 10 N.M.L. Rev. 279 (1980).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Nonconsensual treatment of involuntarily committed mentally ill persons with neuroleptic or antipsychotic drugs as violative of state constitutional guaranty, 74 A.L.R.4th 1099.

### **43-1-16 to 43-1-18. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1993, ch. 77, § 234F repealed 43-1-16, and 43-1-16.1 to 43-1-18 NMSA 1978, as amended by Laws 1989, ch. 128, § 9, enacted by Laws 1979, ch. 213, § 3, amended by Laws 1978, ch. 161, § 11, and enacted by Laws 1977, ch. 279, § 17, respectively, relating to treatment of minors and right to education, effective July 1, 1993. For provisions of former sections, see the 1992 NMSA 1978 on *NMONESOURCE.COM*. For present comparable provisions, see 32A-6-1 to 32A-6-21 NMSA 1978.

### **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.

History: 1953 Comp., § 34-2A-8, enacted by Laws 1977, ch. 279, § 18; 1989, ch. 128, § 5; 1993, ch. 77, § 232; 2007, ch. 46, § 44; 2009, ch. 159, § 19.

## ANNOTATIONS

**Compiler's notes.** — For the meaning of "code", see 43-1-3C and 43-1-2 NMSA 1978.

**The 2009 amendment,** effective June 19, 2009, added Subsection H.

**The 2007 amendment,** effective June 15, 2007, made non-substantive language changes.

**The 1998 amendment,** effective on May 20, 1998, substituted "that" for "which" preceding "may" in Paragraph C(2), and deleted Subsection H.

**The 1993 amendment,** effective July 1, 1993, deleted former Subsection B(3), which read "when the disclosure of such information to the parent or the legal guardian is

essential for the treatment of the minor", and redesignated former Paragraphs (4) and (5) of Subsection B as present Paragraphs (3) and (4).

**The 1989 amendment**, effective June 16, 1989, substituted "the code" for "this code" in Subsections A and G; in Subsection B added present Paragraph (4) and redesignated former Paragraph (4) as present Paragraph (5); and made minor stylistic changes throughout the section.

**Law reviews.** — For article, "Disclosure of Medical Information - Criminal Prosecution of Medicaid Fraud in New Mexico," see 9 N.M.L. Rev. 321 (1979).

For article, "Treating Children Under the New Mexico Mental Health and Developmental Disabilities Code," see 10 N.M.L. Rev. 279 (1980).

### **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.

**History:** 1953 Comp., § 34-2A-19, enacted by Laws 1977, ch. 279, § 19.

## **ANNOTATIONS**

**Compiler's notes.** — For the meaning of "code", see 43-1-3C and 43-1-2 NMSA 1978.

**Law reviews.** — For article, "Treating Children Under the New Mexico Mental Health and Developmental Disabilities Code," see 10 N.M.L. Rev. 279 (1980).

### **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.

**History:** 1953 Comp., § 34-2A-20, enacted by Laws 1977, ch. 279, § 21.

## ANNOTATIONS

**Hospital maintains and has jurisdiction of every patient who is released** as an improved patient on convalescent status as long as he is within the jurisdiction of the state of New Mexico, and, if said patient refuses to return when ordered by the hospital, the hospital, after having said order endorsed by the judge of the district court of the county in which the patient is resident or present, can compel the patient to return to the hospital, if he can be located. 1953-54 Op. Att'y Gen. No. 54-5901 (opinion rendered under former law).

**Until removed into another jurisdiction.** — As soon as a patient removes himself from the jurisdiction of the state of New Mexico and goes into another jurisdiction, the hospital loses control and jurisdiction over the patient, for the reason that the board would not have any jurisdiction. 1953-54 Op. Att'y Gen. No. 54-5901 (opinion rendered under former law).

### **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.

**History:** 1953 Comp., § 34-2A-21, enacted by Laws 1977, ch. 279, § 22.

### **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 [41-4-1 through 41-4-27 NMSA 1978].

**History:** 1953 Comp., § 34-2A-22, enacted by Laws 1977, ch. 279, § 23; 1978, ch. 161, § 13.

## ANNOTATIONS

**Compiler's notes.** — For the meaning of "this code", see 43-1-3C and 43-1-2 NMSA 1978.

### **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.

**History:** 1953 Comp., § 34-2A-23, enacted by Laws 1978, ch. 161, § 14.

#### **ANNOTATIONS**

**Compiler's notes.** — For the meaning of "this code", see 43-1-3C and 43-1-2 NMSA 1978.

**Law reviews.** — For article, "Treating Children Under the New Mexico Mental Health and Developmental Disabilities Code," see 10 N.M.L. Rev. 279 (1980).

### **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.

**History:** 1953 Comp., § 34-2A-24, enacted by Laws 1978, ch. 161, § 15.

#### **ANNOTATIONS**

**Reimbursement from county under Indigent Hospital Claims Act.** — Individuals committed to private or county-operated facilities under statutory involuntary commitment procedures are responsible for their hospital expenses, and eligible hospitals treating indigent patients may look to the applicable county for reimbursement under the Indigent Hospital Claims Act. 1989 Op. Att'y Gen. No. 89-35.

## **ARTICLE 1A**

### **Developmental Disabilities Community Services**

(Recompiled)

#### **43-1A-1 to 43-1A-12. Recompiled.**

#### **ANNOTATIONS**

**Recompilations.** — Sections 43-1A-1 to 43-1A-12 NMSA 1978, as enacted by Laws 1984, Chapter 100, have been recompiled as 28-16-1 to 28-16-12 NMSA 1978. Sections 28-16-1 to 28-16-12 NMSA 1978 were repealed by Laws 1993, ch. 50, § 19. For present comparable provisions, see 28-16A-1 to 28-16A-18 NMSA 1978.

## **ARTICLE 2**

# **Alcoholics and Intoxicated Persons; Detoxification**

### **43-2-1. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1983, ch. 177, § 11, repealed 43-2-1 NMSA 1978, as enacted by Laws 1977, ch. 253, § 50, relating to the definition of "division", effective June 17, 1983.

#### **43-2-1.1. Short title.**

Chapter 43, Article 2 NMSA 1978 may be cited as the "Detoxification Reform Act".

History: Laws 2005, ch. 198, § 1.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 198, § 12 made Laws 2005, ch. 198, § 1 effective July 1, 2005.

### **43-2-2. Definitions.**

As used in the Detoxification Reform Act:

A. "alcohol-impaired person" means a person who uses alcoholic beverages to the extent that the person's health and well-being are substantially impaired or endangered;

B. "authorized person" means a physician or police officer;

C. "consistent with the least drastic means principle" means that the habilitation, protective custody or treatment and the conditions of habilitation, protective custody or treatment separately and in combination:

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

(2) involve no restrictions on physical movement except as reasonably necessary for the administration of treatment, for the security of the facility or for the protection of the person committed or another from physical injury;

D. "department" means the department of health;

E. "detention center" means a city, county or other jail, the administration of which agrees to accept intoxicated persons for protective custody; provided, however, that a detention center is authorized to hold a person in protective custody pursuant to Section 43-2-8 NMSA 1978 but is not otherwise subject to the provisions of the Detoxification Reform Act;

F. "drug-impaired person" means a person who uses drugs to the extent that the person's health and well-being are substantially impaired or endangered;

G. "incapacitated person" means a person who, as a result of the use of alcohol or drugs, is unconscious or has the person's judgment otherwise so impaired that the person is incapable of realizing and making rational decisions;

H. "intoxicated person" means a person whose mental or physical functioning is substantially impaired as a result of the use of alcohol or drugs;

I. "likely to inflict serious physical harm on another" means that it is more likely than not that in the near future the 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 that person;

J. "likely to inflict serious physical harm on himself" 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 himself by violent or passive or other self-destructive means as evidenced by behavior causing, attempting or threatening the infliction of serious bodily harm to himself;

K. "protective custody" means confinement of an intoxicated person, for a period not less than twelve hours or more than seventy-two hours in length and under conditions consistent with the least drastic means principle;

L. "treatment" means the broad range of emergency, outpatient, intermediate and inpatient services and care, including protective custody, diagnostic evaluation, medical, psychiatric, psychological and social service care, vocational rehabilitation and career counseling, which may be extended to alcohol-impaired, drug-impaired and intoxicated persons; and

M. "treatment facility" means:

(1) an institution under the supervision of the department and approved by the department for the care and treatment of alcohol-impaired persons or drug-impaired persons;

(2) a public institution approved by the department for the care and treatment of alcohol-impaired persons or drug-impaired persons, but not specifically under the supervision of the department; or

(3) any other facility that provides any of the services specified in the Detoxification Reform Act and is licensed by the department for those services.

History: 1953 Comp., § 46-12-2, enacted by Laws 1977, ch. 374, § 1; 1979, ch. 264, § 1; 1983, ch. 177, § 2; 1989, ch. 47, § 1; 2005, ch. 198, § 2.

## ANNOTATIONS

**Repeals.** — Laws 1976 (S.S.), ch. 9, § 14, repealed former 46-12-2, 1953 Comp., relating to officers of the commission on alcoholism, effective July 1, 1976.

**The 2005 amendment**, effective July 1, 2005, changed the statutory reference to the Detoxification Reform Act; in Subsection A, defined "alcohol-impaired person" and deleted the former definition of "alcoholic"; deleted former Subsection B, which defined "approved private treatment facility"; deleted former Subsection C, which defined "approved public treatment facility"; added a new Subsection B, which defined "authorized person"; added a new Subsection C, which defined "consistent with the least drastic means principle"; deleted former Subsection E, which defined "division" and added a new Subsection E, which defined "detention center"; deleted from the definition of "drug-impaired person" the requirement that a person habitually lacks self-control as to the use of drugs and that his social or economic function be substantially disrupted; added Subsection I, which defined "likely to inflict serious physical harm on another"; added a new Subsection J, which defined "likely to inflict serious physical harm on himself"; added a new Subsection K, which defined "protective custody"; in Subsection L, included "protective custody" in the definition of "treatment"; deleted former Subsection J, which defined "consistent with the least drastic means principle"; deleted former Subsection K, which defined "likely to inflict serious physical harm on himself"; deleted former Subsection L, which defined "likely to inflict serious physical harm on another"; and added Subsection M, which defined "treatment facility".

**The 1989 amendment**, effective June 16, 1989, inserted "or drug-impaired persons" following "alcoholics" in Subsections B and C, substituted "substance abuse bureau" for "alcoholism bureau" in Subsection C, added present Subsection F, redesignated former Subsections F through K as present Subsections G through L, and inserted "or drugs" in Subsections G and H.

### **43-2-3. Policy of state regarding substance abuse.**

It is the policy of this state that intoxicated and incapacitated persons may not be subjected to criminal prosecution, but rather should be afforded protection. It is further the policy of this state that alcohol-impaired persons and drug-impaired persons should



be afforded treatment in order that they may lead normal lives as productive members of society.

History: 1978 Comp., § 43-2-3, enacted by Laws 1989, ch. 378, § 4; 2005, ch. 198, § 3.

## ANNOTATIONS

**Repeals and reenactments.** — Laws 1989, ch. 378, § 4 repealed 43-2-3 NMSA 1978, as amended by Laws 1989, ch. 378, § 1 and enacted a new section, effective July 1, 1991.

**The 2005 amendment,** effective July 1, 2005, provided that the policy of the state is that incapacitated persons may not be subjected to criminal prosecution, that intoxicated and incapacitated persons should be afforded protection and that alcohol-impaired persons and drug-impaired persons should be afforded treatment.

**Prosecution for disorderly conduct while intoxicated.** — The Detoxification Reform Act does not preclude criminal prosecution for disorderly conduct when the accused's conduct otherwise satisfies the statutory elements of the charge, regardless of whether the offender is intoxicated. *State v. Correa*, 2009-NMSC-051, 147 N.M. 291, 222 P.3d 1.

**Prosecution for battery upon a health care worker.** — Where defendant was in protective custody due to intoxication and while defendant was still intoxicated, defendant committed a battery upon a health care worker, the Detoxification Reform Act did not preclude criminal prosecution of defendant for battery upon a health care worker under 30-3-9.2 NMSA 1978. *State v. Tsosie*, 2011-NMCA-115, 150 N.M. 754, 266 P.3d 34, cert. denied, 2011-NMCERT-010.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Prosecution of chronic alcoholic for drunkenness offenses, 40 A.L.R.3d 321.

### **43-2-4. Adoption and enforcement of laws by a political [political] subdivision.**

A. No county, municipality or other political subdivision may adopt or enforce a local law, ordinance, resolution or rule having the force of law that includes drinking, being a common drunkard or being found in an intoxicated condition as one of the elements of the offense giving rise to a criminal or civil penalty or a sanction.

B. No county, municipality or other political subdivision may interpret or apply any law of general application to circumvent he [the] provision of Subsection A of this section.

C. Nothing in this section affects any law, ordinance, resolution or rule against driving under the influence of alcohol or drugs or other similar offense involving the operation of a vehicle, aircraft, boat, machinery or other equipment or regarding the

sale, purchase, dispensing, possessing or use of alcoholic beverages at stated times and places or by a particular class of persons.

**History:** 1978 Comp., § 43-2-4, enacted by Laws 1989, ch. 378, § 5.

### ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Repeals and reenactments.** — Laws 1989, ch. 378, § 5 repealed 43-2-4 NMSA 1978, as enacted by Laws 1977, ch. 374, § 3, relating to adoption and enforcement of laws by a political subdivision, and enacted a new section, effective July 1, 1991.

### 43-2-5. Duties of the department.

A. The department shall study the problem of alcoholism and drug abuse, including methods and facilities available for the care, custody, detention, treatment, employment and rehabilitation of persons addicted to the intemperate use of spirituous or intoxicating liquors or drugs. The department shall promote meetings for the discussion of problems confronting treatment facilities, clinics and agencies engaged in protective custody, treatment and rehabilitation of alcohol-impaired persons and drug-impaired persons and shall disseminate information on the subject of alcoholism and drug abuse for the assistance and guidance of residents and courts of the state.

B. The department shall make such reasonable rules for treatment facilities concerning physical conditions for protective custody commitments pursuant to Section 43-2-8 NMSA 1978 as it deems necessary, including such rules it deems appropriate for minors.

History: 1941 Comp., § 61-1203, enacted by Laws 1949, ch. 114, § 3; 1953 Comp., § 46-12-3; Laws 1957, ch. 12, § 1; 1976 (S.S.), ch. 9, § 3; 1977, ch. 253, § 51; 1977, ch. 374, § 4; 1983, ch. 177, § 3; 1989, ch. 47, § 3; 2005, ch. 198, § 4.

### ANNOTATIONS

**The 2005 amendment**, effective July 1, 2005, provided in Subsection A that the department shall promote discussions confronting treatment facilities and clinics and agencies engaged in protective custody of alcohol-impaired persons; deleted in Subsection A the requirement that the bureau suggest regulations respecting care and treatment of persons committed to state institutions because of alcoholism or drugs; provided in Subsection B that the department shall make rules for treatment facilities concerning physical conditions for protective custody commitments, including rules for minors; and deleted former Subsections A through E which provided standards to guide the division in the promulgation of regulations with respect to treatment programs.

**The 1989 amendment**, effective June 16, 1989, substituted "substance abuse" for "alcoholism" in the catchline and in the first sentence of the undesignated introductory paragraph; and in the undesignated introductory paragraph inserted "and drug abuse" and "or drugs" in the first sentence, inserted "and drug-impaired persons" and "and drug abuse" in the second sentence, in the third sentence twice substituted "care and treatment" for "care, treatment and discipline" and inserted "or impairment due to drugs", and substituted "alcoholics, intoxicated persons and persons impaired by drugs" for "alcoholics and intoxicated persons" at the end of the fourth sentence.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 41 Am. Jur. 2d Incompetent Persons § 35.

### **43-2-6. Gifts.**

The bureau may accept or refuse on behalf of and in the name of the state any gift of any valuable thing, however the gift be created, for any purpose connected with the work of the bureau. Any such property so given shall be received and held by the state treasurer, but the division, upon recommendation of the governor and with the approval of the state board of finance, shall have the power to direct the disposition of any property so donated to it for any purpose consistent with the terms and conditions under which such gift was created.

**History:** 1941 Comp., § 61-1205, enacted by Laws 1949, ch. 114, § 5; 1953 Comp., § 46-12-5; Laws 1957, ch. 12, § 3; 1976 (S.S.), ch. 9, § 4; 1983, ch. 177, § 4.

### **43-2-7. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1978, ch. 154, § 1, repealed 46-12-6, 1953 Comp. (43-2-7 NMSA 1978), relating to the chief of the division.

### **43-2-8. Protective custody.**

A. An intoxicated or incapacitated person may be committed to a treatment facility at the request of an authorized person for protective custody, if the authorized person has probable cause to believe that the person to be committed:

- (1) is disorderly in a public place;
- (2) is unable to care for the person's own safety;
- (3) has threatened, attempted or inflicted physical harm on himself or another;
- (4) has threatened, attempted or inflicted damage to the property of another;

- (5) is likely to inflict serious physical harm on himself;
- (6) is likely to inflict serious physical harm on another; or
- (7) is incapacitated by alcohol or drugs.

A refusal to undergo treatment does not constitute conclusive evidence of lack of judgment as to the need for treatment.

B. An authorized person shall make a written application for commitment under this section, directed to the administration of the treatment facility. The application shall state facts in support of the need for protective custody.

C. Upon approval of the form of the application by the administration in charge of the treatment facility, the person shall be retained at the facility to which the person was admitted or transferred to another appropriate treatment facility until discharged under Subsection E of this section.

D. The administration in charge of a treatment facility may refuse an application if the treatment facility is at its relevant capacity or if the person to be committed is deemed too ill, injured, disruptive or dangerous to himself or another to be managed at the treatment facility.

E. An intoxicated person transported to a treatment facility pursuant to this subsection shall not be detained at the facility:

(1) once the person's blood or breath alcohol concentration level is zero, if alcohol-impaired, and there is no probable cause to believe the person remains at risk of physical harm to himself or another; or

(2) for more than seventy-two hours after admission, absent pendency of a petition filed pursuant to Section 43-2-9 NMSA 1978.

F. An intoxicated person held in protective custody pursuant to the Detoxification Reform Act shall not be considered to have been arrested or charged with any crime.

G. A record of protective custody shall not be considered as an arrest or criminal record.

H. A copy of the written application for commitment and a written explanation of the person's right to contact counsel shall be given by the administration to the person as soon as practicable after commitment. The administration of the treatment facility shall arrange translation of the application and explanation of rights for those who are unable to read the same. The administration shall also provide a reasonable opportunity for the person to contact counsel.

History: 1953 Comp., § 46-12-6.1, enacted by Laws 1977, ch. 374, § 5; 1979, ch. 264, § 2; 1985, ch. 182, § 1; 1989, ch. 47, § 4; 2005, ch. 198, § 5.

## ANNOTATIONS

**The 2005 amendment**, effective July 1, 2005, changed "drug-impaired" to "incapacitated" in Subsection A; provided in Subsection A that an intoxicated or incapacitated person may be committed at the request of an authorized person for protective custody if the authorized person has reasonable cause to believe the person has committed the acts listed in Subsections A(1) through (7); added Subsections A(1), (2) and (4); deleted former Subsection A(5), which provided that a person could be committed to emergency treatment if he had been taken into protective custody three or more times within thirty consecutive days because of intoxication or drug impaired condition; deleted the former provisions of Subsection B that a physician, spouse, guardian or relative could apply for commitment, that the application be directed to the district attorney if a patient is in residence, that the application state facts in support of emergency treatment and be accompanied by a physician's certification supporting the need for treatment and that an application of a peace officer or public service officer be accompanied by a certification of three or more dates on which the person was placed in protective custody for intoxication or drug impairment; deleted the former provisions of Subsection C that upon approval of the application, the person shall be brought to the facility by the applicant for commitment, a peace officer or the person's spouse, guardian or other person; provided in Subsection D that the administration may refuse an application if the treatment facility is at its capacity or if the person is too ill, injured, disruptive or dangerous to himself or to others to be managed at the facility; deleted the former provision of Subsection E which provided for the discharge of the person committed; added Subsection E; added Subsection F; and added Subsection G.

**The 1989 amendment**, effective June 16, 1989, inserted "or drug impaired" in the introductory paragraph of Subsection A, in Subsection A(5), and in the last sentence of Subsection B; inserted "or drugs" in Subsection A(4); and inserted "NMSA 1978" near the end of Subsection A(5).

**Probable cause.** — Where defendant was intoxicated to the point that defendant was stumbling and unable to keep defendant's balance, the officer had probable cause to believe that defendant was unable to care for defendant's own safety and had authority to take defendant into custody. *State v. Phillips*, 2009-NMCA-021, 145 N.M. 615, 203 P.3d 146, cert. quashed, 2010-NMCERT-001, 147 N.M. 675, 227 P.3d 1057.

### **43-2-8.1. Repealed.**

## ANNOTATIONS

**Repeals.** — Laws 1989, ch. 378, § 6 repealed 43-2-8.1 NMSA 1978, as enacted by Laws 1989, ch. 378, § 3, relating to penalty for chronic intoxicated condition, effective

July 1, 1991. For provisions of former section, see the 1990 NMSA 1978 on *NMONESOURCE.COM*.

### **43-2-9. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 2005, ch. 198, § 11 repealed 43-2-9 NMSA 1978, as enacted by Laws 1977, ch. 374, § 6, relating to commitment hearings, effective July 1, 2005. For provisions of former section, see 2004 NMSA 1978 on *NMONESOURCE.COM*.

### **43-2-10. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 2005, ch. 198, § 11 repealed 43-2-10 NMSA 1978, as enacted by Laws 1949, ch. 114, § 8, relating to probation and discharge, effective July 1, 2005. For provisions of former section, see the 2004 NMSA 1978 on *NMONESOURCE.COM*.

### **43-2-11. Voluntary clients.**

A. The administration of a treatment facility may receive any intoxicated person, alcohol-impaired person or drug-impaired person who applies to be received as a client into the facility. If the voluntary client is:

(1) intoxicated, the client shall be discharged pursuant to Subsection E of Section 43-2-8 NMSA 1978; or

(2) not intoxicated, the client shall be discharged at the request of the client or, in the absence of such a request, at the discretion of the administration.

B. If a voluntary client leaves a treatment facility with or against the advice of the administration in charge of the facility, the department shall make reasonable provisions for the client's transportation to another facility or to the client's home.

C. A client who voluntarily submits himself for treatment in accordance with the Detoxification Reform Act shall not forfeit or abridge thereby any of the client's rights. The fact that the client has submitted himself for treatment or that the client has been given help or guidance shall not be used against the client in any proceeding in any court. The record of the voluntary commitment shall be confidential and shall not be divulged except on order of the court or upon receipt of a waiver and release duly executed by the client volunteering for commitment.

History: 1941 Comp., § 61-1209, enacted by Laws 1949, ch. 114, § 9; 1953 Comp., § 46-12-9; Laws 1976 (S.S.), ch. 9, § 8; 1977, ch. 253, § 54; 1977, ch. 374, § 7; 1983, ch. 177, § 7; 1989, ch. 47, § 7; 2005, ch. 198, § 6.

## ANNOTATIONS

**The 2005 amendment**, effective July 1, 2005, in Subsection A, deleted the former requirement that upon the recommendation of the chief of the substance abuse bureau, a treatment facility must receive any alcoholic or drug impaired person who applies for to be received; added Subsections A(1) through (2) to provide for the discharge of voluntary clients; deleted the former requirement of Subsection B that if a voluntary patient leave a treatment facility and has no home, the treatment facility shall assist him in obtaining shelter; and in Subsection C, provided that a record of a voluntary client may be divulged upon receipt of a waiver and release executed by the client.

**The 1989 amendment**, effective June 16, 1989, in Subsection A substituted "substance abuse" for "alcoholism" and inserted "or drug-impaired person", and in Subsection C twice deleted "of New Mexico" following "state" in the first sentence.

**Rights generally.** — No one who voluntarily seeks the help of the organization by submitting himself for treatment shall have such submission for treatment used against him in any court proceedings. Also, the record of such voluntary patient must be held confidential unless divulgence is ordered by a court. The service of a warrant is not in violation of either of these confidential compulsions. No violation exists as to this section by permitting a warrant to be served on any of the alcoholic patients. As to "information," the situation is quite different. If the information sought from anyone, whether of a private or official stature, is in any way connected with the material on the record of such voluntary patient or concerns information divulged to the organization as a natural concomitant of such admission, then the center is prohibited from divulging such information without an order of the court. 1957-58 Op. Att'y Gen. No. 58-67.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53 Am. Jur. 2d Mentally Impaired Persons §§ 3, 5, 152.

### **43-2-12. Assistance upon request.**

The substance abuse bureau of the division shall accept for examination, diagnosis, guidance or treatment at any facility or clinic under its control any person who requests such assistance under regulations as may be prescribed by the division.

**History:** 1941 Comp., § 61-1210, enacted by Laws 1949, ch. 114, § 10; 1953 Comp., § 46-12-10; Laws 1976 (S.S.), ch. 9, § 9; 1983, ch. 177, § 8; 1989, ch. 47, § 8.

## ANNOTATIONS

**The 1989 amendment**, effective June 16, 1989, substituted "substance abuse bureau" for "alcoholism bureau" and deleted "such" preceding "regulations".

### **43-2-13. Repealed.**

## ANNOTATIONS

**Repeals.** — Laws 1989, ch. 47, § 10 repealed 43-2-13 NMSA 1978, as enacted by Laws 1949, ch. 114, § 11, relating to commitment proceedings for ill persons in custody of division, effective June 16, 1989.

### **43-2-14. Costs of commitment and support.**

The provisions of law with respect to the costs of commitment and the costs of support, including methods of determination of the persons liable for the costs, and all provisions of law enabling the state to secure reimbursement for any such items of cost, applicable to the commitment and support of mentally ill persons in state hospitals shall apply with equal force in respect to each item of expense incurred by the state in connection with the commitment, care, custody and treatment of any person committed to the substance abuse bureau of the division or to any institution maintained by the state. Voluntary patients may be required to pay the cost of their subsistence, care and treatment.

**History:** 1941 Comp., § 61-1212, enacted by Laws 1949, ch. 114, § 12; 1953 Comp., § 46-12-12; Laws 1967, ch. 78, § 3; 1976 (S.S.), ch. 9, § 11; 1983, ch. 177, § 10; 1989, ch. 47, § 9.

## ANNOTATIONS

**The 1989 amendment,** effective June 16, 1989, substituted "for the costs" for "therefor" and "substance abuse bureau" for "alcoholism bureau" in the first sentence.

**Responsibility for hospital expenses.** — Individuals committed to private or county-operated facilities under statutory involuntary commitment procedures are responsible for their hospital expenses, and eligible hospitals treating indigent patients may look to the applicable county for reimbursement under the Indigent Hospital Claims Act. 1989 Op. Att'y Gen. No. 89-35.

### **43-2-15. Report.**

On or before December 1 in each year, the division shall render a report to the governor and the state legislature of its activities, including recommendations for improvements therein, by legislation or otherwise.

**History:** 1941 Comp., § 61-1213, enacted by Laws 1949, ch. 114, § 13; 1953 Comp., § 46-12-13; Laws 1976 (S.S.), ch. 9, § 12.

### **43-2-16. Repealed.**

## ANNOTATIONS



**Repeals.** — Laws 2005, ch. 198, § 11 repealed 43-2-16 NMSA 1978, as enacted by Laws 1973, ch. 331, § 1, relating to the short title for the Detoxification Act. For comparable provisions, see 43-2-1.1 NMSA 1978 effective July 1, 2005. For provisions of former section, see the 2004 NMSA 1978 on *NMONESOURCE.COM*.

### **43-2-17. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 2005, ch. 198, § 11 repealed 43-2-17 NMSA 1978, as enacted by Laws 1973, ch. 331, § 2, relating to Detoxification Act definitions, effective July 1, 2005. For provisions of former section, see the 2004 NMSA 1978 on *NMONESOURCE.COM*.

### **43-2-18. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 2005, ch. 198, § 11 repealed 43-2-18 NMSA 1978, as enacted by Laws 1973, ch. 331, § 3, relating to transportation of intoxicated person by peace officer or public service officer, effective July 1, 2005. For provisions of former section, see the 2004 NMSA 1978 on *NMONESOURCE.COM*.

### **43-2-19. Peace officer or public service officer; no liability.**

A. A peace officer or public service officer may, if the officer reasonably believes it necessary for the officer's own safety, make a protective search of an intoxicated person before transporting the person to a residence, treatment facility or detention center.

B. A peace officer or public service officer shall not be held civilly liable for assault, false imprisonment or other alleged torts or crimes on account of reasonable measures taken under the authority of the Detoxification Reform Act, if such measures were, in fact, reasonable and did not involve use of excessive or unnecessary force.

History: 1953 Comp., § 46-14-4, enacted by Laws 1973, ch. 331, § 4; 2005, ch. 198, § 7.

#### **ANNOTATIONS**

**The 2005 amendment**, effective July 1, 2005, created Subsections A and B; changed "health care facility" to "treatment facility" in Subsection A and deleted the former provision that a peace officer or public service officer were not criminally liable for assault, false imprisonment or other alleged torts or crimes on account of reasonable measures taken under the Detoxification Reform Act.

**Search of intoxicated person threatening suicide justified.** — Since the defendant smelled of alcohol, appeared intoxicated, and was threatening suicide, a police officer could have reasonably concluded his safety justified a patdown search of the defendant before taking him into protective custody. *State v. Blakely*, 115 N.M. 466, 853 P.2d 168 (Ct. App), cert. denied, 115 N.M. 535, 854 P.2d 362 (1993).

**Inventory searches of persons detained** are not prohibited by the Detoxification Act. *State v. Johnson*, 1996-NMCA-117, 122 N.M. 713, 930 P.2d 1165, cert. denied, 122 N.M. 578, 929 P.2d 269.

### **43-2-20. Notification of family.**

Whenever an intoxicated person is committed to protective custody, the administration in charge of the treatment facility shall provide the person an opportunity to contact a member of the intoxicated person's family as soon as practicable.

History: 1953 Comp., § 46-14-5, enacted by Laws 1973, ch. 331, § 5; 2005, ch. 198, § 8.

#### **ANNOTATIONS**

**The 2005 amendment**, effective July 1, 2005, deleted the former provisions that when a person is transported to a health care facility or jail, the person in charge of the facility or jail shall see that a member of the intoxicated person's family is notified of his presence there.

### **43-2-21. Liability for costs.**

Any intoxicated person having transportation, shelter or treatment furnished to the person as an intoxicated person under the Detoxification Reform Act shall be liable to the furnishing city, county or treatment facility for its reasonable costs in providing that transportation, shelter or treatment.

History: 1953 Comp., § 46-14-6, enacted by Laws 1973, ch. 331, § 6; 2005, ch. 198, § 9.

#### **ANNOTATIONS**

**The 2005 amendment**, effective July 1, 2005, changed "health care or other facility" to "treatment facility".

### **43-2-22. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 2005, ch. 198, § 11 repealed 43-2-22 NMSA 1978, as enacted by Laws 1973, ch. 331, § 7, relating to protective custody of intoxicated persons, effective July 1, 2005. For provisions of former section, see the 2004 NMSA 1978 on *NMONESOURCE.COM*.

### **43-2-23. Civil liability.**

Physicians and treatment facilities and their officers, directors and employees shall not be liable to any person held on account of reasonable measures taken under the authority of the Detoxification Reform Act, absent proof of negligence or intentional misconduct.

History: Laws 2005, ch. 198, § 10.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 198, § 12 made Laws 2005, ch. 198, § 10 effective July 1, 2005.

## **ARTICLE 3 Community Alcoholism Treatment and Detoxification**

### **43-3-1 to 43-3-6. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 185, § 8 repealed 43-3-1 to 43-3-6 NMSA 1978, as enacted by Laws 1978, ch. 133, §§ 1 to 6, relating to the Community Alcoholism Treatment and Detoxification Act, effective July 1, 1985. For present comparable provisions, see 9-7-6.1 to 9-7-6.3 NMSA 1978.

### **43-3-7. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1993, ch. 65, § 23, repealed 43-3-7 NMSA 1978, as enacted by Laws 1981, ch. 39, § 126, relating to the community alcoholism treatment and detoxification fund, effective July 1, 1993. For provisions of former section, see the 1992 NMSA 1978 on *NMONESOURCE.COM*.

### **43-3-8, 43-3-9. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1999, ch. 270, § 10 repealed 43-3-8 and 43-3-9 NMSA 1978, as enacted by Laws 1985, ch. 185, §§ 1 and 2, relating to alcohol abuse prevention and treatment, effective July 1, 1999. For provisions of former sections, see the 1998 NMSA 1978 on NMONESOURCE.COM. For present comparable provisions, see 9-7-6.1 to 9-7-6.3 NMSA 1978.

### **43-3-10. Definitions.**

As used in Chapter 43, Article 3 NMSA 1978:

A. "board" means the board of county commissioners of a county;

B. "department" means the human services department;

C. "DWI program" means a community program specifically designed to provide treatment, aftercare or prevention of or education regarding driving while under the influence of alcohol or drugs;

D. "incarceration and treatment facility" means a minimum security detention facility that provides a DWI program;

E. "planning council" means a county DWI planning council;

F. "screening program" means a program that provides screening or examination by alcoholism treatment professionals of persons charged with or convicted of driving while intoxicated or other offenses to determine whether the person is:

(1) physically dependent on alcohol and thus suffering from the disease of alcoholism;

(2) an alcohol abuser who has not yet developed the alcoholism disease syndrome but has an entrenched pattern of pathological use of alcohol and social or occupational impairment in function from alcohol abuse; or

(3) neither an alcoholic nor an alcohol abuser such that alcoholism treatment is not necessary; and that provides referral or recommendation of such persons to the most appropriate treatment; and

G. "statewide substance abuse services plan" means the comprehensive plan for a statewide services network developed by the department that documents the extent of New Mexico's substance abuse problem and statewide needs for prevention, screening, detoxification, short-term and long-term rehabilitation, outpatient programs and DWI programs. The plan shall be based on the continuum of care concept of a comprehensive prevention and treatment system.

History: Laws 1985, ch. 185, § 3; 1989, ch. 146, § 1; 1993, ch. 65, § 10; 1999, ch. 270, § 5; 2007, ch. 325, § 10.

## ANNOTATIONS

**The 2007 amendment**, effective June 15, 2007, changed "department of health" to "human services department".

**The 1999 amendment**, effective July 1, 1999, substituted "Chapter 43, Article 3 NMSA 1978" for "the Alcoholism and Alcohol Abuse Prevention, Screening and Treatment Act" in the introductory language; deleted Subsections A, B, G, H, J and L, which defined "aftercare", "detoxification program", "long-term rehabilitation program", "outpatient program", "prevention program", and "short-term rehabilitation program", and redesignated subsequent subsections accordingly; and substituted "substance abuse" for "alcoholism" in three places in Subsection G.

**The 1993 amendment**, effective July 1, 1993, deleted former Subsection A, defining "bureau"; inserted present Subsections A, B, E, and F and redesignated former Subsections B through I as present Subsections C, D, G, H, and J through M; substituted "department of health" for "health and environment department" in Subsection C; and, in the first sentence of Subsection M, substituted "department" for "bureau", added "DWI programs", and made a minor stylistic change.

**The 1989 amendment**, effective June 16, 1989, substituted "forty-five days or more" for "over a month" in Subsection D, and substituted "forty-five" for "thirty" in Subsection H.

### **43-3-11. Powers and duties of the department.**

A. The department shall adopt rules to provide for:

(1) minimum standards of service for DWI programs that contract for funds pursuant to the department's behavioral health services rules; provided that rules adopted pursuant to this section shall, before adoption, have been presented to all interested parties in a public hearing;

(2) the format and guidelines for county DWI plans and the criteria for evaluating them; and

(3) procedures for reporting of programmatic and financial information necessary to evaluate the effectiveness of programs funded. Evaluation of program effectiveness shall include an analysis of outcome-based measures and the impact of the programs on the incidence of driving while under the influence of intoxicating liquor or drugs and shall be reported to the legislature annually.

B. The department shall provide technical assistance and training to assist each county as needed in developing its DWI plan.

C. The department shall review the impact of the programs on the reduction of the incidence of driving while under the influence of intoxicating liquor or drugs, approve county DWI plans and incorporate these plans into the statewide substance abuse services plan in accordance with Section 43-3-13 NMSA 1978.

D. Any screening programs funded pursuant to the behavioral health services rules shall be established in collaboration with the district, magistrate, metropolitan and municipal courts to be served by the screening program. Whenever feasible, the screening program shall not be provided by an alcoholism treatment program serving the judicial districts involved in order to avoid conflict of interest in recommending that offenders enter treatment.

**History:** Laws 1985, ch. 185, § 4; 1993, ch. 65, § 11; 1999, ch. 270, § 6.

### ANNOTATIONS

**The 1999 amendment**, effective July 1, 1999, rewrote the section to the extent that a detailed comparison is impracticable.

**The 1993 amendment**, effective July 1, 1993, deleted "and bureau" at the end of the catchline; deleted "programs" following "service" near the beginning and inserted "and DWI programs" near the middle of Subsection A(1); inserted present Paragraph (2) and redesignated former Paragraphs (2) through (5) as present Paragraphs (3) through (6) in Subsection A; substituted "the secretary of health" for "the bureau to the secretary of the department" in Subsection A(4); rewrote the second sentence of Subsection A(6), which read "Evaluation of program effectiveness shall be reported to the legislature annually"; inserted present Subsections C and D; redesignated former Subsections C through E as present Subsections E through G; inserted "and programs consistent with the priorities set forth in the statewide alcoholism services plan" in Subsection E; and made stylistic changes.

### 43-3-12. Repealed.

### ANNOTATIONS

**Repeals.** — Laws 1999, ch. 270, § 10 repealed 43-3-12 NMSA 1978, as enacted by Laws 1985, ch. 185, § 5, relating to alcohol abuse treatment, effective July 1, 1999. For provisions of former section, see the 1998 NMSA 1978 on *NMONESOURCE.COM*. For present comparable provisions, see 9-7-6.1 to 9-7-6.3 NMSA 1978.

### 43-3-13. Statewide substance abuse services plan.

A. The department shall develop and update annually prior to August 30 a statewide substance abuse services plan that documents the extent of New Mexico's substance abuse problem. The plan shall describe the effectiveness of existing services and shall

document needs based on a statewide assessment that reflects local planning, concerns and priorities.

B. The department shall annually invite comment and review of the substance abuse services plan for a period of no less than thirty days prior to its publication.

C. The department shall make decisions concerning proposed substance abuse programs consistent with the priorities and service system concepts contained in the current statewide substance abuse services plan.

**History:** Laws 1985, ch. 185, § 6; 1993, ch. 65, § 12; 1999, ch. 270, § 7.

### **ANNOTATIONS**

**The 1999 amendment,** effective July 1, 1999, substituted "substance abuse" for "alcoholism" throughout the section.

**The 1993 amendment,** effective July 1, 1993, substituted "department" for "bureau" in the first sentence of Subsection A.

### **43-3-14. County DWI planning councils authorized; membership.**

A. A board may create a county DWI planning council and appoint the members for terms set by the board. The members of the planning council shall be selected to represent a broad spectrum of interests and may include county officials, DWI program and service providers, law enforcement officers, alcohol counselors and therapists, school administrators and local political leaders.

B. The members of a planning council shall elect from among the membership of the planning council a chairman for a term designated by the board. The planning council shall meet at the call of the chairman.

C. Planning council members shall receive per diem and mileage reimbursement as provided in the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

**History:** Laws 1993, ch. 65, § 13.

### **43-3-15. County DWI plans.**

A. With the advice of the planning council, the board or its designee shall prepare a county DWI plan. Upon approval of the DWI plan by the board and the planning council, the board shall submit the DWI plan to the department for approval and integration into the statewide alcoholism services plan.

B. Two or more boards may agree to establish a multicounty DWI plan.

C. Each county DWI plan shall include:

(1) a county needs assessment that identifies and quantifies:

(a) the major factors that affect access to and the success or effectiveness of local DWI programs;

(b) the gaps and needs not covered in local DWI programs; and

(c) the extent to which county residents use DWI programs available in other counties;

(2) an inventory of existing public and private DWI providers and programs in the county, including identification of any DWI program duplication, and existing governmental funding and other resources, including county funding, for county DWI programs; and

(3) recommendations and goals for providing, improving and funding DWI programs in the county, based on the needs assessment and inventory, and including proposals to eliminate duplication of programs and services, improve access to programs and services, establish new programs or services, provide additional funding, in-kind contributions and other resources for existing programs and where feasible use DWI programs available in other counties.

D. The county DWI plan shall be updated at the request of the board or the department if the plan as implemented through the statewide alcoholism services plan is not achieving its stated goals, if the needs of the county have changed or if the department determines that the distribution of funds is not having an impact on the incidence of driving while under the influence of intoxicating liquor or drugs.

**History:** Laws 1993, ch. 65, § 14.