

ENROLLED ACT NO. 56, HOUSE OF REPRESENTATIVES

FIFTY-NINTH LEGISLATURE OF THE STATE OF WYOMING
2007 GENERAL SESSION

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

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

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

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

(a) Client registration records and treatment records relating to persons receiving mental health or substance abuse treatment at a treatment facility under contract with the department shall remain confidential, except as provided in this section, W.S. 7-4-201(f), 28-8-107, 28-8-108, 28-8-111 and 35-2-605 through 35-2-617.

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

(c) The records specified in subsection (a) of this section shall be provided by the treatment facility or by another division within the department to the mental health

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division or the substance abuse division for the purpose of determining compliance with state or federal requirements and as necessary to coordinate treatment for mental illness, developmental disabilities, alcoholism or drug abuse.

(d) Treatment records of a person may be released without informed written consent of the patient or his legal representative in the following circumstances:

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

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

(iii) Within the treatment facility where the client is receiving treatment as necessary for the provision of mental health or substance abuse services;

(iv) To a licensed physician or a licensed health care provider who has determined that the life or health of the client is in danger and that treatment without the information contained in the treatment records could be injurious to the client's health. Disclosure under this paragraph shall be limited to the portions of the records necessary to meet the medical emergency;

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(v) To a treatment facility that is to receive the client from another treatment facility. The release of records under this subsection shall be limited to the treatment records required by law and those treatment records as necessary for the provision of mental health and substance abuse services;

(vi) To a correctional facility, the board of parole, a corrections employee or contractor who is responsible for the supervision of a person who is receiving mental health or substance abuse services. Release of records under this paragraph is limited to and as follows:

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

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

(C) When a person is returned from a treatment facility to a correctional facility or when a person under the supervision of the department of corrections is receiving mental health or substance abuse services from a treatment facility, the information provided under paragraph (v) of this subsection. Disclosure under this paragraph shall be made to clinical staff only;

(D) Any information necessary to establish or implement changes in the person's treatment plan or the level or kind of supervision as determined by the department of corrections, the contractor or the board of parole. In cases involving a person transferred back to a

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correctional facility, disclosure under this paragraph shall be made to clinical staff only.

(vii) To the person's legal representative or guardian ad litem, without modification, at any time in order to prepare for involuntary commitment or recommitment proceedings, reexaminations, appeals or other actions relating to detention, admission, commitment or patient's rights;

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

(e) The department shall develop and maintain an information system to be used by the department and its divisions that includes a tracking method which allows the department and its divisions to identify mental health and substance abuse clients' participation in any mental health or substance abuse services on an immediate basis. The information system shall not include individual client's case history files. Confidentiality of client information shall be maintained to avoid identification of individual clients. The data elements shall be designed to provide information that is needed to measure performance and achieve service outcomes.

(f) Nothing in this section shall be construed to prohibit the compilation and publication of statistical data for use by government or researchers under standards, including standards to assure maintenance of confidentiality, as established by rule and regulation of the department.

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

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

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

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

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

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

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

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(vii) "Treatment records" means registration, health care and all other records, in any form or medium, concerning persons who are receiving or who at any time have received mental health or substance abuse services from a treatment facility or other persons under contract with the department.

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

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

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

(i) The department adopts research review and approval rules including, but not limited to, the requirement that the research organization appoints a standing human research review board competent to review research proposals as to ethical and scientific soundness and the review board determines that the disclosure request has scientific merit and is of importance in terms of the agency's program concerns, that the research purposes cannot be reasonably accomplished without disclosure of the information in individually identifiable form and without

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waiver of the informed consent of the person to whom the record pertains or the person's legal representative, that disclosure risks have been minimized, and that remaining risks are outweighed by anticipated health, safety or scientific benefits;

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

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

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

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

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

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

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(E) Provide for the signature of the research professional, of any of the research professional's team members who require access to the information in identified form, and of the department official authorized to approve disclosure of identifiable records or record information for research purposes.

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

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

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

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

(A) The audit or evaluation is authorized or required by federal or state law or regulation or is

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based upon an explicit provision in a research contract, grant or other written research agreement; and

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

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

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

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

(d) Unauthorized disclosure, whether willful or negligent, by a research organization that has obtained an individually identifiable record or record information from the department or a treatment facility pursuant to subsection (b) of this section is a misdemeanor punishable by imprisonment for not more than six (6) months, a fine of not more than ten thousand dollars (\$10,000.00), or both. All fines and penalties collected under this section shall be paid to the state treasurer and credited as provided in W.S. 8-1-109. A patient, or in the case of a minor or

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legally incompetent person, the person's legal representative, may maintain a civil action for damages for unauthorized disclosure of protected health information against any person or entity making such an unauthorized disclosure.

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

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Section 2. This act is effective immediately upon completion of all acts necessary for a bill to become law as provided by Article 4, Section 8 of the Wyoming Constitution.

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____

DATE APPROVED: _____

I hereby certify that this act originated in the House.

Chief Clerk