

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 202

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

AN ACT

RELATING TO SOCIAL SERVICES; ENACTING THE CHILD AND FAMILY
DATABANK ACT; PROVIDING FOR DATA SHARING AMONG STATE AGENCIES
TO FACILITATE PROGRAM EVALUATION AND DEVELOP EVIDENCE-BASED
POLICY; DEVELOPING A GOVERNANCE INFRASTRUCTURE TO ESTABLISH
GUIDELINES FOR ACCESS, USE, STORAGE AND SHARING OF DATA;
CREATING THE CHILD AND FAMILY DATABANK COMMISSION; AMENDING
SECTIONS OF THE CHILDREN'S MENTAL HEALTH AND DEVELOPMENTAL
DISABILITIES ACT AND THE MENTAL HEALTH AND DEVELOPMENTAL
DISABILITIES CODE TO PROVIDE FOR DISCLOSURES; PROVIDING A
PENALTY; MAKING AN APPROPRIATION.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1
through 12 of this act may be cited as the "Child and Family
Databank Act".

.214337.4

underscored material = new
[bracketed material] = delete

1 SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
2 Child and Family Databank Act:

3 A. "administrative data" or "data" means
4 information that a government agency or an organization
5 collects for administrative purposes, usually during the
6 delivery of a service;

7 B. "agency" means a governmental or quasi-
8 governmental entity that collects, transmits or stores data
9 relevant to the work of the commission;

10 C. "anonymized data" means information that does
11 not identify an individual and for which there is no reasonable
12 basis to believe could be used to identify an individual even
13 when combined with other separate pieces of information;

14 D. "commission" means the child and family databank
15 commission;

16 E. "commissioner" means a person who serves on the
17 commission;

18 F. "databank" means a system for collecting,
19 storing and using administrative data;

20 G. "databank host" means an entity that employs a
21 method or device used to store data and provide networking
22 capabilities;

23 H. "identifying data" means data that identify an
24 individual or for which there is a reasonable basis to believe
25 could be used to identify an individual;

.214337.4

1 I. "institutional review board" means a board,
2 committee or other group that:

3 (1) is formally designated by an institution
4 to approve research involving human subjects and to conduct
5 periodic review of the research to ensure the protection of the
6 rights and welfare of the human subjects but not to review a
7 clinical trial for scientific merit;

8 (2) is a nonpartisan entity; and

9 (3) has been approved by the national
10 institutes of health;

11 J. "multi-system" means an individual or family who
12 is involved, as a client, participant, recipient of services or
13 other affected party, with more than one state or federal
14 social program, including child welfare, income support,
15 corrections, health care and similar programs; and

16 K. "researcher" means an individual or entity that
17 requests to use or access information in the databank.

18 SECTION 3. [NEW MATERIAL] CHILD AND FAMILY DATABANK
19 COMMISSION--CREATION--APPOINTMENT--MEMBERSHIP.--

20 A. The "child and family databank commission" is
21 created as a nonpartisan commission administratively attached
22 to the department of health and consists of fifteen members as
23 follows:

24 (1) the secretary of human services or the
25 secretary's designee;

.214337.4

1 (2) the secretary of health or the secretary's
2 designee;

3 (3) the secretary of public education or the
4 secretary's designee;

5 (4) the secretary of children, youth and
6 families or the secretary's designee;

7 (5) the secretary of aging and long-term
8 services or the secretary's designee;

9 (6) the secretary of information technology or
10 the secretary's designee;

11 (7) one representative who is a member of the
12 New Mexico sentencing commission, appointed by the New Mexico
13 sentencing commission;

14 (8) four members of the general public,
15 appointed by the New Mexico legislative council, as follows:

16 (a) an individual with experience in
17 human subjects research and a demonstrated understanding of the
18 ethical considerations in that research who is affiliated with
19 a research university located in the state;

20 (b) an individual with technical
21 expertise and experience in the creation, design and
22 maintenance of large data systems and data security;

23 (c) an individual with demonstrated
24 experience in the fields of civil liberties or civil rights;
25 and

.214337.4

1 (d) an individual from a nonprofit
2 nonpartisan organization that focuses solely on legal and
3 public policy on behalf of children and families;

4 (9) two members, appointed by the speaker of
5 the house of representatives, who represent organizations that
6 provide services in the state directly to multi-system children
7 or families; and

8 (10) two members, appointed by the president
9 pro tempore of the senate, who represent organizations that
10 provide services in the state directly to multi-system children
11 or families.

12 B. A member of the commission shall not
13 simultaneously serve as a commissioner and as an employee of,
14 or a contractor to, the commission.

15 C. Appointed commissioners shall serve for
16 staggered three-year terms. Designated members shall serve for
17 the duration of the designating official's tenure in office.
18 Of the eight commissioners named in Paragraphs (8) through (10)
19 of Subsection A of this section who are initially appointed to
20 the board, four shall serve for a term of three years, three
21 shall serve for a term of two years and one shall serve for a
22 term of one year. At the first meeting of the commission, the
23 commissioners shall determine by lot who shall serve three-,
24 two- and one-year terms. Following the expiration of the
25 initial terms, appointments shall be for terms of three years.

.214337.4

1 D. The governor shall call the initial meeting of
2 the commission by September 1, 2019. At that meeting, the
3 commissioners shall appoint a chair and a vice chair, each of
4 whom shall serve for two-year terms, unless removed sooner by a
5 vote of two-thirds of the commission. After the first meeting
6 of the commission, the commission shall meet at least quarterly
7 at the call of the chair.

8 E. An appointed commissioner may be removed by a
9 vote of two-thirds of the commission.

10 F. A vacancy that occurs in the commission shall be
11 filled in the same manner as the original appointment. An
12 appointment to fill a vacancy shall be made only for the
13 unexpired portion of the vacated term.

14 G. Members of the commission may receive per diem
15 and reimbursement for mileage for work related to the
16 commission in accordance with the Per Diem and Mileage Act and
17 shall receive no other compensation, perquisite or allowance
18 for their service on the commission.

19 **SECTION 4. [NEW MATERIAL] POWERS AND DUTIES OF**
20 **COMMISSION.--**

21 A. The commission shall:

22 (1) promulgate rules to carry out its duties
23 provided in the Child and Family Databank Act;

24 (2) ensure that data are received by the
25 databank from each agency required to provide data for

1 research, analysis and policy development related to addressing
2 the needs of multi-system individuals or families;

3 (3) ensure that identifying data in the
4 databank is stored and used in accordance with all applicable
5 privacy and security laws and standards;

6 (4) contract with agencies to define and
7 manage the process by which data are shared between agencies
8 and the commission and to address relevant legal and privacy
9 concerns of the commission and the agencies;

10 (5) define and manage the governance process
11 by which a researcher or an agency may access and use data for
12 research, while ensuring compliance with all applicable privacy
13 and security laws and standards, adherence to an institutional
14 review board process and the requirements of the commission's
15 committee on ethical use of data, as provided for in Paragraph
16 (8) of this subsection;

17 (6) ensure that the commission staff performs
18 evaluation and analysis of data in the databank and provides
19 support and assistance to agencies in the agencies' evaluation
20 and analysis of data, which evaluation and analysis shall
21 include a focus on:

22 (a) identifying and understanding risk
23 and protective factors of families that are most vulnerable to
24 experiencing housing, health, nutrition, financial and other
25 hardships;

.214337.4

1 (b) evaluating existing programs and
2 developing evidence-based programs and policies to address
3 issues related to the safety, health and well-being of the
4 state's children and families;

5 (c) quantifying outcomes of participants
6 in programs administered by agencies; and

7 (d) developing a strategic plan or
8 research agenda to identify and address questions related to
9 programs, policies and rules of agencies;

10 (7) publish the results of any analysis or
11 evaluation completed by commission staff, as well as summaries
12 of reports and analyses conducted by researchers using data
13 from the databank;

14 (8) establish a committee of the commission to
15 address ethics and privacy issues related to data and the
16 databank and any additional committees necessary for the work
17 of the commission; and

18 (9) establish and maintain a publicly
19 accessible website that includes access to:

20 (a) the commission's rules, meeting
21 dates and meeting times;

22 (b) reports of research conducted by the
23 commission staff; and

24 (c) summaries of research conducted
25 using data provided by the commission from the databank.

.214337.4

1 B. The commission may charge reasonable fees for:

2 (1) creating specialized or customized reports
3 of information in the databank;

4 (2) assisting in the development of a research
5 proposal;

6 (3) conducting a portion of data analysis for
7 a researcher;

8 (4) producing anonymized data from data that
9 include identifying data before providing data to a researcher;
10 and

11 (5) preparing or publishing data to improve
12 its utility in analysis.

13 C. An entity that is required to provide data to
14 the databank shall not be charged any of the fees provided for
15 in Subsection B of this section.

16 SECTION 5. [NEW MATERIAL] COMMISSION--EXECUTIVE

17 DIRECTOR--STAFF.--

18 A. By October 1, 2019, the commission shall hire an
19 executive director. The executive director shall have:

20 (1) a demonstrated competency in research and
21 program analysis;

22 (2) a demonstrated breadth of knowledge on the
23 social systems and programs that will be the subject of data in
24 the databank;

25 (3) the knowledge and expertise to lead the

.214337.4

underscored material = new
[bracketed material] = delete

1 work of the commission;

2 (4) a demonstrated familiarity with electronic
3 systems used to collect, store and provide output of data
4 received from multiple sources;

5 (5) extensive management experience; and

6 (6) an in-depth understanding of research and
7 analysis using administrative data.

8 B. The executive director, with the commission's
9 authorization, shall hire staff as necessary to carry out the
10 commission's duties, including staff that possess the following
11 skills:

12 (1) experience and understanding of:

13 (a) integration and organization of
14 varied data;

15 (b) communication of complex technical
16 concepts to diverse audiences; and

17 (c) administrative data research
18 methodologies;

19 (2) technical expertise to:

20 (a) support data integration; and

21 (b) assist researchers and analysts in
22 obtaining the appropriate data to meet needs;

23 (3) experience in creating and maintaining
24 large data systems, preparing or publishing data to improve its
25 utility in analysis and data security;

.214337.4

- 1 (4) legal expertise related to:
 2 (a) drafting and negotiating data-
 3 sharing agreements;
 4 (b) the historical, cultural and ethical
 5 implications surrounding data use; and
 6 (c) protecting the privacy and security
 7 of identifying data;
 8 (5) the ability to conduct qualitative and
 9 quantitative research and support; and
 10 (6) the ability to assist in evaluating agency
 11 programming and developing evidence-based policy.

12 SECTION 6. [NEW MATERIAL] AGENCY CONTRACTS AND DATA
 13 SHARING.--

14 A. Absent a specific legal prohibition to the
 15 contrary and in accordance with contractual agreements with the
 16 commission, the following agencies shall share all available
 17 data with the databank that relates to the needs of multi-
 18 system individuals and families:

- 19 (1) the department of health;
 20 (2) the human services department;
 21 (3) the children, youth and families
 22 department;
 23 (4) the public education department;
 24 (5) the corrections department;
 25 (6) the aging and long-term services

.214337.4

1 department; and

2 (7) the New Mexico sentencing commission.

3 B. An agency shall cooperate with the commission in
4 the drafting and execution of its contractual agreement with
5 the commission. The contractual agreement between an agency
6 and the commission shall be executed by September 1, 2020 and
7 shall specify, at a minimum:

8 (1) the confidentiality of the agency's client
9 data;

10 (2) the conditions for or restrictions on the
11 release and use of data so as to comply with all applicable
12 state and federal laws; and

13 (3) security measures to be taken to protect
14 the confidentiality of the data.

15 C. At a minimum, the department of health shall
16 share the following data with the databank:

17 (1) demographics relating to individuals to
18 whom the department provides services and to public health
19 measures that the department collects;

20 (2) vital records and statistics, including
21 birth and death information;

22 (3) inpatient hospital discharge data,
23 including emergency department usage;

24 (4) emergency department usage;

25 (5) emergency medical services data;

.214337.4

1 (6) environmental health and injury data; and
2 (7) family, infant, toddler program
3 participation information.

4 D. At a minimum, the human services department
5 shall share the following data with the databank:

6 (1) demographics relating to recipients of
7 medical assistance;

8 (2) medicaid data, including both fee-for-
9 service and managed care organization data and children's
10 health insurance program claims data; and

11 (3) data from the following programs:

12 (a) the supplemental nutrition
13 assistance program;

14 (b) cash assistance programs;

15 (c) utility payment assistance programs;

16 (d) child support enforcement; and

17 (e) behavioral health services.

18 E. The public education department shall share with
19 the databank data regarding students and public schools in the
20 state, including the following:

21 (1) student attendance;

22 (2) student demographics;

23 (3) graduation rates;

24 (4) student achievement, including

25 proficiencies in math, reading and science;

.214337.4

- 1 (5) teachers' training and qualifications;
- 2 (6) course offerings;
- 3 (7) post-secondary education; and
- 4 (8) other information relevant to the well-
- 5 being of children and families in the state.

6 F. The children, youth and families department
7 shall share all federally reported data with the databank, as
8 well as any other relevant data, from the following programs
9 and areas:

- 10 (1) demographics on families and individuals
11 to whom the department provides services or intervention;
- 12 (2) juvenile justice;
- 13 (3) behavioral health services;
- 14 (4) early childhood services, including pre-
- 15 kindergarten, home visiting, daycare, family nutrition and head
16 start; and

17 (5) the protective services division,
18 including:

- 19 (a) foster care;
- 20 (b) adoptions;
- 21 (c) reports and investigations for
22 allegations of child abuse and neglect;
- 23 (d) permanency planning; and
- 24 (e) youth services.

25 G. The corrections department shall share state-

1 level corrections data with the databank, including information
2 relating to:

- 3 (1) inmate and parolee demographics;
- 4 (2) offender intake and sentencing;
- 5 (3) probation and parole;
- 6 (4) community reentry and integration; and
- 7 (5) recidivism rates and information on how
8 the rates were determined.

9 H. The New Mexico sentencing commission shall share
10 with the databank data it collects and analyzes under
11 agreements with other state agencies.

12 I. The aging and long-term services department
13 shall share any data collected by the department related to
14 kinship care programs with the databank.

15 J. In addition to the agencies and programs listed
16 in Subsections C through I of this section, other agencies that
17 the commission identifies as having data that are relevant to
18 the well-being of children and families in the state shall
19 share their data with the databank, to the extent legally
20 permissible and upon execution of a contractual agreement as
21 provided in this section. These data shall include demographic
22 information.

23 K. The data shared by an agency as required in
24 Subsection A of this section shall include historical
25 administrative data created based on an individual interaction

.214337.4

1 with a person, a claim made by a person or another incident or
2 event that was documented for recordkeeping. Historical data
3 shall include data that were created as far in the past as is
4 practicable for the agency to share and shall include at least
5 the previous five years' data, unless the data are unavailable.

6 L. Agencies shall provide their data to the
7 commission in the formats and on the schedules determined by
8 the commission's rule but, in any event, no less frequently
9 than annually.

10 M. Agencies shall cooperate with the commission and
11 other agencies in the evaluation of programs and policy
12 development and for the purpose of cross-sector collaboration
13 in the provision of services to children and families
14 statewide.

15 SECTION 7. [NEW MATERIAL] DATABANK POLICY OFFICER.--

16 A. The contractual agreements between the
17 commission and the department of health, human services
18 department, public education department and children, youth and
19 families department shall each provide for a databank policy
20 officer within each department, and that position shall be
21 funded by the commission.

22 B. A databank policy officer shall:

- 23 (1) coordinate and liaise with the commission;
24 (2) assist with the identification of data
25 sets to share with the databank; and

.214337.4

1 (3) coordinate with the commission and the
2 databank host to transmit and share data, assist agencies in
3 identifying priority programs and policies for analysis and
4 work within the agency and with the commission to identify and
5 implement areas of cross-sector collaboration and improved
6 delivery of services.

7 **SECTION 8. [NEW MATERIAL] DATABANK HOST--DUTIES.--**

8 A. The commission shall enter into a contractual
9 operating agreement with a databank host.

10 B. The databank host shall:

11 (1) cooperate with the commission in the
12 expeditious negotiation and execution of the contractual
13 operating agreement;

14 (2) provide access to data in response to
15 research requests; and

16 (3) at least annually, ensure that the
17 databank is updated with new data received from agencies.

18 **SECTION 9. [NEW MATERIAL] PUBLICATION OF RESEARCH**
19 **SUMMARIES.--**

20 A. The commission shall require that a researcher
21 that uses databank data provide the commission with a summary
22 of the researcher's findings for publication by the commission.

23 B. An agency shall not prevent publication of a
24 summary because the agency disagrees with a researcher's
25 findings or conclusions.

.214337.4

1 **SECTION 10. [NEW MATERIAL] DATA OWNERSHIP.--**

2 Notwithstanding the data sharing requirements set forth in the
3 Child and Family Databank Act, an agency that shares data shall
4 retain ownership of its original data set.

5 **SECTION 11. [NEW MATERIAL] COMPLIANCE WITH OTHER**

6 **LAWS.--**If the disclosure of data to the commission is
7 specifically prohibited by state or federal law, an agency
8 shall work with the commission to identify any ways in which
9 data could be edited, redacted or otherwise protected to allow
10 the data to be provided to the commission in compliance with
11 state and federal law.

12 **SECTION 12. [NEW MATERIAL] REDISCLOSURE OF INFORMATION.--**

13 Neither the commission nor the databank host shall disclose
14 information released to the databank in violation of state or
15 federal law. A person who violates this section is guilty of a
16 misdemeanor and shall be sentenced in accordance with Section
17 31-19-1 NMSA 1978.

18 **SECTION 13.** Section 32A-6A-24 NMSA 1978 (being Laws 2007,
19 Chapter 162, Section 24, as amended) is amended to read:

20 **"32A-6A-24. DISCLOSURE OF INFORMATION.--**

21 A. Except as otherwise provided in the Children's
22 Mental Health and Developmental Disabilities Act, a person
23 shall not, without the authorization of the child, disclose or
24 transmit any confidential information from which a person well-
25 acquainted with the child might recognize the child as the

1 described person or any code, number or other means that could
2 be used to match the child with confidential information
3 regarding the child.

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

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

25 D. Authorization from the child or legal custodian

.214337.4

underscored material = new
~~[bracketed material]~~ = delete

1 for a child less than fourteen years of age shall not be
2 required for the disclosure or transmission of confidential
3 information when the disclosure or transmission:

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

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

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

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

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

.214337.4

1 information disclosed pursuant to this section, has not been
2 disclosed to the insurer;

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

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

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

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

18 (8) is made to a governmental agency, its
19 agent or a state education institution, a duly organized state
20 or county association of licensed physicians or dentists, a
21 licensed health facility or staff committee of a licensed
22 health facility, for the purpose of research, subject to the
23 provisions of Section 14-6-1 NMSA 1978 and subject to the
24 review of an institutional review board in compliance with the
25 federal Health Insurance Portability and Accountability Act of

.214337.4

1 1996 or any succeeding legislation.

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

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

14 (1) is in writing and signed; and

15 (2) contains a statement of the child's right
16 to examine and copy the information to be disclosed, the name
17 or title of the proposed recipient of the information and a
18 description of the use that may be made of the information.

19 G. The child has a right of access to confidential
20 information about the child and has the right to make copies of
21 information about the child and submit clarifying or correcting
22 statements and other documentation of reasonable length for
23 inclusion with the confidential information. The statements
24 and other documentation shall be kept with the relevant
25 confidential information, shall accompany it in the event of

.214337.4

1 disclosure and shall be governed by the provisions of this
2 section to the extent the statements or other documentation
3 contain confidential information. Nothing in this subsection
4 shall prohibit the denial of access to the records when a
5 physician or other mental health or developmental disabilities
6 professional believes and notes in the child's medical records
7 that the disclosure would not be in the best interests of the
8 child. In all cases, the child has the right to petition the
9 court for an order granting access.

10 H. Information concerning a child disclosed under
11 this section shall not be released to any other person, agency
12 or governmental entity or placed in files or computerized data
13 banks accessible to any persons not otherwise authorized to
14 obtain information under this section. Notwithstanding the
15 confidentiality provisions of the Delinquency Act and the Abuse
16 and Neglect Act, information disclosed under this section shall
17 not be re-released without the express consent of the child or
18 legal custodian authorized under the Children's Mental Health
19 and Developmental Disabilities Act to give consent and any
20 other consent necessary for redisclosure in conformance with
21 state and federal law, including consent that may be required
22 from the professional or the facility that created the
23 document.

24 I. Nothing in the Children's Mental Health and
25 Developmental Disabilities Act shall limit the confidentiality

.214337.4

1 rights afforded by federal statute or regulation.

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

6 SECTION 14. Section 43-1-19 NMSA 1978 (being Laws 1977,
7 Chapter 279, Section 18, as amended) is amended to read:

8 "43-1-19. DISCLOSURE OF INFORMATION.--

9 A. Except as otherwise provided in the code, no
10 person shall, without the authorization of the client, disclose
11 or transmit any confidential information from which a person
12 well acquainted with the client might recognize the client as
13 the described person, or any code, number or other means that
14 can be used to match the client with confidential information
15 regarding the client.

16 B. Authorization from the client shall not be
17 required for the disclosure or transmission of confidential
18 information in the following circumstances:

19 (1) when the request is from a mental health
20 or developmental disability professional or from an employee or
21 trainee working with a person with a mental disability or
22 developmental disability, to the extent that the practice,
23 employment or training on behalf of the client requires access
24 to such information is necessary;

25 (2) when such disclosure is necessary to

.214337.4

1 protect against a clear and substantial risk of imminent
2 serious physical injury or death inflicted by the client on the
3 client's self or another;

4 (3) when the disclosure is made pursuant to
5 the provisions of the Assisted Outpatient Treatment Act, using
6 reasonable efforts to limit protected health information to
7 that which is minimally necessary to accomplish the intended
8 purpose of the use, disclosure or request;

9 (4) when the disclosure of such information is
10 to the primary caregiver of the client and the disclosure is
11 only of information necessary for the continuity of the
12 client's treatment in the judgment of the treating physician or
13 certified psychologist who discloses the information; ~~[or]~~

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

25 (6) when the disclosure is made to a

1 governmental agency, its agent or a state educational
2 institution, a duly organized state or county association of
3 licensed physicians or dentists, a licensed health facility or
4 staff committees of such a facility for the purpose of
5 research, subject to the provisions of Section 14-6-1 NMSA 1978
6 and subject to the review of an institutional review board in
7 compliance with the federal Health Insurance Portability and
8 Accountability Act of 1996 or any succeeding legislation.

9 C. No authorization given for the transmission or
10 disclosure of confidential information shall be effective
11 unless it:

12 (1) is in writing and signed; and

13 (2) contains a statement of the client's right
14 to examine and copy the information to be disclosed, the name
15 or title of the proposed recipient of the information and a
16 description of the use that may be made of the information.

17 D. The client has a right of access to confidential
18 information and has the right to make copies of any information
19 and to submit clarifying or correcting statements and other
20 documentation of reasonable length for inclusion with the
21 confidential information. The statements and other
22 documentation shall be kept with the relevant confidential
23 information, shall accompany it in the event of disclosure and
24 shall be governed by the provisions of this section to the
25 extent they contain confidential information. Nothing in this

.214337.4

1 subsection shall prohibit the denial of access to such records
2 when a physician or other mental health or developmental
3 disabilities professional believes and notes in the client's
4 medical records that such disclosure would not be in the best
5 interests of the client. In any such case, the client has the
6 right to petition the court for an order granting such access.

7 E. Where there exists evidence that the client
8 whose consent to disclosure of confidential information is
9 sought is incapable of giving or withholding valid consent and
10 the client does not have a guardian or treatment guardian
11 appointed by a court, the person seeking such authorization
12 shall petition the court for the appointment of a treatment
13 guardian to make a substitute decision for the client, except
14 that if the client is less than fourteen years of age, the
15 client's parent or guardian is authorized to consent to
16 disclosure on behalf of the client.

17 F. Information concerning a client disclosed under
18 this section shall not be released to any other person, agency
19 or governmental entity or placed in files or computerized [~~data~~
20 ~~banks~~] databanks accessible to any persons not otherwise
21 authorized to obtain information under this section.

22 G. Nothing in the code shall limit the
23 confidentiality rights afforded by federal statute or
24 regulation.

25 H. A person appointed as a treatment guardian in

1 accordance with the [~~Mental Health and Developmental~~
2 ~~Disabilities~~] code may act as the client's personal
3 representative pursuant to the federal Health Insurance
4 Portability and Accountability Act of 1996, Sections 1171-1179
5 of the Social Security Act, 42 U.S.C. Section 1320d, as
6 amended, and applicable federal regulations to obtain access to
7 the client's protected health information, including mental
8 health information and relevant physical health information,
9 and may communicate with the client's health care providers in
10 furtherance of such treatment."

11 SECTION 15. APPROPRIATION.--Three million seven hundred
12 thirty-eight thousand dollars (\$3,738,000) is appropriated from
13 the general fund to the department of health for expenditure in
14 fiscal year 2020 and subsequent fiscal years to establish a
15 child and family databank commission and a child and family
16 databank and to implement the provisions of the Child and
17 Family Databank Act. Any unexpended or unencumbered balance
18 remaining at the end of a fiscal year shall not revert to the
19 general fund.