F I S C A L I M P A C T R E P O R T

SPONSOR Hochman-Vigil **ORIGINAL DATE** 02/16/21 **LAST UPDATED** **HB** 253

SHORT TITLE Disclosure of Certain Mental Health Info **SB**

ANALYST Bachechi

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	NFI	NFI			

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From
Children, Youth and Families Department (CYFD)
Early Childhood Education and Care Department (ECECD)
Human Services Department (HSD)
New Mexico Medical Board (NMMB)
Office of the Attorney General (NMAG)

SUMMARY

Synopsis of Bill

House Bill 253 (HB253) amends Section 32A-6A-24 of the Children's Mental Health and Developmental Disabilities Act, NMSA 1978 (the "Act") to allow for disclosure of confidential information about a child's mental health information for research purposes. The bill creates a new exception to the statute allowing disclosure of confidential information without a signed waiver from the child or the child's legal guardian when the following conditions are satisfied.

1. Disclosure has to be for the purpose of research.
2. Disclosures can only be made to "a governmental agency or its agent, a state educational institution, a duly organized state or county association of licensed physicians or dentists, a licensed health facility or staff committees of such facilities."
3. A waiver or approval by an institutional review board (IRB) made in compliance with all federal guidelines, statues and laws relate to human research participant rights.

When appropriate and as deemed necessary by the IRB or other federal regulations, credentialed and licensed providers, or an investigator approved by the IRB, shall be responsible for the research and its oversight in order to ensure patient safety, patient care and compliance with all relevant state and federal guidelines, statutes and law.

The bill provides for disclosure of confidential information "gathered from January 1, 2015 forward." Agencies providing data and their IRBs would be responsible for ensuring appropriate training of all researchers to meeting federal standards of good clinical practice in performing the studies.

FISCAL IMPLICATIONS

No fiscal implications identified.

SIGNIFICANT ISSUES

HB253 makes it possible for approved entities to obtain private mental health information about disabled children for research purposes without the consent of the child or the child's legal guardian.

As noted in the state's Administrative Code, a person's ability to protect and control the dissemination of their personal information is an intrinsic right. Protecting the confidentiality of staff and clients is an ethical responsibility of state agencies. It is for these reasons there are federal protections such as the Health Insurance Portability and Accountability Act (HIPAA) and Family Educational Rights and Privacy Act (FERPA). Amendments to that right, whether it be through exceptions or modifications of definitions, must be enacted with caution. Furthermore, as identified by the U.S. Department of Health and Human Services, children are classified as vulnerable subjects and afforded special considerations when engaged in research. As such, HHS regulations 45 CFR §46.408, requires that "adequate provisions are made for soliciting the assent of the children and the permission of their parents or guardians."

CYFD contends the bill may subvert the purpose of the Children's Mental Health and Developmental Disabilities Act regarding protections for confidential information. While the checks and assurances associated with procedures and protocols required by institutional review boards (IRBs) provide some protection, not all institutions have established, high-functioning and well-funded IRBs that can ensure compliance. HB253 places a great deal of responsibility on IRBs and projects submitted for research purposes requiring IRB approval may be erroneously characterized as "low-risk" for the disclosure of confidential information, reducing the IRB's control over the information. CYFD stresses the importance of maintaining a balance between allowing researchers to avail themselves of confidential information for purposes meant to improve the systems serving vulnerable populations and protecting that population's privacy rights. Careful consideration of factors motivating potential research teams needs occur in order to protect any human research subject, and especially a child's behavioral health information.

The bill permits the use of data collected from January 1, 2015 onward. This includes protected health information collected from people prior to the amendment being added and the public being made aware of such an amendment.

ADMINISTRATIVE IMPLICATIONS

Accommodation of the changes to the Children's Mental Health and Developmental Disabilities Act will have administrative implications, requiring CYFD staff to review how the changes correspond to current policy, amend policy language to reflect those changes, and educate/train CYFD staff and affiliated facilities of changes.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

May conflict with Senate Bill 75 “State Agency Disclosure Of Sensitive Info.”

May conflict with House Bill 124 “State Agency Sensitive Info.”

Related to House Bill 202, “Foster Care Requirements & Changes,” that proposes different amendments to the Children’s Mental Health and Developmental Disabilities Act.

TECHNICAL ISSUES

The word “waiver” in the proposed subsection E (2) (on page 5, line 6) is potentially confusing, given that it suggests that the confidentiality could be waived, and arguably unnecessary. Since the intent appears to be that the institutional review board must approve the disclosure of the release of the confidential information, the word “waiver” could be removed for clarity without altering the effect of the bill.

CLB/rl/sb