

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 173

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

AN ACT

RELATING TO SOCIAL SERVICES; ENACTING THE CHILD AND FAMILY
DATABANK ACT; CREATING A STATEWIDE INTEGRATED DATA SYSTEM;
PROVIDING FOR DATA SHARING AMONG STATE AGENCIES TO FACILITATE
PROGRAM EVALUATION AND DEVELOP EVIDENCE-BASED POLICY;
DEVELOPING A GOVERNANCE INFRASTRUCTURE TO ESTABLISH GUIDELINES
FOR ACCESS, USE, STORAGE AND SHARING OF DATA; CREATING THE
CHILD AND FAMILY DATABANK COMMISSION; AMENDING SECTIONS OF THE
CHILDREN'S MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES ACT AND
THE MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES CODE TO
PROVIDE FOR DISCLOSURES; ENACTING A PENALTY; MAKING AN
APPROPRIATION.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1
through 13 of this act may be cited as the "Child and Family

.213993.3

underscoring material = new
[bracketed material] = delete

1 Databank Act".

2 SECTION 2. [NEW MATERIAL] FINDINGS--PURPOSE.--

3 A. The legislature finds that administrative data
4 are valuable resources that should be used to improve services
5 for New Mexico residents. Many of the pressing challenges
6 facing New Mexico children and families are the shared
7 responsibility of several agencies. The child and family
8 databank commission will better enable state agencies, social
9 service systems and researchers to:

10 (1) ethically identify risk factors that would
11 enable prediction and prevention of problems;

12 (2) analyze measurable benefits on
13 participants;

14 (3) provide a comprehensive measurement of
15 future cost savings tied to specific programs;

16 (4) provide information on the full spectrum
17 of services being provided to children and families;

18 (5) determine the effectiveness of specific
19 programs and whether specific programs are achieving their
20 stated goals;

21 (6) develop evidence-based policy to improve
22 the lives of families and children in the state;

23 (7) identify areas for cross-sector
24 collaboration;

25 (8) maximize the utilization of available

.213993.3

1 resources; and

2 (9) create high-level knowledge to inform
3 agency policies and practices on the case management of
4 families and children.

5 B. The purpose of the Child and Family Databank Act
6 is to:

7 (1) create the child and family databank
8 commission, consisting of representatives of state agencies,
9 issue-area experts and advocacy organizations;

10 (2) mandate data sharing across agencies;

11 (3) develop a governance process to link,
12 share and provide access to administrative data for research
13 and evaluation; and

14 (4) establish the child and family databank.

15 SECTION 3. [NEW MATERIAL] DEFINITIONS.--As used in the
16 Child and Family Databank Act:

17 A. "administrative data" or "data" means
18 information that government agencies or other organizations
19 collect for registration, transaction, recordkeeping and other
20 administrative purposes, usually during the delivery of a
21 service;

22 B. "agency" means any governmental or quasi-
23 governmental entity that collects, transmits or stores data
24 relevant to the work of the commission;

25 C. "anonymized data" means information that does

.213993.3

1 not identify an individual and for which there is no reasonable
2 basis to believe that the information can be used to identify
3 an individual and that addresses the risk that, through the
4 cumulation of individual pieces of data, an individual could be
5 identified;

6 D. "commission" means the child and family databank
7 commission;

8 E. "commissioner" means a person serving on the
9 commission, either as an appointed member, an ex-officio member
10 or an ex-officio designee;

11 F. "databank" means an integrated data system
12 established by the commission;

13 G. "databank host" means an entity qualified to
14 host data in the databank;

15 H. "individually identifiable information" means
16 data that identify an individual or information with respect to
17 which there is a reasonable basis to believe the information
18 can be used to identify an individual;

19 I. "institutional review board" means a board,
20 committee or other group that:

21 (1) is formally designated by an institution
22 to approve the initiation, and to conduct periodic review, of
23 research involving human subjects. The primary purpose of the
24 human subjects review is to ensure the protection of the rights
25 and welfare of the human subjects and not to review a clinical

.213993.3

1 trial for scientific merit;

2 (2) is a nonpartisan entity; and

3 (3) has been approved by the national
4 institutes of health; and

5 J. "researcher" means an individual or entity
6 requesting use of or access to information in the databank.

7 SECTION 4. [NEW MATERIAL] CHILD AND FAMILY DATABANK
8 COMMISSION--CREATION--APPOINTMENT--MEMBERSHIP.--

9 A. The "child and family databank commission" is
10 created as a nonpartisan commission administratively attached
11 to the office of the governor and consists of seventeen members
12 as follows:

13 (1) the secretary of human services or the
14 secretary's designee;

15 (2) the secretary of health or the secretary's
16 designee;

17 (3) the secretary of public education or the
18 secretary's designee;

19 (4) the secretary of children, youth and
20 families or the secretary's designee;

21 (5) the secretary of aging and long-term
22 services or the secretary's designee;

23 (6) the secretary of information technology or
24 the secretary's designee;

25 (7) one representative of the New Mexico

.213993.3

1 sentencing commission, appointed by the New Mexico sentencing
2 commission from among its membership;

3 (8) one representative from the administrative
4 office of the courts, appointed by the director of the
5 administrative office of the courts;

6 (9) five members of the general public,
7 appointed by the New Mexico legislative council, as follows:

8 (a) an individual with experience in
9 human subjects research and a demonstrated understanding of the
10 ethical considerations in such research who is affiliated with
11 a research university located in the state;

12 (b) an individual with expertise in the
13 privacy, security and ethical use of individually identifiable
14 information;

15 (c) an individual with technical
16 expertise and experience in the creation, design and
17 maintenance of large data systems and data security;

18 (d) an individual with demonstrated
19 experience in the fields of civil liberties and civil rights;
20 and

21 (e) an individual from a nonpartisan
22 organization that is focused solely on systems level change and
23 advocacy on behalf of children and families;

24 (10) two members, appointed by the speaker of
25 the house of representatives, who is a representative of

.213993.3

1 nongovernmental organizations or research universities located
2 within the state and who is engaged in the provision of social
3 services in the state; and

4 (11) two members, appointed by the president
5 pro tempore of the senate, who represent advocacy organizations
6 for underserved communities in the state.

7 B. The commission shall strive for geographic and
8 cultural diversity in the appointed public member
9 commissioners.

10 C. No member shall simultaneously serve as both a
11 commissioner and as an employee of, or a contractor to, the
12 commission.

13 D. Appointed commissioners shall serve for
14 staggered three-year terms to promote continuity of
15 institutional knowledge and maintain the nonpartisan nature of
16 the commission. Designated members shall serve for the
17 duration of the designating official's tenure in office. Of
18 the eleven appointed commissioners named in Paragraphs (7)
19 through (11) of Subsection A of this section who are initially
20 appointed to the board, five shall serve for a term of three
21 years, four shall serve for a term of two years and two shall
22 serve for a term of one year. At the first meeting of the
23 commission, the commissioners shall determine by lot who shall
24 serve three-, two- and one-year terms. Following the
25 expiration of the initial terms, appointments shall be for

.213993.3

1 terms of three years.

2 E. The governor shall call the initial meeting of
3 the commission by September 1, 2019. At the commission's
4 initial meeting, commissioners shall appoint a chair and a vice
5 chair, each of whom shall serve for two-year terms, unless
6 removed sooner by a vote of two-thirds of the commission.
7 After the first meeting of the commission, the commission shall
8 meet at least quarterly at the call of the chair.

9 F. An appointed commissioner may be removed by a
10 vote of two-thirds of the commission.

11 G. A vacancy occurring in the commission shall be
12 filled in the same manner as the original appointment. An
13 appointment to fill a vacancy shall be made only for the
14 unexpired portion of the vacated term.

15 H. Members of the commission appointed in
16 accordance with Paragraphs (9) through (11) of Subsection A of
17 this section may receive per diem and reimbursement for mileage
18 for work related to the commission pursuant to the Per Diem and
19 Mileage Act. Those members shall receive no other
20 compensation, perquisite or allowance for their service on the
21 commission.

22 SECTION 5. [NEW MATERIAL] POWERS AND DUTIES OF
23 COMMISSION.--

24 A. The commission shall collaborate with the
25 agencies whose representatives are listed in Paragraphs (1)

.213993.3

1 through (8) of Subsection A of Section 4 of the Child and
2 Family Databank Act, as well as any other agency the commission
3 identifies as providing services to children and families in
4 the state, to adopt and promulgate rules to ensure that all
5 relevant data that these agencies collect are integrated into
6 the databank, in accordance with state and federal privacy
7 laws, for research, analysis and policy development.

8 B. The commission shall select a databank host and
9 manage and define the process by which the databank system
10 links, stores, maintains, receives, transmits and securely
11 protects individually identifiable information. It shall adopt
12 and promulgate rules for this process as needed.

13 C. The commission shall identify both the
14 technologies and processes by which data may be securely
15 received, maintained and transmitted in accordance with all
16 applicable privacy and security laws and standards.

17 D. The commission shall establish the governance
18 infrastructure to support data sharing among state agencies and
19 access to data by agency staff, researchers and other
20 stakeholders. The commission shall create a governance process
21 to guide how decisions about appropriate data uses are made and
22 how research projects are prioritized and approved, including
23 whether any institutional review board approval is required and
24 what privacy protections are required to secure the data. To
25 the extent that institutional review board review is not

.213993.3

1 required for certain research projects, the commission shall
2 establish an alternative process for ethical review of research
3 proposals.

4 E. The commission may adopt and promulgate rules as
5 necessary to carry out its duties under the Child and Family
6 Databank Act.

7 F. To recoup costs, the commission may charge
8 reasonable fees for creating specialized or customized reports;
9 provided that the commission shall not charge an entity that
10 contributes data to the databank. At a minimum, the commission
11 may charge fees for performance of the following tasks:

12 (1) assisting in the development of a research
13 proposal;

14 (2) conducting a portion of the data
15 processing for the researcher;

16 (3) anonymizing data;

17 (4) linking data from different data sets;

18 (5) cleaning data before providing the data to
19 researchers;

20 (6) encrypting or securing information for
21 researchers; and

22 (7) assisting with analysis of data or
23 performing other tasks in accordance with commission rules.

24 G. The commission shall take steps to secure or
25 utilize federal funding whenever possible. The commission also

1 is authorized and encouraged to seek grants to support the
2 databank operations and mission from governmental entities and
3 nonprofit organizations.

4 H. The commission shall ensure that data provided
5 by agencies can be used across agency lines and be made
6 available to agency staff, researchers and other private and
7 public partners in accordance with the provisions of the Child
8 and Family Databank Act, all applicable federal and state laws
9 and the process for accessing data established by commission
10 rules.

11 I. The staff of the commission shall perform
12 evaluation and analysis of data in the databank and provide
13 support and assistance to agencies in their evaluation and
14 analysis, including:

15 (1) identifying and understanding risk and
16 protective factors of vulnerable families;

17 (2) evaluating existing programs and
18 developing evidence-based programs and policies to address the
19 critical issues related to child well-being in the state;

20 (3) quantifying outcomes of program
21 participants; and

22 (4) developing a strategic plan or research
23 agenda to identify and address questions relevant to the
24 programs, policies and rules of the agency.

25 J. The commission shall form committees to focus on

.213993.3

1 specific issues required by the work of the commission,
2 including a committee on ethics and privacy matters.

3 K. The commission shall establish and maintain a
4 website for internal and public use.

5 SECTION 6. [NEW MATERIAL] COMMISSION--EXECUTIVE
6 DIRECTOR--STAFF.--

7 A. By October 1, 2019, the commission shall hire an
8 executive director. The executive director shall:

9 (1) have a demonstrated competency in research
10 and program analysis;

11 (2) demonstrate a breadth of knowledge on the
12 social systems that will be the subject of the databank;

13 (3) possess the knowledge and expertise to
14 lead the work of the commission;

15 (4) demonstrate familiarity with integrated
16 data systems;

17 (5) have an extensive management experience;
18 and

19 (6) possess an in-depth understanding of
20 research and analysis using administrative data.

21 B. The executive director, as authorized by the
22 commission, may hire staff as necessary to carry out the duties
23 of the commission, including staff that possess the following
24 skills:

25 (1) experience and understanding of:

.213993.3

- 1 (a) integration and organization of
2 varied data;
- 3 (b) communication of complex technical
4 concepts to diverse audiences; and
- 5 (c) administrative data research
6 methodologies;
- 7 (2) technical expertise to:
- 8 (a) support data integration; and
9 (b) assist researchers and analysts in
10 obtaining the appropriate data to meet needs;
- 11 (3) experience in creating and maintaining
12 large data systems, linked data and data security;
- 13 (4) legal expertise related to:
- 14 (a) drafting and negotiating data-
15 sharing agreements;
- 16 (b) the historical, cultural and ethical
17 implications surrounding data use; and
- 18 (c) protecting the privacy and security
19 of individually identifiable information;
- 20 (5) the ability to conduct qualitative and
21 quantitative research and support; and
- 22 (6) the ability to assist in evaluating agency
23 programming and developing evidence-based policy.

24 SECTION 7. [NEW MATERIAL] AGENCY DATA SHARING.--

25 A. Absent a specific legal prohibition to the

.213993.3

1 contrary, the following agencies shall share their available
2 data with the databank in accordance with the provisions of a
3 contractual agreement that the commission executes with each of
4 the following agencies, which agreement shall address the
5 relevant legal and privacy concerns of each party:

- 6 (1) the department of health;
- 7 (2) the human services department;
- 8 (3) the children, youth and families
9 department;
- 10 (4) the public education department;
- 11 (5) the corrections department;
- 12 (6) the administrative office of the courts;
- 13 and
- 14 (7) the New Mexico sentencing commission.

15 B. The data shared in accordance with the
16 contractual agreement executed pursuant to Subsection A of this
17 section shall include historical record-level administrative
18 data that range in date as far in the past as practicable,
19 including a minimum of five previous years' data, unless such
20 data are unavailable.

21 C. The contractual agreement required pursuant to
22 Subsection A of this section shall be executed by June 30,
23 2020.

24 D. Agencies shall cooperate with the commission in
25 the drafting and execution of their respective contractual

1 agreement executed pursuant to Subsection A of this section.

2 The contractual agreement between an agency and the commission
3 shall specify, at a minimum:

4 (1) the confidentiality of client information;

5 (2) the conditions or restrictions for the
6 release and use of data so as to comply with all applicable
7 state and federal laws; and

8 (3) security measures to be taken to protect
9 the confidentiality of the data.

10 E. At a minimum, the department of health shall
11 share the following data with the databank:

12 (1) demographics relating to individuals to
13 whom the department provides services and to public health
14 measures that the department collects;

15 (2) vital records and statistics, including
16 birth and death information;

17 (3) inpatient hospital discharge data,
18 including emergency department usage;

19 (4) emergency department usage;

20 (5) emergency medical services data;

21 (6) environmental health and injury data; and

22 (7) family, infant, toddler program
23 participation information.

24 F. At a minimum, the human services department
25 shall share the following data with the databank:

.213993.3

1 (1) demographics relating to recipients of
2 medical assistance;

3 (2) medicaid data, including both fee-for-
4 service and managed care organization data and children's
5 health insurance program claims data; and

6 (3) data from the following programs:

7 (a) the supplemental nutrition
8 assistance program;

9 (b) cash assistance programs;

10 (c) utility payment assistance programs;

11 (d) child support enforcement; and

12 (e) behavioral health services.

13 G. The public education department shall share with
14 the databank data regarding students and public schools in the
15 state, including the following:

16 (1) student attendance;

17 (2) student demographics;

18 (3) graduation rates;

19 (4) student achievement, including
20 proficiencies in math, reading and science;

21 (5) teachers' training and qualifications;

22 (6) student and teacher disciplinary
23 information;

24 (7) course offerings;

25 (8) post-secondary education; and

1 (9) other information relevant to the well-
2 being of children and families in the state.

3 H. The children, youth and families department
4 shall share all federally reported data with the databank, as
5 well as any other relevant data, from the following programs
6 and areas:

7 (1) demographics on families and individuals
8 to whom the department provides services or intervention;

9 (2) juvenile justice;

10 (3) behavioral health services;

11 (4) early childhood services, including pre-
12 kindergarten, home visiting, daycare, family nutrition and head
13 start; and

14 (5) the protective services division,
15 including:

16 (a) foster care;

17 (b) adoptions;

18 (c) reports and investigations for
19 allegations of child abuse and neglect;

20 (d) permanency planning; and

21 (e) youth services.

22 I. The corrections department shall share state-
23 level corrections data with the databank, including information
24 relating to:

25 (1) inmate and parolee demographics;

.213993.3

underscoring material = new
~~[bracketed material] = delete~~

- 1 (2) offender intake and sentencing;
- 2 (3) probation and parole;
- 3 (4) community reentry and integration; and
- 4 (5) recidivism rates.

5 J. The New Mexico sentencing commission and the
6 administrative office of the courts shall share court records
7 and sentencing information with the databank.

8 K. In addition to the agencies and programs listed
9 in Subsections A through I of this section, other agencies or
10 programs that the commission identifies as having data that are
11 relevant to the well-being of children and families in the
12 state shall share their data with the databank, to the extent
13 legally permissible and upon execution of a contractual
14 agreement in accordance with the provisions of Subsections A
15 through D of this section. These data shall include
16 demographic information.

17 L. Agencies shall provide their data to the
18 databank host pursuant to Section 9 of the Child and Family
19 Databank Act in the formats and schedules determined by the
20 commission but no less than annually.

21 M. Agencies shall cooperate with the commission and
22 other agencies in the evaluation of programs and policy
23 development and work toward cross-sector collaboration in the
24 provision of services to children and families statewide.

25 SECTION 8. [NEW MATERIAL] DATABANK POLICY OFFICER.--

1 A. The contractual agreement between the commission
2 and the department of health, human services department, public
3 education department and children, youth and families
4 department shall include funding for a databank policy officer.
5 A databank policy officer shall have at least the following
6 qualifications:

7 (1) familiarity with integrated data systems;
8 (2) extensive understanding of research and
9 analysis using administrative data;

10 (3) expertise sufficient to support agency
11 staff in the evaluation of programming and in evidence-based
12 policymaking;

13 (4) the ability to communicate complex
14 technical concepts to different audiences; and

15 (5) the capacity to understand research
16 methodologies relating to administrative data.

17 B. A databank policy officer shall be responsible
18 for:

19 (1) coordinating and liaising with the
20 commission;

21 (2) assisting with the identification of data
22 sets to include in the databank; and

23 (3) coordinating with the commission and the
24 databank host to transmit and share data, assist agencies in
25 identifying priority programs and policies for analysis and

.213993.3

1 work within the agency and with the commission to identify and
2 implement areas of cross-sector collaboration and improved
3 delivery of services.

4 SECTION 9. [NEW MATERIAL] DATABANK HOST--DATA STAFF.--

5 A. The databank host and the commission shall enter
6 into a contractual operating agreement. The databank host
7 shall cooperate with the commission in the expeditious
8 negotiation and execution of the agreement and shall provide
9 access to the appropriate data for research requests.

10 B. At least annually, the databank host shall
11 ensure that the databank is updated with new data from
12 agencies.

13 SECTION 10. [NEW MATERIAL] PUBLICATIONS.--

14 A. The commission shall require that any researcher
15 that seeks to use databank data provide the commission with a
16 summary of its findings for publication on the commission's
17 website.

18 B. An agency shall not prevent publication because
19 it disagrees with a researcher's findings or conclusions.

20 SECTION 11. [NEW MATERIAL] DATA OWNERSHIP.--

21 Notwithstanding the requirements set forth in the Child and
22 Family Databank Act to share data, each agency shall retain
23 ownership of its original data set.

24 SECTION 12. [NEW MATERIAL] OTHER LAWS.--If the
25 transmission of data to the commission is specifically

1 prohibited by state or federal law, an agency shall work with
2 the commission to identify any edits, deletions or additional
3 protections that can be made to comply with state and federal
4 laws allowing data to be provided to the commission.

5 SECTION 13. [NEW MATERIAL] REDISCLOSURE OF
6 INFORMATION.--Neither the commission nor the databank host
7 shall disclose information released to the databank in
8 violation of state or federal law. A violation of this
9 provision is a misdemeanor punishable under Section 31-19-1
10 NMSA 1978.

11 SECTION 14. Section 32A-6A-24 NMSA 1978 (being Laws 2007,
12 Chapter 162, Section 24, as amended) is amended to read:

13 "32A-6A-24. DISCLOSURE OF INFORMATION.--

14 A. Except as otherwise provided in the Children's
15 Mental Health and Developmental Disabilities Act, a person
16 shall not, without the authorization of the child, disclose or
17 transmit any confidential information from which a person well-
18 acquainted with the child might recognize the child as the
19 described person or any code, number or other means that could
20 be used to match the child with confidential information
21 regarding the child.

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

.213993.3

1 consent of the child or the child's legal custodian.

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

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

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

24 (2) is necessary to protect against a clear
25 and substantial risk of imminent serious physical injury or

.213993.3

1 death inflicted by the child on self or another;

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

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

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

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

.213993.3

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

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

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

11 (8) is made to a governmental agency, its
12 agent or a state education institution, a duly organized state
13 or county association of licensed physicians or dentists, a
14 licensed health facility or staff committee of a licensed
15 health facility, for the purpose of research, subject to the
16 provisions of Section 14-6-1 NMSA 1978 and subject to the
17 review of an institutional review board in compliance with the
18 federal Health Insurance Portability and Accountability Act of
19 1996 or any succeeding legislation.

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 other
25 measures as are necessary to limit disclosure for the

1 protection of the child, including sealing from public scrutiny
2 the record of a proceeding for which disclosure of a child's
3 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 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 G. The child has a right of access to confidential
13 information about the child and has the right to make copies of
14 information about the child and submit clarifying or correcting
15 statements and other documentation of reasonable length for
16 inclusion with the confidential information. The statements
17 and other documentation shall be kept with the relevant
18 confidential information, shall accompany it in the event of
19 disclosure and shall be governed by the provisions of this
20 section to the extent the statements or other documentation
21 contain confidential information. Nothing in this subsection
22 shall prohibit the denial of access to the records when a
23 physician or other mental health or developmental disabilities
24 professional believes and notes in the child's medical records
25 that the disclosure would not be in the best interests of the

.213993.3

1 child. In all cases, the child has the right to petition the
2 court for an order granting access.

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

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

20 J. The department shall promulgate rules for
21 implementing disclosure of records pursuant to this section and
22 in compliance with state and federal law and the Children's
23 Court Rules."

24 SECTION 15. Section 43-1-19 NMSA 1978 (being Laws 1977,
25 Chapter 279, Section 18, as amended) is amended to read:

.213993.3

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

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

9 B. Authorization from the client shall not be
10 required for the disclosure or transmission of confidential
11 information in the following circumstances:

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

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

22 (3) when the disclosure is made pursuant to
23 the provisions of the Assisted Outpatient Treatment Act, using
24 reasonable efforts to limit protected health information to
25 that which is minimally necessary to accomplish the intended

.213993.3

1 purpose of the use, disclosure or request;

2 (4) when the disclosure of such information is
3 to the primary caregiver of the client and the disclosure is
4 only of information necessary for the continuity of the
5 client's treatment in the judgment of the treating physician or
6 certified psychologist who discloses the information; [~~or~~]

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

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

.213993.3

underscored material = new
[bracketed material] = delete

1 Accountability Act of 1996 or any succeeding legislation.

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

5 (1) is in writing and signed; and

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

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

25 E. Where there exists evidence that the client

.213993.3

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

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

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

18 H. A person appointed as a treatment guardian in
19 accordance with the [~~Mental Health and Developmental~~
20 ~~Disabilities~~] code may act as the client's personal
21 representative pursuant to the federal Health Insurance
22 Portability and Accountability Act of 1996, Sections 1171-1179
23 of the Social Security Act, 42 U.S.C. Section 1320d, as
24 amended, and applicable federal regulations to obtain access to
25 the client's protected health information, including mental

