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FISCAL IMPACT REPORT

SPONSOR <u>Nibert</u>	LAST UPDATED <u>2/14/2024</u> ORIGINAL DATE <u>2/9/2024</u>
SHORT TITLE <u>Disclosure of Certain Health Info</u>	BILL NUMBER <u>Senate Bill 230/aSHPAC/aSFI#1</u>
ANALYST <u>Chilton</u>	

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*

(dollars in thousands)

Agency/Program	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	No fiscal impact	No fiscal impact	No fiscal impact	No fiscal impact		

Parentheses () indicate expenditure decreases.
 *Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Agency Analysis Received From
 Children, Youth and Families Department (CYFD)
 Early Childhood Education and Care Department (ECECD)

Agency Analysis was Solicited but Not Received From
 Department of Health (DOH)

SUMMARY

Synopsis of SFI#1 Amendment to Senate Bill 230

The Senate Floor Amendment #1 to Senate Bill 230 adds identical language to two sections of the bill to state that any release of information for research be subject not only to provisions in state law and the oversight of an institutional review board (IRB) to assure compliance with Health Insurance Portability and Accountability Act regulations but also to federal regulations regarding IRBs.

Synopsis of SHPAC Amendment to Senate Bill 230

The SHPAC amendment to Senate Bill 230 makes two clarifying changes to language in paragraphs on pages four and nine of the bill, each dealing with the release of confidential information for research without changing the meaning of the paragraphs.

Synopsis of Senate Bill 230

Senate Bill 230 amends two sections of statute, Section 32A-6A-24 NMSA 1978 (part of the Children’s Code headed “Disclosure of information”) and Section 43-1-19 NMSA 1978 (part of the section on Mental Health and Developmental Disabilities entitled “Disclosure of information” regarding the transmission of confidential information on children, allowing for releases of information in a broadened list of instances.

The bill removes the restriction on release of confidential information without the child’s or child’s legal custodian’s consent in certain instances to just children under the age of 14, allowing similar release of information until the age of majority, age 18. This confidential information could now be released without child or custodian consent not only in cases where already enumerated (when needed by a clinician for treatment; when it is necessary to prevent injury or death, when a clinician determines that release is in a child’s best interest; when the information is necessary for continuation of a child’s treatment; when it would be to an insurer; when it is to a duly-qualified protection and advocacy representative; and when it is pursuant to a court order) but also where needed by a governmental agency, a state educational institution, an association of physicians or dentists, a licensed health care facility or staff of such an institution if used for research, subject to the approval of an institutional review board and to provisions of the federal Health Insurance Portability and Accounting Act (HIPAA).

The effective date of this bill is July 1, 2024

FISCAL IMPLICATIONS

There is no appropriation in Senate Bill 230. There is no evident fiscal impact.

SIGNIFICANT ISSUES

Disclosure of a child’s personal medical records could potentially cause harm if highly sensitive material – e.g., substance use, illegal activity, or gender dysphoria – were disclosed to someone with authority over that child. Thus, the handling of sensitive material is personally important, as well as being regulated by HIPAA rules.

ECECD states that “SB230 appears to propose the above changes to the Children's Mental Health and Developmental Disabilities Code to make its requirements regarding disclosures consistent with the requirements already set forth in the Mental Health and Developmental Disabilities Code. This additional proposed disclosure contained in SB230 to the Children's Mental Health and Developmental Disabilities Code does not appear to facially violate the provisions of Section 14-6-1 NMSA 1978, or the federal Health Insurance Portability and Accountability Act (HIPAA).”

CYFD notes that “As written, Section 32A-6A-24(D)(8) 1978 NMSA 1978 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.”

TECHNICAL ISSUES

In two locations in the bill – page 4, lines 18 and 19, and page 9, lines 19 and 20 – the phrase “for all confidential information in existence on or after July 1, 2024” is added regarding what information can be disclosed. The phrase would appear to indicate that all information gained prior to and on or after that date could be disclosed; the safety of information obtained prior to passage of this bill, possibly obtained without the subject knowing that it could later be released, might be questioned.

CYFD states that it 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.”

As pointed out by CYFD, a provision for anonymization of data used for research purposes could be written into the bill.

LAC/rl/ne/al