

HOUSE BILL NO. HB0133

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
9 35-2-617.

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

1 illness, developmental disabilities, alcoholism or drug
2 abuse.

3

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

7

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

14

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

20

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

24

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

8
9 (v) To a treatment facility that is to receive
10 the client from another treatment facility. The release of
11 records under this subsection shall be limited to the
12 treatment records required by law and those treatment
13 records as necessary for the provision of mental health and
14 substance abuse services;

15
16 (vi) To a correctional facility, a corrections
17 officer or contractor who is responsible for the
18 supervision of a person who is receiving mental health or
19 substance abuse services. Release of records under this
20 paragraph is limited to and as follows:

21
22 (A) An evaluation report provided pursuant
23 to a written supervision plan;

24

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

5
6 (C) When a person is returned from a
7 treatment facility to a correctional facility or when a
8 person is receiving mental health or substance abuse
9 services from a treatment facility, the information
10 provided under paragraph (v) of this subsection.
11 Disclosure under this paragraph shall be made to clinical
12 staff only;

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 services on an immediate basis. The
13 information system shall not include individual client's
14 case history files. Confidentiality of client information
15 shall be maintained to avoid identification of individual
16 clients. The data elements shall be designed to provide
17 information that is needed to measure performance and
18 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:

5

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 or service provider providing mental health
17 or substance abuse services under contract with the
18 department;

19

20 (vii) "Treatment records" means registration,
21 health care and all other records, in any form or medium,
22 concerning persons who are receiving or who at any time
23 have received mental health or substance abuse services

1 from a treatment facility or other persons under contract
2 with the department.

3

4 **9-2-126. Client treatment records; research; access;**
5 **disclosure; penalties.**

6

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

14

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

21

22 (i) The department adopts research review and
23 approval rules including, but not limited to, the
24 requirement that the research organization appoints a

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

13

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

16

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

21

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

1

2

(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;

8

9

(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;

15

16

(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

20

21

(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

24

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 record
6 information pursuant to subsection (b) of this section, or
7 who has established a research record from data or
8 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:
18

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 record or record information from
12 the department or a treatment facility pursuant to
13 subsection (b) of this section is a misdemeanor punishable
14 by imprisonment for not more than six (6) months, a fine of
15 not more than seven hundred fifty dollars (\$750.00), or
16 both. In addition, violation of any provision of this
17 section by the research organization may subject the
18 research organization to a civil penalty of not more than
19 ten thousand dollars (\$10,000.00) for each violation.

20
21 (e) Nothing in W.S. 9-2-125 or 9-2-126 shall require
22 the department to provide client registration records or
23 client treatment records in a format that is not within the

1 technological capabilities of the department at the time
2 the request is made for such records.

3

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

8

9 (END)