

ENROLLED ACT NO. 56, SENATE

SIXTY-THIRD LEGISLATURE OF THE STATE OF WYOMING
2016 BUDGET SESSION

AN ACT relating to hospitalization and treatment of mentally ill persons; modifying procedures for involuntary hospitalization; providing for directed outpatient commitment; amending convalescent status; providing for and modifying definitions; providing for access to patient records as specified; amending provisions relating to representation by the state and county of an involuntarily hospitalized or treated person; clarifying provisions relating to payment by the county for involuntary hospitalization and treatment; providing for the coordination of treatment and payment through gatekeepers as specified; and providing for an effective date.

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

Section 1. W.S. 25-10-110.1 and 25-10-128 are created to read:

25-10-110.1. Directed outpatient commitment proceedings.

(a) If the court finds based upon the recommendation of an examiner or on its own determination that the proposed patient is mentally ill but does not require inpatient hospitalization, the court shall consider issuing a directed outpatient commitment order. The court shall require directed outpatient commitment for the proposed patient for a period of time as determined appropriate by the court, not to exceed two (2) years with review by the court at least every six (6) months. The court may designate an outpatient care provider that will provide care to the proposed patient.

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(b) In considering whether directed outpatient commitment is appropriate, the court may consider one (1) or more of the following:

(i) The proposed patient is diagnosed as having a mental illness;

(ii) Without directed outpatient treatment, the proposed patient is likely to be dangerous to himself or others based upon noncompliance with prior medical directives;

(iii) The proposed patient is likely to suffer substantial medical or mental deterioration or become seriously disabled;

(iv) The proposed patient lacks present ability to make an informed decision concerning his need for treatment; or

(v) Any other information concerning the proposed patient's need for outpatient care.

(c) The terms and conditions of the treatment plan shall be established by an examiner in consultation with any gatekeeper designated by the department and approved by the court. In preparing the plan, the examiner shall consult with the county attorney, treating health care providers and the patient or the person responsible for the care and custody of the patient, if known.

(d) The treatment plan may require:

(i) Periodic reporting;

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(ii) Continuation of medication and submission to testing;

(iii) Restrictions on travel;

(iv) Restrictions on consumption of alcoholic beverages and drugs with requirements for any necessary testing;

(v) Use of community based group homes, crisis assistance centers or other available community based support services;

(vi) Temporary inpatient or residential treatment for stabilization;

(vii) Other conditions as agreed upon by the respective parties or as otherwise directed by the court.

(e) Treatment shall be provided by a treatment center or a court approved treatment provider.

(f) The treatment center or treatment provider or any other person identified in the treatment plan shall report to the county attorney and any gatekeeper designated by the department any material noncompliance by the patient with the treatment plan.

(g) By motion of an interested party or on its own motion, the court may revoke or modify the directed outpatient commitment if, after a hearing, the court finds by a preponderance of evidence that the patient violated any condition of the directed outpatient commitment order. If there has been a violation of the order, the court may modify the conditions of directed outpatient commitment,

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schedule an involuntary commitment hearing pursuant to W.S. 25-10-110, order any disposition for which private resources are available or order any disposition which is consistent with the best interests of the proposed patient and public safety.

(h) If a motion has been filed to modify or revoke the directed outpatient commitment, the court may enter an ex parte order for immediate detention of the patient if the court finds that the patient is a danger to himself or others. If the court enters an ex parte order of detention, the matter shall be set for hearing within seventy-two (72) hours. Notice of a hearing on a motion to modify or revoke the order for directed outpatient commitment shall be as provided in W.S. 25-10-110(d).

(j) The county attorney of the county where the directed outpatient commitment order is filed shall appear on behalf of the state at any hearing pursuant to this section.

25-10-128. Access to patient information.

Any disclosure of patient information required by this article shall be subject to limitations imposed by state and federal law. The department shall promulgate rules facilitating the exchange of information required by this article to the maximum extent allowed by state and federal law. At the discretion of the court considering a matter under this article, the court may order the disclosure of information required by this article. The court also may designate and direct the actions of a gatekeeper otherwise designated by the department under W.S. 25-10-112(g) for the purpose of allowing the gatekeeper access to patient information.

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Section 2. W.S. 25-10-101(a)(i), (ii) by creating a new subparagraph (D), (iv), (xiii), by creating new paragraphs (xiv) and (xvi) and by renumbering (xiv) as (xvii), 25-10-103, 25-10-104(a)(intro), (i) through (iv) and (vii), 25-10-109(e) through (j), 25-10-110(d)(intro), (v), (vi) and by creating a new paragraph (vii), (f), (h), (j)(intro), (i)(E), by creating a new paragraph (iii), by renumbering (iii) as (iv), (k), (n) and (o), 25-10-111(a) and (c), 25-10-112(c)(intro), (d)(intro), (g) and by creating new subsections (h) and (j), 25-10-116(a), 25-10-122(a)(intro), 25-10-127(a) through (c) are amended to read:

25-10-101. Definitions.

(a) As used in this act:

(i) "Court" means the district court which ordered detention, directed outpatient commitment or involuntary hospitalization of the person pursuant to this act, or the district court in the county where the person resides, is found or is hospitalized;

(ii) "Dangerous to himself or others" means that, as a result of mental illness, a person:

(D) While this definition requires evidence of recent acts or omissions of endangerment, either to self or others, a court may consider a person's mental health history in determining whether directed outpatient commitment or involuntary hospitalization is warranted.

(iv) "Examiner" means a licensed psychiatrist, a licensed physician, ~~an~~ a licensed advanced practice

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registered nurse, ~~with a clinical specialty in psychiatric and mental health nursing working in collaboration with a licensed physician, a licensed physician assistant,~~ a licensed psychologist, a licensed professional counselor, a licensed addictions therapist, a licensed clinical social worker or a licensed marriage and family therapist; ~~For purposes of emergency detention proceedings only, "examiner" includes a licensed physician's assistant;~~

(xiii) "Treatment" means diagnosis, evaluation, intervention, which may include psychiatric medication, individual and group mental health counseling, illness management diversion services such as immediate linkages to mental health services in the community and discharge planning. Treatment shall begin at the time of detention, if the person knowingly and voluntarily consents, and shall continue throughout involuntary hospitalization or directed outpatient commitment. Treatment may be given without the consent of the detained person or his parent or guardian when treatment is limited to diagnosis or evaluation or when treatment is necessary to prevent immediate and serious physical harm to the person or others. "Treatment" does not include observation or supervision;

(xiv) "Treatment center" or "treatment provider" means as defined by department rule;

(xvi) "Gatekeeper" means the single point of responsibility which may be designated by the department pursuant to W.S. 25-10-112(g);

~~(xiv)~~ (xvii) "This act" means W.S. 25-10-101 through 25-10-305.

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25-10-103. Admission of persons with mental illness to hospital or treatment center.

Subject to the rules and regulations of the hospital department, ~~the head of a hospital~~ or any other treatment provider providing treatment under this act may admit persons who have symptoms of mental illness ~~pursuant to W.S. 25-10-106, 25-10-109 or 25-10-110~~ for treatment in their hospital or treatment center.

25-10-104. Duties of department of health as to hospitals other than state hospital.

(a) The department, with respect to designated hospitals or other licensed treatment facilities providers other than the state hospital, shall:

(i) Adopt standards for the designation of hospitals or other licensed treatment facilities providers as qualified to accept patients and provide treatment under this act;

(ii) Designate hospitals or other licensed treatment facilities providers which qualify ~~under the standards adopted pursuant to paragraph (i) of this subsection~~ to provide services under this act;

(iii) Enter into contracts or agreements with designated hospitals or other licensed treatment facilities providers for the inpatient treatment of persons patients with mental illness; ~~and other services incident to the hospitalization of patients. Designated hospitals or other licensed treatment facilities having a contract with the department shall receive individuals detained under W.S. 25-10-109;~~

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(iv) Require ~~reports~~information from designated hospitals and other ~~licensed~~treatment facilities~~providers~~ concerning the services rendered to patients under the provisions of this act;

(vii) Promulgate rules and regulations for the administration of this act, including rules regarding reimbursement under W.S. 25-10-112.

25-10-109. Emergency detention.

(e) The law enforcement officer or examiner who initially detained the person shall make a written statement of the facts of the emergency detention. A copy of the statement shall be given to the detained person, to any gatekeeper designated by the department and to any subsequent examiner.

(f) When a person is detained under emergency circumstances, treatment may be given during the emergency detention period if the person voluntarily and knowingly consents. The parent or guardian of a minor or incompetent person may consent to treatment. If the parent or guardian of a minor patient does not consent to treatment, a petition may be filed under the Child Protection Act. Treatment may be given without the consent of the detained person or his parent or guardian when treatment is limited to diagnosis or evaluation or when treatment is necessary to prevent immediate and serious physical harm to the person or others. Prior to treatment, the person shall be fully advised of the scope of treatment, and a report of the treatment shall be provided to any gatekeeper designated by the department and filed with the court if directed outpatient commitment or involuntary

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hospitalization proceedings are commenced. An examiner or a physician who provides treatment in good faith pursuant to this subsection shall be immune from civil liability for the treatment except there shall be no immunity from liability for negligent acts or deliberate misconduct.

(g) At the time of emergency detention the person shall be informed orally and in writing of his right to contact his family and an attorney, of his right to appointed counsel if he is indigent, of his right to remain silent and that his statements may be used as a basis for directed outpatient commitment or involuntary hospitalization.

(h) When a person is detained in emergency detention and an application for directed outpatient commitment or involuntary hospitalization is filed by the county attorney, the court shall appoint an attorney to represent the detained person unless he has his own attorney, and the court shall conduct a hearing within seventy-two (72) hours, excluding Saturdays, Sundays and legal holidays, of the initial detention to determine whether continued detention is required pending directed outpatient commitment or involuntary hospitalization proceedings. The county attorney of the county where the application is filed shall appear on behalf of the state at the hearing. Any gatekeeper designated by the department pursuant to W.S. 25-10-112(g) shall appear at the hearing and provide testimony concerning continued detention and, if applicable, the issues outlined in subsection (m) of this section. Notice of the preliminary hearing shall be given to the county attorney, any gatekeeper designated by the department, the detained person and his attorney. The court may delay the hearing only at the request of the detained person or his parent, guardian or his attorney. An

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emergency detention hearing may be waived at the request of the detained person or the detained person's attorney. ~~except in cases where a licensed physician's assistant was the only examiner for the emergency detention.~~ If an emergency detention hearing has been waived, the court may immediately conduct the directed outpatient commitment or involuntary hospitalization hearing. ~~provided that a licensed physician's assistant shall not be the examiner for an involuntary hospitalization hearing.~~

(j) At the hearing the court shall advise the detained person and his parent, guardian or attorney of the contents of the written statement of emergency detention required in subsection (e) of this section and the application for directed outpatient commitment or involuntary hospitalization.

25-10-110. Involuntary hospitalization proceedings.

(d) Upon receipt of an application, the court shall issue notice thereof to the proposed patient, the person responsible for the care or custody of the proposed patient, any gatekeeper designated by the department and other persons designated by the court. The notice shall be served as provided by the Wyoming Rules of Civil Procedure. The notice shall apprise the proposed patient:

(v) Of the basis for the proposed hospitalization, including a detailed statement of the facts and supporting testimony; ~~and~~

(vi) That a hearing will be held if warranted by the report of the examination of the proposed patient; ~~and~~ and

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(vii) Of the identity of any gatekeeper designated by the department pursuant to W.S. 25-10-112(g).

(f) If the examiner reports the proposed patient is not mentally ill, the court shall terminate the proceedings. If the examiner reports the proposed patient is mentally ill, the court shall fix a date for and give notice of a hearing to be held as soon as possible. The notice shall satisfy the requirements of paragraphs (d)(i) through ~~(vi)~~ (vii) of this section.

(h) The proposed patient, the applicant, and all others to whom notice is required may appear at the hearing to testify and may present witnesses. The court shall consider the testimony of any gatekeeper designated by the department and may receive the testimony of other persons. The proposed patient shall be present at the hearing unless he waives his right to appear. All persons not necessary to protect the rights of the parties shall be excluded from the hearing. The hearing shall be conducted in as informal a manner as is consistent with orderly procedure and in a physical setting which will not have a harmful effect on the mental health of the proposed patient. Any hearing conducted under this subsection shall be recorded by the court reporter or by electronic, mechanical or other appropriate means.

(j) If, upon completion of the hearing and consideration of the record, the court or the jury finds by clear and convincing evidence that the proposed patient is mentally ill the court shall consider the least restrictive and most therapeutic alternatives, give consideration to any recommendations by the gatekeeper and shall:

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(i) Order his hospitalization, assign him to a hospital, and:

(E) Make findings as to his competence to make informed choices regarding treatment and his need for prescribed psychotropic medication. If the court finds the person incompetent to make an informed decision, the court may order the administration of prescribed psychotropic medication. The order for medication shall be reviewed by a physician upon commitment and by a psychiatrist upon admission to the hospital. The prescribed medication shall be continued if found medically appropriate by the investigation review committee of the hospital or institution, subject to review by the medical director of the hospital or institution. Any action by the medical director of the hospital or institution shall be reviewable pursuant to the Wyoming Administrative Procedure Act. All orders for prescribed medication or a summary of all orders shall be provided to the gatekeeper designated by the department under W.S. 25-10-112(g).

(iii) Order the proposed patient be treated in a directed outpatient commitment pursuant to W.S. 25-10-110.1 if the court finds continuous inpatient hospitalization is not required and the proposed patient would be more appropriately treated in a directed outpatient commitment; or

~~(iii)~~ (iv) Order any disposition for which private resources are available and which is consistent with the best interests of the proposed patient and with public safety.

(k) The court is authorized to appoint a special commissioner to assist in the conduct of hospitalization

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proceedings. In proceedings under this act, regularly appointed court commissioners may exercise the authority granted by W.S. 5-3-307. In any case in which the court refers an application to the commissioner, the commissioner shall conduct the directed outpatient commitment under W.S. 25-10-110.1 or the involuntary hospitalization proceedings under this section and on the basis thereof shall either recommend dismissal of the application or hold a hearing as provided in this section and make recommendations to the court regarding the disposition of the proposed patient and of the proceedings.

(n) The court shall inquire into the medical condition of every patient found to be mentally ill. If the court determines based upon the advice of a physician or other qualified professional, and in consultation with any gatekeeper designated by the department pursuant to W.S. 25-10-112(g), that the patient's present primary need is for medical treatment or care and whose need for psychiatric care is secondary, the court may delay ordering ~~the commitment~~ directed outpatient commitment or involuntary hospitalization of the patient ~~to the Wyoming state hospital~~ until such time as the patient receives medical care and the patient's need for psychiatric care is primary.

(o) In proceedings under this section involving a minor, the ~~department~~ court shall, to the extent feasible, consult with the minor's parents or legal guardian.

25-10-111. Commitment or transfer to federal hospital; effect of orders by courts of other jurisdictions; powers of federal facility.

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(a) The court, when ordering involuntary hospitalization pursuant to W.S. 25-10-110(j), may order a person hospitalized in a hospital or facility operated by the veterans' administration or another federal agency, if the court has received a certificate from the agency showing that facilities are available and that the patient is eligible for treatment therein.

(c) Upon receipt of a certificate from the veterans' administration or another federal agency that facilities are available for treatment of a patient involuntarily hospitalized under W.S. 25-10-110 and that the patient is eligible for treatment therein, the head of a hospital may transfer the patient to the veterans' administration or other federal agency for treatment. The court which ordered involuntary hospitalization shall be notified of the transfer by the hospital. No person shall be transferred if he is confined pursuant to a conviction for a crime or if he has been acquitted of a criminal charge solely on the ground of mental illness or deficiency, unless, prior to the transfer, the court which committed the person enters an order for the transfer after appropriate motion and hearing.

25-10-112. Liability for costs of detention, involuntary hospitalization and proceedings therefor.

(c) The county shall pay for the first seventy-two (72) hours as provided in subsection (a) of this section even if the patient waives the hearing required under W.S. 25-10-109 and proceeds to voluntary outpatient treatment, directed outpatient commitment or involuntary hospitalization proceedings. Subject to the provisions of subsections (d) and (e) of this section, if continued emergency detention is ordered pursuant to W.S.

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25-10-109(k)(iii), the county's liability for any costs of detention, treatment or transportation shall terminate after the first seventy-two (72) hours of detention, in addition to any Saturday, Sunday or legal holiday. The department shall be responsible for those costs after the expiration of the county's responsibility for payments of the costs. ~~The county attorney shall notify the department of the continued emergency detention order or involuntary hospitalization order within twenty-four (24) hours.~~ All costs of treatment, transportation and continued emergency detention incurred after the first seventy-two (72) hours of detention, in addition to any Saturday, Sunday or legal holiday, shall be paid by:

(d) The hospital or other treatment provider shall attempt to recover all costs of treatment from public and private health insurance, ~~from patients,~~ and from government benefit programs prior to seeking payment from the county or the department. The hospital or other treatment provider shall have discharged its obligation to recover costs under this subsection if it:

(g) The department in consultation with each board of county commissioners may establish a single point of responsibility to identify, make referrals to, intervene and coordinate with community or regional resources prior to and after an emergency detention. The single point of responsibility may be assigned to a community mental health center, designated hospital or other entity that is able to provide treatment as defined under this act or gatekeeper. Gatekeeper duties shall include, but are not limited to, providing guidance on issues of detention and involuntary treatment and monitoring and coordinating timely, efficient and effective patient treatment prior to, during and after any emergency detention or involuntary treatment under this

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act. No gatekeeper designated under this subsection shall provide inpatient psychiatric treatment to patients under this act, unless the gatekeeper has been approved by the department of health to provide these services.

(h) The county attorney shall notify the department and any gatekeeper of any detention, continued emergency detention order, directed outpatient commitment or involuntary hospitalization order within twenty-four (24) hours.

(j) The department, boards of county commissioners, designated hospitals, gatekeepers and other treatment providers may, upon contract or agreement, coordinate and monitor the services and payments required for the treatment of persons with mental illness as provided under this section. Pursuant to contract or agreement, the department may assume any part of the expenses associated with a gatekeeper which expenses would otherwise be the responsibility of a county under this act, including expenses for the transportation of patients to appropriate care settings.

25-10-116. Periodic examinations of patients; determination of discharge or continued hospitalization; notice; hearing.

(a) Three (3) months after each patient's admission to the hospital, the head of the hospital shall evaluate the progress of each patient and shall reevaluate the treatment and progress every six (6) months thereafter. The evaluation shall consider whether directed outpatient commitment is appropriate.

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**25-10-122. Records to be kept confidential;
exceptions.**

(a) Records and reports made under this act which directly or indirectly identify a patient, a former patient or an individual for whom an application for directed outpatient commitment or involuntary hospitalization has been filed, shall be confidential and shall not be disclosed by any person unless:

**25-10-127. Convalescent status; discharge;
readmittance.**

(a) After providing ~~fourteen (14) days~~ notice to the court, ~~and the~~ county attorney who initiated involuntary hospitalization procedures, any gatekeeper designated by the department and all interested parties, the hospital may release an improved patient on convalescent ~~status~~. ~~Release on convalescent status shall include a plan of treatment on an outpatient or nonhospital basis and other provisions for continuing responsibility to and by the hospital. Prior to the end of one (1) year on convalescent status, and not less than annually thereafter, the hospital shall reexamine the facts relating to the hospitalization of the patient on convalescent status and if the hospital determines hospitalization is no longer anticipated, the hospital shall discharge the patient and make a report of discharge to the court and county attorney involved in ordering the hospitalization, if any. leave subject to the following:~~

(i) The hospital has determined that the patient is likely to follow the conditions the hospital determines necessary for the patient;

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(ii) The hospital has determined that the patient will not likely be a danger to himself or others during convalescent leave; and

(iii) Release on convalescent leave shall include a plan of treatment on an outpatient or nonhospital basis and other provisions for continuing responsibility of the patient by the hospital. Prior to the end of one (1) year on convalescent leave, and not less than annually thereafter, the hospital shall reexamine the facts relating to the hospitalization of the patient on convalescent leave and if the hospital determines hospitalization is no longer anticipated, the hospital shall discharge the patient and make a report of discharge to the court, to any gatekeeper designated by the department and to the county attorney who initiated procedures for the involuntary hospitalization.

(b) The hospital from which the patient is given convalescent ~~status—leave~~ may readmit to the hospital ~~an~~ the involuntary hospitalized patient who has been released on convalescent ~~status—leave~~ if the hospital reasonably believes that it is in the best interests of the patient. The ~~person—patient~~ readmitted shall have all the rights he had upon admission to the hospital. Upon readmission he shall be given notice of his rights pursuant to W.S. 25-10-116. It is the responsibility of the hospital to provide or pay for any transportation or other services in connection with any revocation of a convalescent status.

(c) The hospital shall discharge any patient who has remained on convalescent ~~status—leave~~ for a period of two (2) continuous years.

Section 3. W.S. 25-10-104(a)(v), 25-10-110(j)(ii) and 25-10-112(d)(i) are repealed.

ORIGINAL SENATE
FILE NO. SF0058

ENGROSSED

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Section 4. 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 Senate.

Chief Clerk