

HOUSE BILL 253

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

Dayan Hochman-Vigil

AN ACT

RELATING TO BEHAVIORAL HEALTH; AMENDING A SECTION OF THE
CHILDREN'S MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES ACT
REGARDING DISCLOSURE OF INFORMATION.

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

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

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1 regarding the child.

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

7 C. A child fourteen years of age or older with
8 capacity to consent to disclosure of confidential information
9 shall have the right to consent to disclosure of mental health
10 and habilitation records. A legal custodian who is authorized
11 to make health care decisions for a child has the same rights
12 as the child to request, receive, examine, copy and consent to
13 the disclosure of medical or other health care information when
14 evidence exists that such a child whose consent to disclosure
15 of confidential information is sought does not have capacity to
16 give or withhold valid consent and does not have a treatment
17 guardian appointed by a court. If the legal custodian is not
18 authorized to make decisions for a child under the Children's
19 Mental Health and Developmental Disabilities Act, the person
20 seeking authorization shall petition the court for the
21 appointment of a treatment guardian to make a decision for such
22 a child.

23 D. Authorization from the child or legal custodian
24 for a child less than fourteen years of age shall not be
25 required for the disclosure or transmission of confidential

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1 information when the disclosure or transmission:

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

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

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

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

16 (5) is to an insurer contractually obligated
17 to pay part or all of the expenses relating to the treatment of
18 the child at the residential facility. The information
19 disclosed shall be limited to data identifying the child,
20 facility and treating or supervising physician and the dates
21 and duration of the residential treatment. It shall not be a
22 defense to an insurer's obligation to pay that the information
23 relating to the residential treatment of the child, apart from
24 information disclosed pursuant to this section, has not been
25 disclosed to the insurer;

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

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

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

13 (b) the need for the disclosure
14 outweighs the potential injury to the child, the clinician-
15 child relationship and treatment services.

16 E. Authorization from the child or legal custodian
17 for a child shall not be required for the disclosure or
18 transmission of confidential information when the disclosure is
19 made by a governmental agency, its agent or a state educational
20 institution, a duly organized state or county association of
21 licensed physicians or dentists or a licensed health facility
22 or staff committees of such a facility for the purpose of
23 research, subject to the provisions of Section 14-6-1 NMSA 1978
24 and subject to satisfaction of each of the following:

25 (1) submission of the proposed research to and

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1 approval by an institutional review board of record that can
2 provide assurance that the entity responsible for the
3 confidential information is in compliance with federal
4 requirements for the protection of human research participants;
5 and

6 (2) waiver and approval of the required
7 authorization to disclose confidential information by that
8 institutional review board made in compliance with all federal
9 guidelines, statutes and laws related to human research
10 participant rights.

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

20 ~~[F.]~~ G. An authorization given for the transmission
21 or disclosure of confidential information shall not be
22 effective unless it:

23 (1) is in writing and signed; and

24 (2) contains a statement of the child's right
25 to examine and copy the information to be disclosed, the name

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

3 ~~[G.]~~ H. The child has a right of access to
4 confidential information about the child and has the right to
5 make copies of information about the child and submit
6 clarifying or correcting statements and other documentation of
7 reasonable length for inclusion with the confidential
8 information. The statements and other documentation shall be
9 kept with the relevant confidential information, shall
10 accompany it in the event of disclosure and shall be governed
11 by the provisions of this section to the extent the statements
12 or other documentation contain confidential information.
13 Nothing in this subsection shall prohibit the denial of access
14 to the records when a physician or other mental health or
15 developmental disabilities professional believes and notes in
16 the child's medical records that the disclosure would not be in
17 the best interests of the child. In all cases, the child has
18 the right to petition the court for an order granting access.

19 ~~[H.]~~ I. Information concerning a child disclosed
20 under this section shall not be released to any other person,
21 agency or governmental entity or placed in files or
22 computerized data banks accessible to any persons not otherwise
23 authorized to obtain information under this section.
24 Notwithstanding the confidentiality provisions of the
25 Delinquency Act and the Abuse and Neglect Act, information

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

8 ~~[F.]~~ J. Nothing in the Children's Mental Health and
9 Developmental Disabilities Act shall limit the confidentiality
10 rights afforded by federal statute or regulation.

11 ~~[J.]~~ K. The department shall promulgate rules for
12 implementing disclosure of records pursuant to this section and
13 in compliance with state and federal law and the Children's
14 Court Rules.

15 L. If approved by an institutional review board of
16 record, a disclosure may be made to a governmental agency, its
17 agent or a state educational institution, a duly organized
18 state or county association of licensed physicians or dentists
19 or a licensed health facility or staff committees of such a
20 facility for the purpose of research and shall include data and
21 information gathered from January 1, 2015 forward.

22 M. When appropriate and as deemed necessary by the
23 institutional review board of record or other guiding federal
24 regulations, credentialed and licensed providers or an
25 investigator approved by the institutional review board of

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1 record shall be responsible for the research and its oversight,
2 in order to ensure patient safety, patient care and compliance
3 with all relevant state and federal guidelines, statutes and
4 law. Agencies providing data and their institutional review
5 boards of record shall be responsible for ensuring appropriate
6 training of all researchers to meet federal standards of good
7 clinical practice in performing these studies."

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