

SENATE BILL 230

56TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2024

INTRODUCED BY

Greg Nibert

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

AN ACT

RELATING TO HEALTH CARE; AMENDING A SECTION OF THE CHILDREN'S MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES ACT; AMENDING A SECTION OF THE MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES CODE; PROVIDING FOR ADDITIONAL DISCLOSURE OF CONFIDENTIAL INFORMATION.

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

SECTION 1. Section 32A-6A-24 NMSA 1978 (being Laws 2007,

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Chapter 162, Section 24, as amended) is amended to read:

"32A-6A-24. DISCLOSURE OF INFORMATION.--

A. Except as otherwise provided in the Children's Mental Health and Developmental Disabilities Act, a person shall not, without the authorization of the child, disclose or transmit any confidential information from which a person well-acquainted with the child might recognize the child as the described person or any code, number or other means that could be used to match the child with confidential information regarding the child.

B. When the child is under fourteen years of age, the child's legal custodian is authorized to consent to disclosure on behalf of the child. Information shall also be disclosed to a court-appointed guardian ad litem without consent of the child or the child's legal custodian.

C. A child fourteen years of age or older with capacity to consent to disclosure of confidential information shall have the right to consent to disclosure of mental health and habilitation records. A legal custodian who is authorized to make health care decisions for a child has the same rights as the child to request, receive, examine, copy and consent to the disclosure of medical or other health care information when evidence exists that such a child whose consent to disclosure of confidential information is sought does not have capacity to give or withhold valid consent and does not have a treatment

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guardian appointed by a court. If the legal custodian is not authorized to make decisions for a child under the Children's Mental Health and Developmental Disabilities Act, the person seeking authorization shall petition the court for the appointment of a treatment guardian to make a decision for such a child.

D. Authorization from the child or legal custodian [~~for a child less than fourteen years of age~~] shall not be required for the disclosure or transmission of confidential information when the disclosure or transmission:

(1) is necessary for treatment of the child and is made in response to a request from a clinician;

(2) is necessary to protect against a clear and substantial risk of imminent serious physical injury or death inflicted by the child on self or another;

(3) is determined by a clinician not to cause substantial harm to the child and a summary of the child's assessment, treatment plan, progress, discharge plan and other information essential to the child's treatment is made to a child's legal custodian or guardian ad litem;

(4) is to the primary caregiver of the child and the information disclosed was necessary for the continuity of the child's treatment in the judgment of the treating clinician who discloses the information;

(5) is to an insurer contractually obligated

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to pay part or all of the expenses relating to the treatment of the child at the residential facility. The information disclosed shall be limited to data identifying the child, 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 child, apart from information disclosed pursuant to this section, has not been disclosed to the insurer;

(6) is to a protection and advocacy representative pursuant to the federal Developmental Disabilities Assistance and Bill of Rights Act and the federal Protection and Advocacy for Individuals with Mental Illness Act; [or]

(7) is pursuant to a court order issued for good cause shown after notice to the child and the child's legal custodian and opportunity to be heard is given. Before issuing an order requiring disclosure, the court shall find that:

(a) other ways of obtaining the information are not available or would not be effective; and

(b) the need for the disclosure outweighs the potential injury to the child, the clinician-child relationship and treatment services; or

(8) SHPAC→is, ←SHPAC for all confidential

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information in existence on and after July 1, 2024,
SHPAC→~~is~~←SHPAC to a governmental agency, its agent or a state
educational institution, a duly organized state or county
association of licensed physicians or dentists SHPAC→~~.~~←SHPAC
SHPAC→~~or~~←SHPAC a licensed health facility or staff committees
of such a facility for the purpose of research, subject to the
provisions of Section 14-6-1 NMSA 1978 and subject to the
review of an institutional review board in compliance with the
federal Health Insurance Portability and Accountability Act of
1996 or any succeeding legislation.

E. A disclosure ordered by the court shall be limited to the information that is essential to carry out the purpose of the disclosure. Disclosure shall be limited to those persons whose need for the information forms the basis for the order. An order by the court shall include such other measures as are necessary to limit disclosure for the protection of the child, including sealing from public scrutiny the record of a proceeding for which disclosure of a child's record has been ordered.

F. An authorization given for the transmission or disclosure of confidential information shall not be effective unless it:

- (1) is in writing and signed; and
- (2) contains a statement of the child's right to examine and copy the information to be disclosed, the name

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or title of the proposed recipient of the information and a description of the use that may be made of the information.

G. The child has a right of access to confidential information about the child and has the right to make copies of information about the child and 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 the statements or other documentation contain confidential information. Nothing in this subsection shall prohibit the denial of access to the records when a physician or other mental health or developmental disabilities professional believes and notes in the child's medical records that the disclosure would not be in the best interests of the child. In all cases, the child has the right to petition the court for an order granting access.

H. Information concerning a child 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. Notwithstanding the confidentiality provisions of the Delinquency Act and the Abuse and Neglect Act, information disclosed under this section shall

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not be re-released without the express consent of the child or legal custodian authorized under the Children's Mental Health and Developmental Disabilities Act to give consent and any other consent necessary for redisclosure in conformance with state and federal law, including consent that may be required from the professional or the facility that created the document.

I. Nothing in the Children's Mental Health and Developmental Disabilities Act shall limit the confidentiality rights afforded by federal statute or regulation.

J. The department shall promulgate rules for implementing disclosure of records pursuant to this section and in compliance with state and federal law and the Children's Court Rules."

SECTION 2. Section 43-1-19 NMSA 1978 (being Laws 1977, Chapter 279, Section 18, as amended) is amended to read:

"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

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required for the disclosure or transmission of confidential information in the following circumstances:

(1) when the request is from a mental health or developmental disabilities 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 is made pursuant to the provisions of the Assisted Outpatient Treatment Act, using reasonable efforts to limit protected health information to that which is minimally necessary to accomplish the intended purpose of the use, disclosure or request;

(4) 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;

(5) 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

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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;

(6) when the request is from a physician, a licensed psychologist or a qualified mental health professional licensed for independent practice and responsible for the continuity of care of inmates with a mental or developmental disability who are in a jail or corrections facility, and the disclosure is only of information necessary for the continuity of the client's treatment in the judgment of an equally qualified treating professional who discloses the information;

(7) when such disclosure is by a physician, a licensed psychologist or a qualified mental health professional licensed for independent practice and responsible for the treatment of inmates in a jail or corrections facility to another equally qualified treating professional responsible for the continuation of care of the inmate upon the inmate's release from a jail or corrections facility, and the disclosure is only of information necessary for the continuity of the client's treatment in the judgment of the treating professional

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who discloses the information; or

(8) for all confidential information in existence on and after July 1, 2024, when the disclosure is made to a governmental agency, its agent or a state educational institution, a duly organized state or county association of licensed physicians or dentists SHPAC→, ←SHPAC SHPAC→or←SHPAC a licensed health facility or staff committees of such a facility for the purpose of research, subject to the provisions of Section 14-6-1 NMSA 1978 and subject to the review of an institutional review board in compliance with the federal Health Insurance Portability and Accountability Act of 1996 or any succeeding legislation.

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

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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.

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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."

SECTION 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2024.