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SENATE BILL 202

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

INTRODUCED BY

Carlos R. Cisneros

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; MAKING AN APPROPRIATION.

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

**SECTION 1.** [NEW MATERIAL] SHORT TITLE.--Sections 1  
through 12 of this act may be cited as the "Child and Family  
Databank Act".

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

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

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

11                   (2)  analyze measurable benefits on  
12   participants;

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

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

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

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

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

24                   (8)  maximize the utilization of available  
25   resources; and

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

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

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

9 (2) mandate data sharing across agencies;

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

13 (4) establish the child and family databank.

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

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

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

24 C. "anonymized data" means information that does  
25 not identify an individual and for which there is no reasonable

1 basis to believe that the information can be used to identify  
2 an individual and that addresses the risk that, through the  
3 cumulation of individual pieces of data, an individual could be  
4 identified;

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

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

10 F. "databank" means the child and family databank,  
11 an integrated databank system established by the commission;

12 G. "databank host" means the department of health  
13 or another entity qualified to host data in the databank;

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

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

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

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1 (2) is a nonpartisan entity; and

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

4 J. "qualified nonprofit entity" means an entity  
5 that:

6 (1) has a mission singularly dedicated to  
7 solving child and family welfare and poverty issues in the  
8 state through systemic change;

9 (2) is a nonpartisan entity;

10 (3) has expertise in governance structures of:

11 (a) integrated data systems; and

12 (b) privacy requirements, including a  
13 deep knowledge of state and federal privacy laws;

14 (4) has expertise in the ethical  
15 considerations relating to integrated data;

16 (5) has demonstrated competency in research  
17 and program analysis;

18 (6) has a proven ability to work across  
19 disciplines;

20 (7) has the ability to establish, incubate and  
21 implement projects at scale; and

22 (8) demonstrates a breadth of knowledge on  
23 social systems that will be the subject of the databank; and

24 K. "researcher" means a person that is employed or  
25 contracted by or affiliated with a nonprofit private entity or

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1 academic research institution and is not employed or contracted  
2 by or otherwise affiliated with a state agency providing direct  
3 services to families.

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

6 A. The "child and family databank commission" is  
7 created as a nonpartisan commission administratively attached  
8 to the office of the governor and consists of thirteen members  
9 as follows:

10 (1) the secretary of human services, ex  
11 officio, or the secretary's designee;

12 (2) the secretary of health, ex officio, or  
13 the secretary's designee;

14 (3) the secretary of public education, ex  
15 officio, or the secretary's designee;

16 (4) the secretary of children, youth and  
17 families, ex officio, or the secretary's designee;

18 (5) one representative of the New Mexico  
19 sentencing commission, appointed by the New Mexico sentencing  
20 commission from among its membership;

21 (6) one representative from the administrative  
22 office of the courts, appointed by the director of the  
23 administrative office of the courts;

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

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1 (a) an individual with experience in  
2 human subjects research and a demonstrated understanding of the  
3 ethical considerations in such research who is affiliated with  
4 a research university located in the state;

5 (b) an individual with expertise in the  
6 privacy, security and ethical use of individually identifiable  
7 information;

8 (c) an individual with technical  
9 expertise and experience in the creation, design and  
10 maintenance of large data systems and data security;

11 (d) an individual with demonstrated  
12 experience in the fields of civil liberties and civil rights;  
13 and

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

17 (8) one member, appointed by the speaker of  
18 the house of representatives, who is a representative of  
19 nongovernmental organizations or research universities located  
20 within the state and who is engaged in the provision of social  
21 services in the state; and

22 (9) one member, appointed by the president pro  
23 tempore of the senate, who represents an advocacy organization  
24 for underserved communities in the state.

25 B. The commission shall strive for geographic and

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1 cultural diversity in the appointed public member  
2 commissioners.

3 C. No member shall simultaneously serve:

4 (1) as both a commissioner and as a qualified  
5 nonprofit entity; or

6 (2) as an employee of, or a contractor to, the  
7 commission and to a qualified nonprofit entity.

8 D. Appointed commissioners shall serve for  
9 staggered three-year terms to promote continuity of  
10 institutional knowledge and maintain the nonpartisan nature of  
11 the commission. Designated members shall serve for the  
12 duration of the designating official's tenure in office. Of  
13 the nine appointed commissioners named in Paragraphs (5)  
14 through (9) of Subsection A of this section who are initially  
15 appointed to the board, four shall serve for a term of three  
16 years, three shall serve for a term of two years and two shall  
17 serve for a term of one year. At the first meeting of the  
18 commission, the commissioners shall determine by lot who shall  
19 serve three-, two- and one-year terms. Following the  
20 expiration of the initial terms, appointments shall be for  
21 terms of three years.

22 E. The governor shall call the initial meeting of  
23 the commission by September 1, 2019. At the commission's  
24 initial meeting, commissioners shall appoint a chair and a vice  
25 chair, each of whom shall serve for two-year terms, unless

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1 removed sooner by a vote of two-thirds of the commission.  
2 After the first meeting of the commission, the commission shall  
3 meet at least quarterly at the call of the chair.

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

6 G. A vacancy occurring in the commission shall be  
7 filled in the same manner as the original appointment. An  
8 appointment to fill a vacancy shall be made only for the  
9 unexpired portion of the vacated term.

10 H. Members of the commission appointed in  
11 accordance with Paragraphs (7) through (9) of Subsection A of  
12 this section may receive per diem and reimbursement for mileage  
13 for work related to the commission pursuant to the Per Diem and  
14 Mileage Act. Those members shall receive no other  
15 compensation, perquisite or allowance for their service on the  
16 commission.

17 SECTION 5. [NEW MATERIAL] POWERS AND DUTIES OF  
18 COMMISSION.--

19 A. The commission shall collaborate with the  
20 agencies whose representatives are listed in Paragraphs (1)  
21 through (6) of Subsection A of Section 4 of the Child and  
22 Family Databank Act, as well as any other agency the commission  
23 identifies as providing services to children and families in  
24 the state, to adopt and promulgate rules to ensure that all  
25 relevant data that these agencies collect are integrated into

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1 the databank, in accordance with state and federal privacy  
2 laws, for research, analysis and policy development.

3 B. The commission shall select a databank host and  
4 manage the process by which the databank system links, stores,  
5 maintains, receives, transmits and securely protects  
6 individually identifiable information. It shall adopt and  
7 promulgate rules for this process as needed.

8 C. The commission shall identify both the  
9 technologies and processes by which data may be securely  
10 received, maintained and transmitted in accordance with all  
11 applicable privacy and security laws and standards.

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

24 E. The commission may adopt and promulgate rules as  
25 necessary to carry out its duties under the Child and Family

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1 Databank Act.

2 F. To recoup costs associated with the commission  
3 staff's process of protecting individually identifiable  
4 information, providing access and assisting with research  
5 requests, the commission may charge reasonable fees for use of  
6 the databank; provided that the commission shall charge an  
7 entity that contributes data to the databank a lower fee for  
8 use of the databank than the fee the commission charges other  
9 entities for use of the databank. At a minimum, the commission  
10 may charge fees for performance of the following tasks:

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

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

15 (3) anonymizing data;

16 (4) linking data from different data sets;

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

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

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

23 G. The commission shall ensure that data provided  
24 by agencies can be used across agency lines and be made  
25 available to agency staff, researchers and other private and

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1 public partners in accordance with the provisions of the Child  
2 and Family Databank Act, federal and state privacy laws and the  
3 process for accessing data established by commission rules.

4 H. The staff of the commission shall perform  
5 evaluation and analysis of data in the databank and provide  
6 support and assistance to agencies in their evaluation and  
7 analysis, including:

8 (1) identifying and understanding risk and  
9 protective factors of vulnerable families;

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

13 (3) quantifying outcomes of program  
14 participants; and

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

18 I. The commission shall form committees to focus on  
19 specific issues required by the work of the commission,  
20 including a committee on ethics and privacy matters.

21 J. The commission shall establish and maintain a  
22 website for internal and public use.

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

25 A. To provide the requisite staff support, services  
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1 and knowledge to the commission as it carries out the  
2 provisions of the Child and Family Databank Act, by October 1,  
3 2019, the commission may contract with a qualified nonprofit  
4 entity; provided that the commission shall not contract with an  
5 entity pursuant to this subsection that is a researcher that,  
6 during the term of the proposed contract, requests access to  
7 data in the databank. At a minimum, the commission may  
8 contract with the qualified nonprofit entity to:

9 (1) provide necessary staff support, including  
10 executive director services in accordance with Subsection B of  
11 this section, and services to develop mechanisms to research  
12 and analyze issues and disseminate the research;

13 (2) evaluate current programs for their  
14 effectiveness;

15 (3) analyze and recommend the adoption of  
16 effective policies; or

17 (4) provide data management, storage, security  
18 and oversight services.

19 B. By October 1, 2019, the commission may hire  
20 either an executive director or contract with a qualified  
21 nonprofit entity to perform the duties of an executive  
22 director. An executive director shall:

23 (1) have a demonstrated competency in research  
24 and program analysis;

25 (2) demonstrate a breadth of knowledge on the

1 social systems that will be the subject of the databank;

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

4 (4) demonstrate familiarity with integrated  
5 data systems;

6 (5) have an extensive management experience;  
7 and

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

10 C. The executive director, the executive director's  
11 designee or a qualified nonprofit entity that performs the  
12 duties of an executive director may hire staff as necessary to  
13 carry out the duties of the commission, including staff that  
14 possess the following skills:

15 (1) experience and understanding of:

16 (a) integration and organization of  
17 varied data;

18 (b) communication of complex technical  
19 concepts to diverse audiences; and

20 (c) administrative data research  
21 methodologies;

22 (2) technical expertise to:

23 (a) support data integration; and

24 (b) assist researchers and analysts in  
25 obtaining the appropriate data to meet needs;

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1 (3) experience in creating and maintaining  
2 large data systems, linked data and data security;

3 (4) legal expertise related to:

4 (a) drafting and negotiating data-  
5 sharing agreements;

6 (b) the historical, cultural and ethical  
7 implications surrounding data use; and

8 (c) protecting the privacy and security  
9 of individually identifiable information;

10 (5) the ability to conduct qualitative and  
11 quantitative research and support; and

12 (6) the ability to assist in evaluating agency  
13 programming and developing evidence-based policy.

14 D. The executive director or the executive  
15 director's designee may hire staff to fill other positions as  
16 funding permits and the commission directs.

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

18 A. Absent a specific legal prohibition to the  
19 contrary, the following agencies shall share their data with  
20 the databank in accordance with the provisions of a memorandum  
21 of agreement that the commission executes with each of the  
22 following agencies, which memorandum of agreement shall address  
23 the relevant legal and privacy concerns of each party:

24 (1) the department of health;

25 (2) the human services department;

- 1 (3) the children, youth and families  
2 department;  
3 (4) the public education department;  
4 (5) the corrections department;  
5 (6) the administrative office of the courts;  
6 and  
7 (7) the New Mexico sentencing commission.

8 B. The data shared in accordance with the memoranda  
9 of agreement executed pursuant to Subsection A of this section  
10 shall include historical administrative data that range in date  
11 as far in the past as practicable, including a minimum of five  
12 previous years' data.

13 C. The memoranda of agreement required pursuant to  
14 Subsection A of this section shall be executed by June 30,  
15 2020.

16 D. Agencies shall cooperate with the commission in  
17 the drafting and execution of their respective memoranda of  
18 agreement executed pursuant to Subsection A of this section.  
19 The memorandum of agreement between an agency and the  
20 commission shall specify, at a minimum:

- 21 (1) the confidentiality of client information;  
22 (2) the conditions or restrictions for the  
23 release and use of data so as to comply with state and federal  
24 privacy laws; and  
25 (3) security measures to be taken to protect



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1 the confidentiality of the data.

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

4 (1) demographics relating to individuals to  
5 whom the department provides services and to public health  
6 measures that the department collects;

7 (2) vital records and statistics, including  
8 birth and death information;

9 (3) inpatient hospital discharge data,  
10 including emergency department usage;

11 (4) emergency department usage;

12 (5) emergency medical services data;

13 (6) environmental health and injury data; and

14 (7) family, infant, toddler program  
15 participation information.

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

18 (1) demographics relating to recipients of  
19 medical assistance;

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

23 (3) data from the following programs:

24 (a) the supplemental nutrition  
25 assistance program;

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- 1 (b) cash assistance programs;
- 2 (c) utility payment assistance programs;
- 3 (d) child support enforcement; and
- 4 (e) behavioral health services.

5 G. The public education department shall share with  
6 the databank data regarding students and public schools in the  
7 state, including the following:

- 8 (1) student attendance;
- 9 (2) student demographics;
- 10 (3) graduation rates;
- 11 (4) student achievement, including  
12 proficiencies in math, reading and science;
- 13 (5) teachers' training and qualifications;
- 14 (6) student and teacher disciplinary  
15 information;
- 16 (7) course offerings;
- 17 (8) post-secondary education; and
- 18 (9) other information relevant to the well-  
19 being of children and families in the state.

20 H. The children, youth and families department  
21 shall share all federally reported data with the databank, as  
22 well as any other relevant data, from the following programs  
23 and areas:

- 24 (1) demographics on families and individuals  
25 to whom the department provides services or intervention;

- 1 (2) juvenile justice;  
2 (3) behavioral health services;  
3 (4) early childhood services, including pre-  
4 kindergarten, home visiting, daycare, family nutrition and head  
5 start; and  
6 (5) the protective services division,  
7 including:  
8 (a) foster care;  
9 (b) adoptions;  
10 (c) reports and investigations for  
11 allegations of child abuse and neglect;  
12 (d) permanency planning; and  
13 (e) youth services.

14 I. The corrections department shall share state-  
15 level corrections data with the databank, including information  
16 relating to:

- 17 (1) inmate and parolee demographics;  
18 (2) offender intake and sentencing;  
19 (3) probation and parole;  
20 (4) community reentry and integration; and  
21 (5) recidivism rates.

22 J. The New Mexico sentencing commission and the  
23 administrative office of the courts shall share court records  
24 and sentencing information with the databank.

25 K. In addition to the agencies and programs listed

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1 in Subsections A through I of this section, other agencies or  
2 programs that the commission identifies as having data that are  
3 relevant to the well-being of children and families in the  
4 state shall share their data with the databank, to the extent  
5 legally permissible and upon execution of a memorandum of  
6 agreement in accordance with the provisions of Subsections A  
7 through D of this section. These data shall include  
8 demographic information.

9 L. Agencies shall provide their data to the  
10 databank, or to the department of health in its capacity as  
11 host and storage facility for the data pursuant to Section 9 of  
12 the Child and Family Databank Act, in the formats and schedules  
13 determined by the commission but no less than annually.

14 M. Agencies shall cooperate with the commission and  
15 other agencies in the evaluation of programs and policy  
16 development and work toward cross-sector collaboration in the  
17 provision of services to children and families statewide.

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

19 A. The department of health, human services  
20 department, public education department and children, youth and  
21 families department shall each hire a databank policy officer.  
22 A databank policy officer shall have at least the following  
23 qualifications:

- 24 (1) familiarity with integrated data systems;  
25 (2) extensive understanding of research and

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1 analysis using administrative data;

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

5 (4) the ability to communicate complex  
6 technical concepts to different audiences; and

7 (5) the capacity to understand research  
8 methodologies relating to administrative data.

9 B. A databank policy officer shall be responsible  
10 for:

11 (1) coordinating and liaising with the  
12 commission;

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

15 (3) coordinating with the commission, the  
16 department of health or a designee of the commission to  
17 transmit and share data, assist agencies in identifying  
18 priority programs and policies for analysis and work within the  
19 agency and with the commission to identify and implement areas  
20 of cross-sector collaboration and improved delivery of  
21 services.

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

23 A. The databank host and the commission shall enter  
24 into a cooperation agreement to govern the commission's access  
25 to and use of the databank. The databank host shall cooperate

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1 with the commission in the expeditious negotiation and  
2 execution of the agreement and shall provide access to the  
3 appropriate data for research requests.

4 B. The databank host shall hire appropriate staff  
5 to handle data cleaning, linkage and security. It shall assist  
6 with research requests as the office of the governor or the  
7 commission assigns.

8 C. If the department of health is the databank  
9 host, it may use the data in the databank for its own research  
10 and evaluation; provided that:

11 (1) an institutional review board approves  
12 each instance of the department's use of the data; or

13 (2) the department's own internal ethical  
14 review panel approves the department's proposed use of the  
15 data.

16 D. At least annually, the databank host shall  
17 ensure that the databank is updated with new data from  
18 agencies.

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

20 A. The commission shall require that any researcher  
21 that seeks to use databank data provide the commission with a  
22 summary of its findings for publication on the commission's  
23 website.

24 B. Prior to publication, the commission shall  
25 provide an agency with at least thirty days to review any

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1 publication that makes use of the agency's data and the right  
2 to comment on or clarify any inaccuracies in the publication.  
3 An agency shall not prevent publication because it disagrees  
4 with a researcher's findings or conclusions.

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

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

9 SECTION 12. [NEW MATERIAL] OTHER LAWS.--If the  
10 transmission of data to the commission is specifically  
11 prohibited by state or federal law, an agency shall work with  
12 the commission to identify any edits, deletions or additional  
13 protections that can be made to comply with state and federal  
14 laws allowing data to be provided to the commission.

15 SECTION 13. Section 32A-6A-24 NMSA 1978 (being Laws 2007,  
16 Chapter 162, Section 24, as amended) is amended to read:

17 "32A-6A-24. DISCLOSURE OF INFORMATION.--

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

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

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

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

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

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

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

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

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

25 (6) is to a protection and advocacy

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1 representative pursuant to the federal Developmental  
2 Disabilities Assistance and Bill of Rights Act and the federal  
3 Protection and Advocacy for Individuals with Mental Illness  
4 Act; [~~or~~]

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

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

12 (b) the need for the disclosure  
13 outweighs the potential injury to the child, the clinician-  
14 child relationship and treatment services; or

15 (8) in accordance with other state and federal  
16 privacy laws, is to the child and family databank established  
17 pursuant to the Child and Family Databank Act.

18 E. A disclosure ordered by the court shall be  
19 limited to the information that is essential to carry out the  
20 purpose of the disclosure. Disclosure shall be limited to  
21 those persons whose need for the information forms the basis  
22 for the order. An order by the court shall include such other  
23 measures as are necessary to limit disclosure for the  
24 protection of the child, including sealing from public scrutiny  
25 the record of a proceeding for which disclosure of a child's

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1 record has been ordered.

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

5 (1) is in writing and signed; and

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

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

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

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

22           **SECTION 14.** Section 43-1-19 NMSA 1978 (being Laws 1977,  
23 Chapter 279, Section 18, as amended) is amended to read:

24           "43-1-19. DISCLOSURE OF INFORMATION.--

25           A. Except as otherwise provided in the code, no

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1 person shall, without the authorization of the client, disclose  
2 or transmit any confidential information from which a person  
3 well acquainted with the client might recognize the client as  
4 the described person, or any code, number or other means that  
5 can be used to match the client with confidential information  
6 regarding the client.

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

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

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

20 (3) when the disclosure is made pursuant to  
21 the provisions of the Assisted Outpatient Treatment Act or the  
22 Child and Family Databank Act, using reasonable efforts to  
23 limit protected health information to that which is minimally  
24 necessary to accomplish the intended purpose of the use,  
25 disclosure or request;

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

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

17 C. No authorization given for the transmission or  
18 disclosure of confidential information shall be effective  
19 unless it:

20 (1) is in writing and signed; and  
21 (2) contains a statement of the client's right  
22 to examine and copy the information to be disclosed, the name  
23 or title of the proposed recipient of the information and a  
24 description of the use that may be made of the information.

25 D. The client has a right of access to confidential

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

15 E. Where there exists evidence that the client  
16 whose consent to disclosure of confidential information is  
17 sought is incapable of giving or withholding valid consent and  
18 the client does not have a guardian or treatment guardian  
19 appointed by a court, the person seeking such authorization  
20 shall petition the court for the appointment of a treatment  
21 guardian to make a substitute decision for the client, except  
22 that if the client is less than fourteen years of age, the  
23 client's parent or guardian is authorized to consent to  
24 disclosure on behalf of the client.

25 F. Information concerning a client disclosed under

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1 this section shall not be released to any other person, agency  
2 or governmental entity or placed in files or computerized [~~data~~  
3 ~~banks~~] databanks accessible to any persons not otherwise  
4 authorized to obtain information under this section.

5 G. Nothing in the code shall limit the  
6 confidentiality rights afforded by federal statute or  
7 regulation.

8 H. A person appointed as a treatment guardian in  
9 accordance with the [~~Mental Health and Developmental~~  
10 ~~Disabilities~~] code may act as the client's personal  
11 representative pursuant to the federal Health Insurance  
12 Portability and Accountability Act of 1996, Sections 1171-1179  
13 of the Social Security Act, 42 U.S.C. Section 1320d, as  
14 amended, and applicable federal regulations to obtain access to  
15 the client's protected health information, including mental  
16 health information and relevant physical health information,  
17 and may communicate with the client's health care providers in  
18 furtherance of such treatment."

19 **SECTION 15. APPROPRIATION.**--Three million seven hundred  
20 thirty-eight thousand dollars (\$3,738,000) is appropriated from  
21 the general fund to the office of the governor for expenditure  
22 in fiscal years 2020 and 2021 to establish a child and family  
23 databank commission and a child and family databank and to  
24 implement the provisions of the Child and Family Databank Act.  
25 Any unexpended or unencumbered balance remaining at the end of  
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fiscal year 2021 shall revert to the general fund.

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