

AGENCY BILL ANALYSIS
2024 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:
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and
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SECTION I: GENERAL INFORMATION

Check all that apply:

Original Amendment
Correction Substitute

Date Prepared: 2024-01-26
Bill No: SB230

Sponsor(s) Greg Nibert
:

Agency Name CYFD 69000
and Code
Number:
Person Writing Elizabeth Hamilton
Analysis:

Short DISCLOSURE OF
Title: CERTAIN HEALTH INFO

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		
\$0	\$0		

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		
\$0	\$0			

ESTIMATED ADDITIONAL OPERATION BUDGET (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		\$0		\$0		

Duplicates/Conflicts with/Companion to/Relates to:

Duplicates/Relates to Appropriation in the General Appropriation

Act:

SECTION III: NARRATIVE

BILL SUMMARY

This bill amends the Children's Mental Health and Developmental Disabilities Act to include additional disclosures of confidential information.

Specifically, the bill amends Section 32A-6A-24(D) to no longer require the authorization from a child or legal custodian for a child less than fourteen years of age for the disclosure or transmission of confidential information in certain circumstances. The bill further provides in Section 32A-6A-24(D)(8) that disclosure can be made to add all confidential information in existence on and after July 1, 2024, to a governmental agency, its agent or 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 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.

FISCAL IMPLICATIONS

There is no fiscal impact to CYFD.

SIGNIFICANT ISSUES

As written, Section 32A-6A-24(D)(8) is very broad and may inadvertently encompass disclosure for non-academic purposes. Further, the bill is silent regarding whether the protected health information would be anonymized prior to disclosure or identify specific instances where such information may be disclosed. The bill is also silent regarding how the entity to which a disclosure was made will maintain and retain the protected health care information records. Finally, given the recent influx of accredited fee for service institutional review boards not affiliated with an academic institution, review by such a board may not be the most effective manner to ensure HIPAA compliance or a bona fide research purpose.

PERFORMANCE IMPLICATIONS

The streamlined process for disclosure of protected health information in certain circumstances, especially for the purposes of treatment, will support CYFD in meeting its obligation to find appropriate placement and treatment for the children and youth in state custody.

ADMINISTRATIVE IMPLICATIONS

CYFD would have to change its policies and procedures regarding the disclosure of protected health information for youth 14 years of age and up. Currently, CYFD asks a youth 14 years of age or older for consent to release protected health information. If the youth does not consent, there is a procedure to determine whether extraordinary circumstances justify disclosure.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

No conflict or duplication.

TECHNICAL ISSUES

No technical issues identified.

OTHER SUBSTANTIVE ISSUES

No substantial issues identified.

ALTERNATIVES

No alternatives identified.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Disclosure of health information for youth 14 years old and up would remain difficult for CYFD to accomplish.

AMENDMENTS

CYFD recommends that Section 32A-6A-24(D)(8) [page 4: line 23] be amended to reflect that disclosure may be made only for "the purpose of bona fide research". Further confidential information from CYFD should be accompanied by a data use agreement or memorandum of understanding regarding how the data are used and that includes a records retention and disposal provisions. CYFD further recommends that all research conducted under this provision be sponsored by a New Mexico academic institution to ensure that the data are only used for bona fide research purposes. Finally, unless necessary for a specific research purpose, the data should be de-identified.