

CITY of ALBUQUERQUE

SEVENTEENTH COUNCIL

COUNCIL BILL NO. _____ ENACTMENT NO. _____

SPONSORED BY:

1 **ORDINANCE**

2 **ADOPTING AN ASSISTED OUTPATIENT TREATMENT PROGRAM; DEFINING**
3 **TERMS; ESTABLISHING CRITERIA AND REFERRAL PROCEEDINGS;**
4 **PROVIDING FOR PETITION TO DISTRICT COURT, PROCEDURE,**
5 **DISPOSITION, AND NONCOMPLIANCE PROVISIONS.**

6 **BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF**
7 **ALBUQUERQUE:**

8 **SECTION 1. FINDINGS AND INTENT.**

9 (A) The City Council finds that there are mentally ill persons who are
10 capable of living in the community with the help of family, friends and mental
11 health professionals, but who, without routine care and treatment may relapse
12 and become violent or suicidal.

13 (B) The City Council finds that assisted outpatient treatment as provided
14 in this Ordinance is compassionate, not punitive, and will restore patients'
15 dignity.

16 **SECTION 2. SHORT TITLE.**

17 This Ordinance shall be referred to as the "Assisted Outpatient Treatment
18 Ordinance" or "this Ordinance."

19 **SECTION 3. DEFINITIONS.**

20 For the purpose of this Ordinance, the following definitions shall apply
21 unless the context clearly indicates or requires a different meaning.

22 **ADVANCED DIRECTIVES.** Any pre-existing instructions concerning
23 medical treatment decisions pertaining to a person subject or potentially
24 subject to an order of assisted outpatient treatment under this Ordinance.

25 **ASSISTED OUTPATIENT TREATMENT.** Court ordered services prescribed
26 to treat a person's mental illness and to assist a person in living and

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1 functioning in the community or to attempt to prevent a relapse or
2 deterioration that may reasonably be predicted to result in harm to the person
3 or another.

4 **ASSISTED OUTPATIENT TREATMENT PROGRAM.** A program that arranges
5 and coordinates the provision of assisted outpatient treatment, including
6 monitoring treatment compliance by patients, evaluating and addressing the
7 conditions or needs of assisted outpatients and ensuring compliance with
8 court orders.

9 **CITY.** The City of Albuquerque, a New Mexico municipal corporation.

10 **MAYOR.** The Mayor of the City of Albuquerque or his or her designated
11 representatives.

12 **MENTAL ILLNESS.** A substantial disorder of thought, mood or behavior
13 that afflicts a person and that impairs that person's judgment but does not
14 mean developmental disability.

15 **PATIENT.** A person receiving assisted outpatient treatment pursuant to a
16 court order.

17 **PROVIDER.** A public or private health care facility or health care
18 practitioner licensed to provide health care services in New Mexico.

19 **SUBJECT.** A person who is alleged in a petition to the court to meet the
20 criteria for Assisted Outpatient Treatment.

21 **SECTION 4. CRITERIA.**

22 (A) A Subject may be ordered to receive Assisted Outpatient Treatment
23 if the Court finds that such person:

- 24 (1) Is eighteen (18) years of age or older;
25 (2) Is suffering from a mental illness;
26 (3) Is unlikely to survive safely in the community without
27 supervision, based on a clinical determination;

28 (4) Has a history of lack of compliance with treatment for mental
29 illness that has:

- 30 (a) prior to the filing of the petition, at least twice within the
31 last thirty-six months been a significant factor in necessitating hospitalization
32 or receipt of services in a forensic or other mental health unit of a state
33 correctional facility or a local jail facility, not including any current period, or

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1 period ending within the last six months, during which the person was or is
2 hospitalized or incarcerated; or

3 (b) prior to the filing of the petition, resulted in one or more
4 acts of serious violent behavior toward self or others or threats of, or attempts
5 at, serious physical harm to self or others within the last forty-eight months,
6 not including any current period, or period ending within the last six months,
7 in which the person was or is hospitalized or incarcerated; and

8 (5) Is unlikely, as a result of mental illness, to voluntarily
9 participate in the recommended treatment pursuant to the treatment plan;

10 (6) In view of the person's treatment history and current behavior,
11 is in need of assisted outpatient treatment in order to prevent a relapse or
12 deterioration that would be likely to result in serious harm to himself or
13 another person; and

14 (7) Will likely benefit from assisted outpatient treatment.

15 (B) If the person has an advance directive or personal representative,
16 agent, surrogate, guardian or individual designated by the person to make
17 health care decisions, the court shall take into account any advance directives
18 or directions by the person representative, agent, surrogate, guardian or
19 individual designated by the person in determining the written treatment plan.
20 Nothing in this Ordinance shall preclude a person with an authorized
21 representative from being subject to a petition for an order authorizing
22 assisted outpatient treatment.

23 **SECTION 5. REFERRAL AND INITIATION OF PROCEEDINGS.**

24 (A) A petition for an order authorizing assisted outpatient treatment may
25 be filed in the district court in the county in which the subject is present or
26 reasonably believed to be present. A petition shall be filed only by the
27 following persons:

28 (1) a person eighteen years of age or older who resides with the
29 subject;

30 (2) the parent or spouse of the subject;

31 (3) the sibling or child of the subject, provided that the sibling or
32 child is eighteen years of age or older;

33 (4) the director of a hospital where the subject is hospitalized;

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1 (5) the director of a public or charitable organization or agency or
2 a home where the subject resides or that provides mental health services to
3 the subject;

4 (6) a qualified psychiatrist ;

5 (7) a provider or the social services official of the city or county
6 where the subject is present or reasonably believed to be present; or

7 (8) a parole officer or probation officer assigned to supervise the
8 subject; or

9 (9) the Mayor, including without limitation, the Crisis Intervention
10 Team of the Albuquerque Police Department or the Albuquerque Family and
11 Community Services Department.

12 (C) The petition shall state:

13 (1) Each criterion for Assisted Outpatient Treatment;

14 (2) Facts that support petitioner's belief that the Subject meets
15 each of the criterion.

16 (3) If known, any Advanced Directives pertaining to the Subject.

17 (D) The petition shall be accompanied by an affidavit from a physician,
18 who shall not be the petitioner, and shall state that:

19 (1) The physician has personally examined the subject no more
20 than ten days prior to the filing of the petition, that the physician recommends
21 assisted outpatient treatment for the subject and that the physician is willing
22 and able to testify in person or by telephone at the hearing on the petition; or

23 (2) No more than ten days prior to the filing of the petition, the
24 physician or the physician's designee has made appropriate attempts to elicit
25 the cooperation of the subject but has not been successful in persuading the
26 subject to submit to an examination, that the physician has reason to suspect
27 that the subject meets the criteria for assisted outpatient treatment and that
28 the physician is willing and able to examine the subject and testify at the
29 hearing on the petition.

30 **SECTION 6. PROCEDURE.**

31 (A) Notice of a proceeding under this Ordinance shall be served on the
32 Subject of the petition, Protection and Advocacy, and the Public Defender's
33 Office Mental Health Unit.

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1 (B) The Subject shall be represented by counsel at all stages of the
2 proceedings . When a subject has not retained his own attorney and is unable
3 to do so, the court shall appoint counsel to represent him. When appointing
4 counsel, the court shall give preference to nonprofit organizations offering
5 representation to mentally ill and developmentally disabled persons. When a
6 Subject is not indigent, he shall be liable for the cost of his legal
7 representation. At the hearing, the Subject shall have the right to present
8 evidence and to cross-examine witnesses. A complete record of the hearing
9 shall be made, and there shall be a right to an expeditious appeal.

10 (C) At the hearing, the court shall hear all relevant testimony and may
11 examine the Subject in open court, or, if advisable, may examine the Subject
12 out of court. If the Subject fails to appear at the hearing and attempts to elicit
13 attendance of the Subject have failed, the hearing may proceed in the
14 Subject's absence. If the hearing is conducted without the Subject present,
15 the court shall set forth the factual basis for conducting the hearing without
16 the presence of the Subject.

17 (D) The court shall not order assisted outpatient treatment for the
18 Subject unless a physician, who has personally examined the subject of the
19 petition within ten days prior to the filing of the petition, testifies in person or
20 by telephone at the hearing. The physician shall:

21 (1) State the facts that support the allegation that the subject
22 meets each criterion for assisted outpatient treatment and that the treatment is
23 the least restrictive alternative;

24 (2) State the recommended assisted outpatient treatment and the
25 rationale for the recommended assisted outpatient treatment; and

26 (3) Describe, if the recommended assisted outpatient treatment
27 includes medication, the types or classes of medication that should be
28 authorized and the beneficial and detrimental physical and mental effects of
29 such medication. In addition, the physician shall recommend whether such
30 medication should be self-administered or should be administered by an
31 authorized professional.

32 (E) If the subject has refused to be examined by a physician, the court
33 may request that the Subject consent to an examination by a court appointed

1 physician. If the Subject does not consent to an examination and the court
2 finds that there are reasonable grounds to believe that the allegations in the
3 petition are true, the court may order that a law enforcement officer take the
4 Subject into custody and transport the Subject to a provider for examination
5 by a physician. The examination may be performed by the physician whose
6 affidavit accompanied the petition. No Subject taken into custody pursuant to
7 this section shall be detained longer than seventy-two hours.

8 **SECTION 7. WRITTEN LICENSED PHYSICIAN TREATMENT PLAN.**

9 (A) The court shall not order assisted outpatient treatment unless an
10 examining physician:

11 (1) Identified by the appropriate provider develops and provides
12 to the court a proposed written treatment plan; and

13 (2) Testifies in person or by telephone to explain the written
14 proposed treatment plan.

15 (B) In developing a treatment plan, the physician shall take into account,
16 if existing, an advance directive and provide the following persons with an
17 opportunity to actively participate in the development of the plan:

18 (1) The Subject;

19 (2) The treating physician; and

20 (3) Upon the request of the subject, an individual significant to the
21 Subject, including any relative, close friend or individual otherwise concerned
22 with the welfare of the subject. If the petitioner is a provider, the plan shall be
23 provided to the court no later than the date of the hearing on the petition.

24 (C) The written treatment plan shall include case management services
25 or assertive community treatment teams to provide care coordination and all
26 types of assisted outpatient treatment services that the physician
27 recommends the subject should receive. If the written treatment plan includes
28 medication, it shall state whether such medication should be self-administered
29 or should be administered by an authorized professional and shall specify
30 type and dosage range of medication most likely to provide maximum benefit
31 for the subject. If the written treatment plan includes alcohol or substance
32 abuse counseling and treatment, such plan may include a provision requiring
33 relevant testing for either alcohol or illegal substances; provided that the

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1 physician's clinical basis for recommending such plan provides sufficient
2 facts for the court to find that:

3 (1) The Subject has a history of alcohol or substance abuse that
4 is clinically related to the mental illness; and

5 (2) Such testing is necessary to prevent a relapse or deterioration
6 that would be likely to result in serious harm to the subject or others.

7 (D) An examining physician's testimony explaining the written treatment
8 program shall:

9 (1) State the recommended assisted outpatient treatment, the
10 rationale for the recommended assisted outpatient treatment and the facts that
11 establish that such treatment is the least restrictive alternative; and

12 (2) Describe, if the recommended assisted outpatient treatment
13 includes medication, the types or classes of medication that should be
14 authorized and the beneficial and detrimental physical and mental effects of
15 such medication. In addition, the physician shall recommend whether such
16 medication should be self-administered or should be administered by an
17 authorized professional. If the petitioner is a provider, the testimony shall be
18 given at the hearing on the petition.

19 **SECTION 8. DISPOSITION.**

20 (A) If after hearing all the relevant evidence the court finds that grounds
21 for Assisted Outpatient Treatment have not been established, and that the
22 Subject does not meet the criteria for Assisted Outpatient Treatment, the court
23 shall dismiss the petition.

24 (B) If after hearing all the relevant evidence the court finds that grounds
25 for Assisted Outpatient Treatment have been established by clear and
26 convincing proof and there is no appropriate and feasible less restrictive
27 alternative, it shall be authorized to order the Subject to receive Assisted
28 Outpatient Treatment for a period not to exceed six months. In its order, the
29 court shall state the Assisted Outpatient Treatment that the Subject is to
30 receive. A court may order the Subject to self-administer psychotropic drugs
31 or accept the administration of such drugs by an authorized professional as
32 part of an assisted outpatient treatment program. The order may specify the
33 type and dosage range of such psychotropic drugs and shall be effective for

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1 the duration of the Subject's assisted outpatient treatment. The court may
2 order treatment that has not been recommended by the examining physician
3 and included in the written treatment plan for assisted outpatient treatment.
4 Assisted outpatient treatment may include one or more of the following
5 categories:

- 6 (1) medication;
- 7 (2) periodic blood tests or urinalysis to determine compliance
8 with prescribed medications;
- 9 (3) individual or group therapy;
- 10 (4) day or partial day programming activities;
- 11 (5) educational and vocational training or activities;
- 12 (6) alcohol or substance abuse treatment and counseling and
13 periodic tests for the presence of alcohol or illegal drugs for persons with a
14 history of alcohol or substance abuse;
- 15 (7) supervision of living arrangements; or
- 16 (8) any other services prescribed to treat the person's mental
17 illness and to either assist the person in living and functioning in the
18 community or to help prevent a relapse that may reasonably be predicted to
19 result in suicide or the need for hospitalization.

20 (C) If after hearing all relevant evidence, the court finds that grounds for
21 assisted outpatient treatment services have been established by clear and
22 convincing proof and that there is no appropriate and feasible less restrictive
23 alternative, but the court has yet to be provided with a written proposed
24 treatment plan and testimony pursuant to this Ordinance, the court shall order
25 the provider to provide the court with a written treatment plan and testimony
26 as soon as practicable. Upon receiving the written treatment plan and
27 testimony, the court may order assisted outpatient treatment as provided in
28 this Ordinance.

29 (D) The determination by a court that a Subject is in need of assisted
30 outpatient treatment shall not be construed as or deemed to be a
31 determination that the subject is incapacitated.

32 (E) If the petitioner is a provider that operates an assisted outpatient
33 treatment program, the court order shall direct the provider to provide or

1 arrange for all assisted outpatient treatment for the patient throughout the
2 period of the order.

3 (F) The provider shall apply to the court for approval before instituting a
4 proposed material change in the assisted outpatient treatment order unless
5 such change is contemplated in the order. An application for approval shall
6 be served upon those persons required to be served with notice of a petition
7 for an order authorizing assisted outpatient treatment pursuant to this section.
8 Nonmaterial changes may be instituted by the assisted outpatient treatment
9 program without court approval.

10 (G) For purposes of this section, "material change" means an addition or
11 deletion of a category of assisted outpatient treatment from the order of the
12 court or any deviation without the patient's consent from the terms of an
13 existing order relating to the administration of psychotropic drugs.

14 **SECTION 9. APPLICATIONS FOR ADDITIONAL PERIODS OF TREATMENT.**

15 (A) If a provider determines that the condition of a patient requires
16 further assisted outpatient treatment, the provider shall apply, prior to the
17 expiration of the period of assisted outpatient treatment ordered by the court,
18 for a second or subsequent order authorizing continued assisted outpatient
19 treatment for a period not to exceed one year from the date of the second or
20 subsequent order. If the court's disposition of the application does not occur
21 prior to the expiration date of the current order, the current order shall remain
22 in effect until the court's disposition. An order for an additional period of
23 treatment shall be obtained pursuant to the provisions of this Ordinance.

24 (B) A court order requiring periodic blood tests or urinalysis for the
25 presence of alcohol or illegal drugs shall be subject to review after six months
26 by the physician who developed the written treatment plan or another
27 physician designated by the provider, and the physician shall be authorized to
28 terminate such blood tests or urinalysis without further action by the court.

29 **SECTION 10. APPLICATION FOR AN ORDER TO STAY, VACATE OR MODIFY.**

30 In addition to any other right or remedy available by law with respect to the
31 order for assisted outpatient treatment, the patient, the patient's counsel or
32 anyone acting on the patient's behalf may apply to the court to stay, vacate or

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1 modify the order. A copy of the application shall be served on the appropriate
2 provider and the original petitioner.

3 **SECTION 11. NONCOMPLIANCE.**

4 Should a patient fail to comply with the Assisted Outpatient Treatment
5 program ordered by the court, the remedies in the State of New Mexico
6 involuntary commitment statute will apply including, without limitation, an
7 emergency mental health evaluation under NMSA 43-1-10, commitment for a
8 thirty day period, if applicable, under NMSA 43-1-11 and extended commitment
9 under NMSA 43-1-12.

10 **SECTION 12. CRIMINAL PROSECUTION.**

11 A person who makes a false statement or provides false information or
12 false testimony in a petition or hearing pursuant to the provisions of this
13 Ordinance is subject to criminal prosecution.

14 **SECTION 13. SEVERABILITY CLAUSE.**

15 If any section, paragraph, sentence, clause, word or phrase of this
16 ordinance is for any reason held to be invalid or unenforceable by any court of
17 competent jurisdiction, such decision shall not affect the validity of the
18 remaining provisions of this ordinance. The Council hereby declares that it
19 would have passed this ordinance and each section, paragraph, sentence,
20 clause, word or phrase thereof irrespective of any provision being declared
21 unconstitutional or otherwise invalid.

22 **SECTION 14. COMPILATION.**

23 This ordinance shall be incorporated in and made part of the Revised
24 Ordinances of Albuquerque, New Mexico, 1994.

25 **SECTION 15. EFFECTIVE DATE.**

26 This ordinance shall take effect five days after publication by title and
27 general summary.

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