AN ACT

RELATING TO BEHAVIORAL HEALTH; AMENDING A SECTION OF THE
CHILDREN'S MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES ACT
REGARDING DISCLOSURE OF 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.

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

D. Authorization from the child or legal custodian for a child less than fourteen years of age shall not be required for the disclosure or transmission of confidential
information when the disclosure or transmission:

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

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

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

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

(5) is to an insurer contractually obligated
to pay part or all of the expenses relating to the treatment of
the child at the residential facility. The information
disclosed shall be limited to data identifying the child,
facility and treating or supervising physician and the dates
and duration of the residential treatment. It shall not be a
defense to an insurer's obligation to pay that the information
relating to the residential treatment of the child, apart from
information disclosed pursuant to this section, has not been
disclosed to the insurer;
(6) is to a protection and advocacy representative pursuant to the federal Developmental Disabilities Assistance and Bill of Rights Act and the federal Protection and Advocacy for Individuals with Mental Illness Act; or

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

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

(b) the need for the disclosure outweighs the potential injury to the child, the clinician-child relationship and treatment services.

E. Authorization from the child or legal custodian for a child shall not be required for the disclosure or transmission of confidential information when the disclosure is made by a governmental agency, its agent or a state educational institution, a duly organized state or county association of licensed physicians or dentists or 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 satisfaction of each of the following:

(1) submission of the proposed research to and
approval by an institutional review board of record that can
provide assurance that the entity responsible for the
confidential information is in compliance with federal
requirements for the protection of human research participants;
and

(2) waiver and approval of the required
authorization to disclose confidential information by that
institutional review board made in compliance with all federal
guidelines, statutes and laws related to human research
participant rights.

[F.1] A disclosure ordered by the court shall be
limited to the information that is essential to carry out the
purpose of the disclosure. Disclosure shall be limited to
those persons whose need for the information forms the basis
for the order. An order by the court shall include such other
measures as are necessary to limit disclosure for the
protection of the child, including sealing from public scrutiny
the record of a proceeding for which disclosure of a child's
record has been ordered.

[F.2] An authorization given for the transmission
or disclosure of confidential information shall not be
effective unless it:

(1) is in writing and signed; and

(2) contains a statement of the child's right
to examine and copy the information to be disclosed, the name

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or title of the proposed recipient of the information and a
description of the use that may be made of the information.

[H] The child has a right of access to
confidential information about the child and has the right to
make copies of information about the child and submit
clarifying or correcting statements and other documentation of
reasonable length for inclusion with the confidential
information. The statements and other documentation shall be
kept with the relevant confidential information, shall
accompany it in the event of disclosure and shall be governed
by the provisions of this section to the extent the statements
or other documentation contain confidential information.
Nothing in this subsection shall prohibit the denial of access
to the records when a physician or other mental health or
developmental disabilities professional believes and notes in
the child's medical records that the disclosure would not be in
the best interests of the child. In all cases, the child has
the right to petition the court for an order granting access.

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

[I-] J. Nothing in the Children's Mental Health and
Developmental Disabilities Act shall limit the confidentiality
rights afforded by federal statute or regulation.

[J-] K. The department shall promulgate rules for
implementing disclosure of records pursuant to this section and
in compliance with state and federal law and the Children's
Court Rules.

L. If approved by an institutional review board of
record, a disclosure may be made to a governmental agency, its
agent or a state educational institution, a duly organized
state or county association of licensed physicians or dentists
or a licensed health facility or staff committees of such a
facility for the purpose of research and shall include data and
information gathered from January 1, 2015 forward.

M. When appropriate and as deemed necessary by the
in institutional review board of record or other guiding federal
regulations, credentialed and licensed providers or an
investigator approved by the institutional review board of

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record 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. Agencies providing data and their institutional review boards of record shall be responsible for ensuring appropriate training of all researchers to meet federal standards of good clinical practice in performing these studies."