

1 SENATE BILL 230

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2024**

3 INTRODUCED BY

4 Greg Nibert

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10 AN ACT

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

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

18 SECTION 1. 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

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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

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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

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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) for all confidential information in
19 existence on and after July 1, 2024, is to a governmental
20 agency, its agent or a state educational institution, a duly
21 organized state or county association of licensed physicians or
22 dentists, a licensed health facility or staff committees of
23 such a facility for the purpose of research, subject to the
24 provisions of Section 14-6-1 NMSA 1978 and subject to the
25 review of an institutional review board in compliance with the

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1 federal Health Insurance Portability and Accountability Act of
2 1996 or any succeeding legislation.

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

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

15 (1) is in writing and signed; and

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

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

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

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

25 I. Nothing in the Children's Mental Health and

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1 Developmental Disabilities Act shall limit the confidentiality
2 rights afforded by federal statute or regulation.

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

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

9 "43-1-19. DISCLOSURE OF INFORMATION.--

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

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

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

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1 (2) when such disclosure is necessary to
2 protect against a clear and substantial risk of imminent
3 serious physical injury or death inflicted by the client on the
4 client's self or another;

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

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

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

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

9 (7) when such disclosure is by a physician, a
10 licensed psychologist or a qualified mental health professional
11 licensed for independent practice and responsible for the
12 treatment of inmates in a jail or corrections facility to
13 another equally qualified treating professional responsible for
14 the continuation of care of the inmate upon the inmate's
15 release from a jail or corrections facility, and the disclosure
16 is only of information necessary for the continuity of the
17 client's treatment in the judgment of the treating professional
18 who discloses the information; or

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

4 C. No authorization given for the transmission or
5 disclosure of confidential information shall be effective
6 unless it:

7 (1) is in writing and signed; and

8 (2) contains a statement of the client's right
9 to examine and copy the information to be disclosed, the name
10 or title of the proposed recipient of the information and a
11 description of the use that may be made of the information.

12 D. The client has a right of access to confidential
13 information and has the right to make copies of any information
14 and to submit clarifying or correcting statements and other
15 documentation of reasonable length for inclusion with the
16 confidential information. The statements and other
17 documentation shall be kept with the relevant confidential
18 information, shall accompany it in the event of disclosure and
19 shall be governed by the provisions of this section to the
20 extent they contain confidential information. Nothing in this
21 subsection shall prohibit the denial of access to such records
22 when a physician or other mental health or developmental
23 disabilities professional believes and notes in the client's
24 medical records that such disclosure would not be in the best
25 interests of the client. In any such case, the client has the

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1 right to petition the court for an order granting such access.

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

12 F. Information concerning a client disclosed under
13 this section shall not be released to any other person, agency
14 or governmental entity or placed in files or computerized data
15 banks accessible to any persons not otherwise authorized to
16 obtain information under this section.

17 G. Nothing in the code shall limit the
18 confidentiality rights afforded by federal statute or
19 regulation.

20 H. A person appointed as a treatment guardian in
21 accordance with the Mental Health and Developmental
22 Disabilities Code may act as the client's personal
23 representative pursuant to the federal Health Insurance
24 Portability and Accountability Act of 1996, Sections 1171-1179
25 of the Social Security Act, 42 U.S.C. Section 1320d, as

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1 amended, and applicable federal regulations to obtain access to
2 the client's protected health information, including mental
3 health information and relevant physical health information,
4 and may communicate with the client's health care providers in
5 furtherance of such treatment."

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

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