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AN ACT

RELATING TO HEALTH CARE; AMENDING A SECTION OF THE CHILDREN'S MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES ACT; AMENDING A SECTION OF THE MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES CODE; PROVIDING FOR ADDITIONAL DISCLOSURE OF CONFIDENTIAL 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 regarding the child.

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

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

17 D. Authorization from the child or legal custodian  
18 shall not be required for the disclosure or transmission of  
19 confidential information when the disclosure or transmission:

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

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

25 (3) is determined by a clinician not to

1 cause substantial harm to the child and a summary of the  
2 child's assessment, treatment plan, progress, discharge plan  
3 and other information essential to the child's treatment is  
4 made to a child's legal custodian or guardian ad litem;

5 (4) is to the primary caregiver of the child  
6 and the information disclosed was necessary for the  
7 continuity of the child's treatment in the judgment of the  
8 treating clinician who discloses the information;

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

19 (6) is to a protection and advocacy  
20 representative pursuant to the federal Developmental  
21 Disabilities Assistance and Bill of Rights Act and the  
22 federal Protection and Advocacy for Individuals with Mental  
23 Illness Act;

24 (7) is pursuant to a court order issued for  
25 good cause shown after notice to the child and the child's

1 legal custodian and opportunity to be heard is given. Before  
2 issuing an order requiring disclosure, the court shall find  
3 that:

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

6 (b) the need for the disclosure  
7 outweighs the potential injury to the child, the  
8 clinician-child relationship and treatment services; or

9 (8) is, for all confidential information in  
10 existence on and after July 1, 2024, to a governmental  
11 agency, its agent or a state educational institution, a duly  
12 organized state or county association of licensed physicians  
13 or dentists or a licensed health facility or staff committees  
14 of such a facility for the purpose of research, subject to  
15 the provisions of Section 14-6-1 NMSA 1978 and subject to the  
16 review of an institutional review board in compliance with  
17 the federal Health Insurance Portability and Accountability  
18 Act of 1996 or any succeeding legislation and any federal  
19 regulations governing institutional review boards.

20 E. A disclosure ordered by the court shall be  
21 limited to the information that is essential to carry out the  
22 purpose of the disclosure. Disclosure shall be limited to  
23 those persons whose need for the information forms the basis  
24 for the order. An order by the court shall include such  
25 other measures as are necessary to limit disclosure for the

1 protection of the child, including sealing from public  
2 scrutiny the record of a proceeding for which disclosure of a  
3 child's record has been ordered.

4 F. An authorization given for the transmission or  
5 disclosure of confidential information shall not be effective  
6 unless it:

7 (1) is in writing and signed; and

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

13 G. The child has a right of access to confidential  
14 information about the child and has the right to make copies  
15 of information about the child and submit clarifying or  
16 correcting statements and other documentation of reasonable  
17 length for inclusion with the confidential information. The  
18 statements and other documentation shall be kept with the  
19 relevant confidential information, shall accompany it in the  
20 event of disclosure and shall be governed by the provisions  
21 of this section to the extent the statements or other  
22 documentation contain confidential information. Nothing in  
23 this subsection shall prohibit the denial of access to the  
24 records when a physician or other mental health or  
25 developmental disabilities professional believes and notes in

1 the child's medical records that the disclosure would not be  
2 in the best interests of the child. In all cases, the child  
3 has the right to petition the court for an order granting  
4 access.

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

19 I. Nothing in the Children's Mental Health and  
20 Developmental Disabilities Act shall limit the  
21 confidentiality rights afforded by federal statute or  
22 regulation.

23 J. The department shall promulgate rules for  
24 implementing disclosure of records pursuant to this section  
25 and in compliance with state and federal law and the

1 Children's Court Rules."

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

4 "43-1-19. DISCLOSURE OF INFORMATION.--

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

12 B. Authorization from the client shall not be  
13 required for the disclosure or transmission of confidential  
14 information in the following circumstances:

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

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

25 (3) when the disclosure is made pursuant to

1 the provisions of the Assisted Outpatient Treatment Act,  
2 using reasonable efforts to limit protected health  
3 information to that which is minimally necessary to  
4 accomplish the intended purpose of the use, disclosure or  
5 request;

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

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

22 (6) when the request is from a physician, a  
23 licensed psychologist or a qualified mental health  
24 professional licensed for independent practice and  
25 responsible for the continuity of care of inmates with a



1 mental or developmental disability who are in a jail or  
2 corrections facility, and the disclosure is only of  
3 information necessary for the continuity of the client's  
4 treatment in the judgment of an equally qualified treating  
5 professional who discloses the information;

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

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

1 Health Insurance Portability and Accountability Act of 1996  
2 or any succeeding legislation and any federal regulations  
3 governing institutional review boards.

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  
9 right to examine and copy the information to be disclosed,  
10 the name or title of the proposed recipient of the  
11 information and a description of the use that may be made of  
12 the information.

13 D. The client has a right of access to  
14 confidential information and has the right to make copies of  
15 any information and to submit clarifying or correcting  
16 statements and other documentation of reasonable length for  
17 inclusion with the confidential information. The statements  
18 and other documentation shall be kept with the relevant  
19 confidential information, shall accompany it in the event of  
20 disclosure and shall be governed by the provisions of this  
21 section to the extent they contain confidential information.  
22 Nothing in this subsection shall prohibit the denial of  
23 access to such records when a physician or other mental  
24 health or developmental disabilities professional believes  
25 and notes in the client's medical records that such

1 disclosure would not be in the best interests of the client.  
2 In any such case, the client has the right to petition the  
3 court for an order granting such access.

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

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

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

23 H. A person appointed as a treatment guardian in  
24 accordance with the Mental Health and Developmental  
25 Disabilities Code may act as the client's personal

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

9 SECTION 3. EFFECTIVE DATE.--The effective date of the  
10 provisions of this act is July 1, 2024. \_\_\_\_\_

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