

# **NMSA 1978, § 43-1-15**

## **Chapter 43 Commitment Procedures**

### **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.