

WORKING DRAFT

HOUSE BILL NO. _____

Department of health client information sharing.

Sponsored by: Select Committee on Mental Health and
Substance Abuse Services

A BILL

for

1 AN ACT relating to the department of health; authorizing
2 the sharing of client information data within the
3 department and from specified entities that have contracted
4 with the department to provide services; providing limits
5 on the sharing of client information as specified;
6 specifying procedures for the use of client information
7 data for research purposes; establishing penalties for
8 unlawful disclosure of client information as specified;
9 providing definitions; and providing for an effective date.

10

11 *Be It Enacted by the Legislature of the State of Wyoming:*

12

13 **Section 1.** W.S. 9-2-125 and 9-2-126 are created to
14 read:

15

1 **9-2-125. Client treatment records; confidentiality;**
2 **limited disclosure permitted; definitions.**

3

4 (a) Client registration records and treatment records
5 relating to persons receiving mental health or substance
6 abuse treatment at a treatment facility under contract with
7 the department shall remain confidential, except as
8 provided in this section and W.S. 35-2-605 through 35-2-
9 617.

10

11 (b) The content of any record specified in subsection
12 (a) of this section may be disclosed in accordance with the
13 prior written consent of the person who is the subject of
14 the record, but only to the extent, under the
15 circumstances, and for the purposes as are allowed under
16 the terms of the written consent.

17

18 (c) The records specified in subsection (a) of this
19 section shall be provided by the treatment facility or by
20 another division within the department to the mental health
21 division or the substance abuse division for the purpose of
22 determining compliance with state or federal requirements
23 and as necessary to coordinate treatment for mental
24 illness, developmental disabilities, alcoholism or drug

1 abuse. Treatment records of a person may be released
2 without informed written consent of the patient or his
3 legal representative in the following circumstances:

4
5 (i) To a person, organization or agency as
6 necessary for management or financial audits, or program
7 monitoring and evaluation. Information obtained under this
8 paragraph shall remain confidential and may not be used in
9 a manner that discloses the name or other identifying
10 information about the persons whose records are being
11 released;

12
13 (ii) For purposes of research as provided in
14 W.S. 9-2-126. Information obtained under this paragraph
15 shall remain confidential and may not be used in a manner
16 that discloses the name or other identifying information
17 about the persons whose records are being released;

18
19 (iii) Within the treatment facility where the
20 client is receiving treatment as necessary for the
21 provision of treatment services;

22
23 (iv) To a licensed physician who has determined
24 that the life or health of the client is in danger and that

1 treatment without the information contained in the
2 treatment records could be injurious to the client's
3 health. Disclosure under this paragraph shall be limited
4 to the portions of the records necessary to meet the
5 medical emergency;

6

7 (v) To a treatment facility that is to receive
8 the client from another treatment facility. The release of
9 records under this subsection shall be limited to the
10 treatment records required by law, a record or summary of
11 all somatic treatments and a discharge summary. The
12 discharge summary may include a statement of the client's
13 problem, the treatment goals, the type of treatment which
14 has been provided and recommendations for future treatment,
15 but may not include the patient's complete treatment
16 record;

17

18 (vi) To a correctional facility or a corrections
19 officer who is responsible for the supervision of a person
20 who is receiving inpatient or outpatient evaluation or
21 treatment. Release of records under this paragraph is
22 limited to and as follows:

23

1 (A) An evaluation report provided pursuant
2 to written supervision plan;

3

4 (B) The discharge summary, including a
5 record or summary of all somatic treatments, at the
6 termination of any treatment provided as part of the
7 supervision plan;

8

9 (C) When a person is returned from a
10 treatment facility to a correctional facility, the
11 information provided under paragraph (v) of this
12 subsection;

13

14 (D) Any information necessary to establish
15 or implement changes in the person's treatment plan or the
16 level or kind of supervision as determined by the
17 correctional facility. In cases involving a person
18 transferred back to a correctional facility, disclosure
19 under this paragraph shall be made to clinical staff only;

20

21 (vii) To the person's legal representative or
22 guardian ad litem, without modification, at any time in
23 order to prepare for involuntary commitment or recommitment
24 proceedings, reexaminations, appeals or other actions

1 relating to detention, admission, commitment or patient's
2 rights;

3

4 (viii) Pursuant to lawful search warrant or
5 other order issued by a court.

6

7 (d) The department shall develop and maintain an
8 information system to be used by the department and its
9 divisions that includes a tracking method which allows the
10 department and its divisions to identify mental health and
11 substance abuse clients' participation in any mental health
12 or substance abuse treatment facility on an immediate
13 basis. The information system shall not include individual
14 client's case history files. Confidentiality of client
15 information shall be maintained to avoid identification of
16 individual clients. The data elements shall be designed to
17 provide information that is needed to measure performance
18 and achieve service outcomes.

19

20 (e) Nothing in this section shall be construed to
21 prohibit the compilation and publication of statistical
22 data for use by government or researchers under standards,
23 including standards to assure maintenance of

1 confidentiality, as established by rule and regulation of
2 the department.

3

4 (f) As used in W.S. 9-2-125 and 9-2-126:

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6 (i) "Department" means the department of health;

7

8 (ii) "Individually identifiable" means that a
9 record contains information which reveals or can likely be
10 associated with the identity of the person or persons to
11 whom the record pertains;

12

13 (iii) "Legal representative" means a person
14 legally authorized to give consent for the disclosure of
15 personal records on behalf of a minor or a legally
16 incompetent adult;

17

18 (iv) "Registration records" means the records of
19 the department, treatment facilities and other persons
20 providing treatment services under contract with the
21 department which identify persons who are receiving or who
22 at any time have received treatment services for mental
23 illness or substance abuse with monies provided under
24 contract with the department;

1

2 (v) "Research" means a planned and systematic
3 sociological, psychological, epidemiological or other
4 scientific investigation carried out by a state agency, by
5 a scientific research professional with a bona fide
6 scientific research organization or by a graduate student
7 currently enrolled in an academic degree curriculum, with
8 an objective to contribute to scientific knowledge, the
9 solution to health problems or the evaluation of public
10 benefit and service programs. "Research" does not include
11 record analysis and data collection that are subjective, do
12 not permit replication and are not designed to yield
13 reliable and valid results;

14

15 (vi) "Treatment facility" means any community
16 based program providing mental health or substance abuse
17 services under contract with the department;

18

19 (vii) "Treatment records" means registration and
20 all other records concerning persons who are receiving or
21 who at any time have received treatment services for mental
22 illness or substance abuse from a treatment facility or
23 other persons under contract with the department.

24

1 **9-2-126. Client treatment records; research; access;**
2 **disclosure; penalties.**

3

4 (a) The department may authorize or provide access to
5 or provide copies of an individually identifiable personal
6 record for research purposes if informed written consent
7 for the disclosure has been given to the department by the
8 person to whom the record pertains or, in the case of
9 minors and legally incompetent adults, the person's legal
10 representative.

11

12 (b) The department may authorize or provide access to
13 or provide copies of an individually identifiable personal
14 record it has in its control or the registration or
15 treatment records of a treatment facility for research
16 purposes without the informed consent of the person to whom
17 the record pertains or the person's legally authorized
18 representative, only if:

19

20 (i) The department adopts research review and
21 approval rules including, but not limited to, the
22 requirement that the research organization appoints a
23 standing human research review board competent to review
24 research proposals as to ethical and scientific soundness

1 and the review board determines that the disclosure request
2 has scientific merit and is of importance in terms of the
3 agency's program concerns, that the research purposes
4 cannot be reasonably accomplished without disclosure of the
5 information in individually identifiable form and without
6 waiver of the informed consent of the person to whom the
7 record pertains or the person's legal representative, that
8 disclosure risks have been minimized, and that remaining
9 risks are outweighed by anticipated health, safety or
10 scientific benefits;

11

12 (ii) The disclosure does not violate federal law
13 or regulations; and

14

15 (iii) The department negotiates with the
16 research organization receiving the records or record
17 information a written and legally binding confidentiality
18 agreement prior to disclosure. The agreement shall:

19

20 (A) Establish specific safeguards to assure
21 the continued confidentiality and security of individually
22 identifiable records or record information;

23

1 (B) Ensure that the research organization
2 will report or publish research findings and conclusions in
3 a manner that does not permit identification of the person
4 whose record was used for the research. Final research
5 reports or publications shall not include photographs or
6 other visual representations contained in personal records;

7

8 (C) Establish that the research
9 professional will destroy the individual identifiers
10 associated with the records or record information as soon
11 as the purposes of the research project have been
12 accomplished and notify the department to this effect in
13 writing;

14

15 (D) Prohibit any subsequent disclosure of
16 the records or record information in individually
17 identifiable form except as provided in subsection (c) of
18 this section; and

19

20 (E) Provide for the signature of the
21 research professional, of any of the research
22 professional's team members who require access to the
23 information in identified form, and of the department

1 official authorized to approve disclosure of identifiable
2 records or record information for research purposes.

3

4 (c) No research professional who has established an
5 individually identifiable research record from personal
6 record information pursuant to subsection (b) of this
7 section, or who has established a research record from data
8 or information voluntarily provided by a treatment facility
9 under a written confidentiality assurance for the explicit
10 purpose of research, may disclose the record in
11 individually identifiable form unless:

12

13 (i) The person to whom the research record
14 pertains or the person's legal representative has given
15 prior informed written consent for the disclosure;

16

17 (ii) The research organization reasonably
18 believes that disclosure will prevent or minimize injury to
19 a person and the disclosure is limited to information
20 necessary to protect the person who has been or may be
21 injured, and the research organization reports the
22 disclosure only to the person involved or the person's
23 guardian, the person's physician, and the department;

24

1 (iii) The research record is disclosed in
2 individually identifiable form for the purposes of auditing
3 or evaluating a research program and:

4
5 (A) The audit or evaluation is authorized
6 or required by federal or state law or regulation or is
7 based upon an explicit provision in a research contract,
8 grant or other written research agreement; and

9
10 (B) No subsequent disclosure of the
11 research record in individually identifiable form will be
12 made by the auditor or evaluator except as provided in this
13 section; or

14
15 (iv) The research record is furnished in
16 compliance with a search warrant or court order, provided
17 that:

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19 (A) The court issues the search warrant or
20 judicial subpoena concerning the research record solely for
21 the purpose of facilitating inquiry into an alleged
22 violation of law by the research organization using the
23 record for a research purpose or by the agency; and

24

1 (B) Any research record obtained pursuant
2 to this paragraph and any information directly or
3 indirectly derived from the research record shall remain
4 confidential to the extent possible and shall not be used
5 as evidence in an administrative or judicial proceeding
6 except against the research organization using the record
7 for a research purpose or against the department.

8
9 (d) Unauthorized disclosure, whether willful or
10 negligent, by a research organization that has obtained an
11 individually identifiable personal record or record
12 information from the department or a treatment facility
13 pursuant to subsection (b) of this section is a misdemeanor
14 punishable by imprisonment for not more than six (6)
15 months. In addition, violation of any provision of this
16 section by the research organization may subject the
17 research organization to a civil penalty of not more than
18 ten thousand dollars (\$10,000.00) for each violation.

19
20 (e) Nothing in W.S. 9-2-125 or 9-2-126 shall require
21 the department to provide client registration records or
22 client treatment records in a format that is not within the
23 technological capabilities of the department at the time
24 the request is made for such records.

1

2 **Section 2.** This act is effective July 1, 2007.

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(END)