



WYOMING LEGISLATIVE SERVICE OFFICE

Memorandum

DATE October 10, 2016

TO Title 25 Subcommittee

FROM Ian Shaw, LSO Attorney

SUBJECT Title 25 data reporting obligations

At its August meeting, the Title 25 Subcommittee considered the availability of data from which to evaluate the Title 25 system and asked that LSO identify the statutory and rule-based requirements by which participants in the Title 25 system are required to report data. This memo identifies those requirements and also identifies any requirements for the generation of any written material from which data could potentially be obtained.

Provisions Requiring Reporting to the Department of Health:

Only three statutory provisions applicable to the Title 25 involuntary commitment system directly require the disclosure of data to the Department of Health:

- W.S. 25-10-128 requires that the Department promulgate rules facilitating the exchange of information to the maximum extent allowed by state and federal law. Although this language does not mandate the disclosure of data to the Department of Health, it at least does encourage the exchange of data to the maximum extent allowed.
- W.S. 25-10-104 requires the Department of Health to "require information from designated hospitals and other treatment providers concerning the services rendered to patients under the provisions of this act." The statute does not prescribe the methods by which the information must be reported.
- W.S. 25-10-112 requires: 1) That a hospital or other treatment provider certify to a county or the Department that a Title 25 patient has no health insurance or other governmental benefits from which to recover the costs of Title 25 treatment before being eligible to receive compensation from the county or Department; and 2) that the county attorney notify the Department of any detention, continued emergency detention order, directed outpatient commitment, or involuntary hospitalization order within 24 hours.

Two provisions in the Department of Health rules related to Title 25 directly require the disclosure of data to the Department of Health:

- Rules of the State Hospital, Chapter 8- Standards for the Reimbursement of Designated Hospitals or Other Treatment Providers, Section 3-Filing of Claims: Provides an extensive list of documentation that must be provided by designated hospitals and other treatment providers when they submit claims for payment to the Department of Health. That information includes: 1) details of the services provided; 2) medical records; 3) an itemized billing statement; 4) a universal billing form; 5) a CMS 1500 billing claim form; 6) the emergency detention notice; 7) Form 3-81 and, if applicable, the continued emergency detention court order; 8) any involuntary hospitalization court order and any papers showing the patient's release from involuntary hospitalization; 9) Form 14-81; 10) a certification indicating that the patient has no public or private health insurance and that there are no other governmental benefit programs from which the costs of treatment can be collected; 11) an affidavit demonstrating the patient's inability to pay for treatment; and 12) documentation of efforts to recover costs of treatment from other sources.
- Rules of the State Hospital – Chapter 10 - Standards for Convalescent Leave, Section 4 - Process to Initiate Convalescent Leave: Requires that a convalescent leave plan be developed before a patient is released from the State Hospital on convalescent leave. Part of that plan must include "[p]rovisions for quarterly reports from the community treatment provider to the Wyoming State Hospital on the status and progress made by the patient. If more than one community treatment provider is selected by the patient to provide outpatient services and supports, the plan shall specify the community treatment provider responsible for coordinating care and providing quarterly reports."

Confidentiality of Title 25 Records:

When considering data/information that may be generated by the Title 25 system, please be aware of two statutes that guide the disclosure and confidentiality of Title 25 data:

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:
 - (i) The patient or, if he is a minor or incompetent, his parent or guardian, consents;
 - (ii) Disclosure is necessary to carry out this act; or
 - (iii) A court determines disclosure is necessary for the conduct of proceedings before it and failure to disclose would be contrary to the public interest.
- (b) Patient records identified in subsection (a) of this section may be provided without consent of the patient, parent or guardian by and between a mental health center, the state hospital and hospitals designated under W.S. 25-10-104, only for the purpose of facilitating referral treatment, admission, readmission or transfer of the patient under this act.

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.

These provisions are noteworthy in two respects. First, W.S. 25-10-128 clearly authorizes and mandates the free flow of information to the maximum extent allowed by state and federal law. Second, W.S. 25-10-122(a)(ii) already allows the disclosure of "records and reports made under this act" where "disclosure is necessary to carry out this act." To the extent the Act requires the Department of Health to use system utilization and patient data for the efficient operation and supervision of the Title 25 system, disclosure of that information to the Department might fit within the exception to confidentiality established through Section 122(a)(ii). Of course, the Legislature could amend Section 122(a)(ii) to more clearly specify that the disclosure of such data is covered by the exception. There is a separate issue of whether the reference to "records and reports made under this act," within Section 122(a)(ii), covers the types of data that would be useful to the Department. Perhaps the Department needs information in a different form than the typical "records and reports." It would seem, however, that W.S. 25-10-122(a)(ii) and W.S. 25-10-28 likely would allow the Department to promulgate additional rules that would require the "free flow" of any necessary data.

[Note: The Department of Health is helping LSO research the limitations on data disclosure and collection imposed by federal law. HIPPA is the most obvious of these laws.]

Text of Relevant Statutory and Rule Provisions:

Listed below are the statutes and agency rules that require the disclosure of data/information related to a Title 25 patient or the Title 25 process, or which require the generation of written material from which Title 25 data potentially could be obtained. Several qualifications should be noted:

- * Provisions requiring a report of data are in **bold and underlined type**. Provisions which require the generation of written material from which Title 25 data could potentially be obtained are in ***bold italicized type***.
- *Provisions which require the reporting of data or the generation of written reports, but do not require that the information be submitted to the Department of Health, are not indicated as provisions requiring the reporting of data.
- * The statutory sections listed below are not complete versions of each statute. Irrelevant provisions and sentences have been omitted.

*Provisions which require treatment plans, or which otherwise contemplate action that may be reduced to writing, but which is not required to be in writing, have been omitted.

Statutory Provisions

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

- (a) The department, with respect to hospitals or other treatment providers other than the state hospital, shall:
- (i) Adopt standards for the designation of hospitals or other licensed treatment providers as qualified to accept patients and provide treatment under this act;
 - (ii) Designate hospitals or other treatment providers which qualify to provide services under this act;
 - (iii) Enter into contracts or agreements with designated hospitals or other treatment providers for the treatment of patients with mental illness;
 - (iv) **Require information from designated hospitals and other treatment providers concerning the services rendered to patients under the provisions of this act;**
 - (vi) Investigate complaints made by or on behalf of patients with mental illness; and
 - (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.

- (a) When a law enforcement officer or examiner has reasonable cause to believe a person is mentally ill pursuant to W.S. 25-10-101, the person may be detained.
- (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 hospitalization proceedings are commenced.***
- (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.....

25-10-110. Involuntary hospitalization proceedings.

- (a) Proceedings for the involuntary hospitalization of a person may be commenced by the filing of a ***written application with the court in the county in which the person is initially detained.....*** The application shall be accompanied by either:

- (i) **A certificate of an examiner** stating:
 - (A) That he has examined the proposed patient not more than fifteen (15) days prior to the date that the application was filed under this subsection;
 - (B) His findings and the proposed patient's history; and
 - (C) His opinion that the proposed patient is mentally ill; or
- (ii) **A written statement by the applicant and by an examiner that the proposed patient has refused to submit to examination by an examiner, together with a statement of the facts and circumstances supporting the application.**
- (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;**
- (e) The court shall appoint one (1) or more examiners to examine the proposed patient and to make a **written report to the court of the findings as to the history and mental illness of the proposed patient.....**
- (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.... **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:
 - (i) Order his hospitalization, assign him to a hospital, and:
 - (A) Send to the hospital, with the patient a **certified copy of the findings of fact and order and a copy of the examiner's report;**
 - (E) Make findings as to his competence to make informed choices regarding treatment and his need for prescribed psychotropic medication.... **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).**

25-10-110.1. Directed outpatient commitment proceedings.
[no reporting or document generation requirements.]

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

- (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....**

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

(d) The hospital or other treatment provider shall attempt to recover all costs of treatment from public and private health insurance 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:

(ii) **Certifies to the county or the department that the patient has no public or private health insurance and that there are no other government benefit programs from which it can recover the costs of treatment.**

(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.**

25-10-114. Transfer of inmates of penal institutions to state hospital; notice.

(a) The department of corrections may transfer an inmate of a state penal institution who is mentally ill to the state hospital, subject to the rules of admission of the state hospital, if adequate treatment cannot be provided at a state penal institution.

(b) Not less than five (5) days before an inmate is transferred pursuant to this section, ***the department of corrections shall give written notice to the court which ordered imprisonment, the inmate and the person responsible for his care or custody.*** The notice shall include:

- (i) The grounds for the transfer;
- (ii) The inmate's right to contest the transfer;
- (iii) The inmate's right to a hearing before he is transferred; and
- (iv) The inmate's right to counsel.

25-10-115. Transfer of patients to another hospital; notice.

(a) A hospital may transfer a patient hospitalized under this act to another hospital if the transfer is in the best interest of the patient. An involuntarily hospitalized patient who is so transferred retains the status of an involuntarily hospitalized patient under W.S. 25-10-110.

(b) Not less than five (5) days before a patient is transferred, ***the head of the hospital shall give written notice to the court, the patient, and the person responsible for his care or custody.*** The notice shall include:

- (i) The grounds for the transfer;
- (ii) The patient's right to contest the transfer;
- (iii) The patient's right to a hearing before he is transferred; and
- (iv) The patient's right to counsel.

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.

(b) ***When the head of a hospital determines after the examination required by subsection (a) of this section or by W.S. 25-10-113 that the conditions justifying hospitalization of involuntary patients no longer exist, he shall report his determination to the court, the county attorney, the district attorney, family members and the mental health center which were involved in the initial proceedings.*** Unless, within three (3) days after the notice is sent, the court upon motion orders a hearing on continuing the patient's hospitalization, the head of the hospital shall discharge the patient.

The hearing shall be held as soon as practicable and shall follow the procedures in W.S. 25-10-118. Notice of the hearing shall conform with W.S. 25-10-116(c).

(c) ***When the head of a hospital determines after an evaluation required by subsection (a) of this section or by W.S. 25-10-113 that the conditions justifying hospitalization continue to exist, he shall send to the court notice of his determination and a detailed statement of the factual basis for the determination.*** The court may order a hearing to review the determination. The head of the hospital shall also send notice of his determination to the patient and the person responsible for his care or custody. The notice shall include:

- (i) The patient's right to contest the determination;
- (ii) The patient's right to a hearing; and
- (iii) The patient's right to counsel.

25-10-119. Mechanical restraints; uses and reasons therefor recorded.

Mechanical restraints shall not be applied to any patient, unless the head of the hospital determines that the medical needs of the patient require them. ***The head of the hospital shall record every use of a mechanical restraint and the reasons for its use in the clinical record of the patient and sign the record.***

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

(a) After providing notice to the court, 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 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;
- (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.***

Department of Health Rules

Chapter 1: State Hospital – Patient Bill of Rights

Section 4. Patients' Bill of Rights.

(a) A person admitted to the hospital for the purposes of receiving mental health services shall be accorded the following:

- (ii) ***The right to an individualized, written treatment or service plan developed pursuant to and in compliance with W.S. 25-10-113***, including:
 - (A) The right to treatment based on such plan;
 - (B) The right to periodic review and reassessment of treatment and related service needs as required by W.S. 25-10-116; and

(C) The right to appropriate revision of the plan. Appropriate revision includes any revision necessary to provide a description of mental health services that may be needed after the person is discharged from the hospital or its program(s).

(viii) **The right to confidentiality of the person's records, in accordance with W.S. 25-10-122.**

(b) The rights described in these rules shall be in addition to and not in derogation of any other statutory or constitutional rights.

(i) **The right to confidentiality of and access to records described in provisions designated (a)(viii) and (a)(ix) shall remain applicable to records pertaining to a person after the person's discharge from the hospital or program(s), with the following exception:** Records and reports which are made under the Hospitalization of Mentally Ill Persons Act (W.S. 25-10-101 through 25-10-404), and directly or indirectly identify a patient, former patient, or person for whom an application for hospitalization has been filed, may be provided without the person's consent, if the records and reports as provided:

(A) By and between a mental health center, the State Hospital and hospitals designated under W.S. 25-10-104; and

(B) Only for the purpose of facilitating referral treatment, admission, readmission or transfer of the patient under the Hospitalization of Mentally Ill Persons Act.

Chapter 7: Standards for the Designation of Hospitals

Section 3. Designated Hospital Requirements.

[Subsections (e) and (f) contain provisions reflecting the requirements of W.S. 25-10-116(b) and (c), printed above. W.S. 25-10-116(b) and (c) detail the findings that the head of a hospital must make when conducting a periodic review of whether or not the conditions justifying involuntary commitment continue to exist.]

Chapter 8: Standards for the Reimbursement of Designated Hospitals or Other Treatment Providers

Section 3. Filing of Claims.

(a) **Designated hospitals or other treatment providers filing claims with the Department under W.S. § 25-10-112 for services provided pursuant to W.S. § 25-10-109 or W.S. § 25-10-110 shall provide documentation to the Department detailing the services rendered to patients for which payment is being requested. This documentation shall include, but is not limited to:**

(i) All medical records directly related to the services for which payment is being requested;

(ii) An itemized billing statement for services for which payment is requested, to include, as applicable:

(1) A universal billing form;

(2) A CMS 1500

(iii) The emergency detention notice, Form 3-81 and, if applicable, the continued emergency detention court order;

(iv) The involuntary hospitalization court order, if applicable, and any papers showing the patient's release from involuntary hospitalization, Form 14-81.

(v) A certification, signed by the designated hospital representative or treatment provider, indicating that the patient has no public or private health insurance and that there are no other governmental benefit programs from which it can recover the costs of treatment;

(vi) An affidavit from the patient or the legal representative of the patient providing the patient's financial condition to document the patient's inability to pay for treatment. The format for the affidavit and the certification shall be developed by the Department.

(vii) Documentation of all efforts made to recover costs of treatment from public and private health insurance, from the patient, and from government benefit programs prior to seeking payment from the Department.

Chapter 10: Standards for Convalescent Leave

Section 4. Process to Initiate Convalescent Leave.

- (a) Request for Convalescent Leave.
 - (i) Treatment team. Members of the patient's treatment team must meet to discuss the potential benefits of Convalescent Leave. Although all members of the treatment team do not need to agree to the leave, all members of the team must be a part of the decision making process. If the members of the treatment team do not arrive at a consensus for the use of Convalescent Leave, the patient's treating medical provider leading the treatment team will make the final decision. ***If a decision is made to pursue Convalescent Leave, the request must be documented and include the applicable conditions contained in Section 3(a) as justification for the request.***
- (b) Convalescent Leave Plan.
 - (i) Once the treatment team has obtained input from the patient and all appropriate parties, ***a written Convalescent Leave Plan will be developed by the patient's treatment team***, with the documented input of the patient and the community treatment provider.
 - (ii) ***The Convalescent Leave Plan shall include:***
 - (A) The roles and responsibilities of the patient and the appropriate parties and any areas for which the Wyoming State Hospital will retain responsibility while the patient is on Convalescent Leave;
 - (B) The community treatment services, medication, and supports to be provided, the entity responsible for providing the services, medication, and supports and how they will be paid. Wyoming State Hospital staff will assist patients in applying for Medicaid and securing Social Security benefits, if applicable. Community treatment providers will bill third party pay sources prior to billing the patient for services provided;
 - (C) **Provisions for quarterly reports from the community treatment provider to the Wyoming State Hospital on the status and progress made by the patient.** If more than one community treatment provider is selected by the patient to provide outpatient services and supports, the plan shall specify the community treatment provider responsible for coordinating care and providing quarterly reports;
 - (D) The conditions under which Convalescent Leave will be revoked;
 - (E) The preferred location for detention and the method of detention of the patient if Convalescent Leave is revoked.
 - (iii) The Convalescent Leave Plan will be provided to the patient, the patient's treatment team and other appropriate parties for signature, thereby acknowledging its terms and the role of each entity in achieving the goals of the Convalescent Leave.
 - (iv) ***The Convalescent Leave Plan, signed by the patient, the patient's treatment team and other appropriate parties, may act as the report to the court having jurisdiction over the location in which the case originated in support of Convalescent Leave, or a separate report to the court outlining additional information may be drafted and submitted by the treating medical provider.***
 - (v) ***Copies of the signed Convalescent Leave plan shall be provided to the patient and the appropriate parties in a manner to ensure receipt of the copy prior to the patient's release.***
- (c) Application for Convalescent Leave.

- (i) ***Upon completion of the Convalescent Leave plan, the Wyoming State Hospital will notify the Attorney General's Office of the request for Convalescent Leave.*** Notification to the Attorney General's Office may be by email or by fax, and must include copies of the initial commitment documents for the patient's involuntary commitment, the signed Convalescent Leave Plan, and any other relevant information or documents, including any separate reports that are drafted in support of the Convalescent Leave.
- (ii) ***The Attorney General's Office will file an application for approval of the Convalescent Leave*** as soon as possible upon receipt of all required information as set forth in Section 4(c)(i). A copy of the application will be sent to the county attorney who initiated involuntary hospitalization procedures, the attorney that originally represented the patient and the community treatment provider.
- (iv) If an ***objection to Convalescent Leave*** is filed by either the county attorney or the court, a hearing shall be scheduled by the court. At the hearing, the parties may appear to testify in support of or against the Convalescent Leave.

Section 6. One Year Follow Up.

- (a) Prior to the patient's one year anniversary on Convalescent Leave status, the patient's treatment team shall consult with the patient and each of the appropriate parties to reconsider and reexamine the facts relating to the involuntary hospitalization of the patient.
- (b) If the patient's treatment team and the community treatment provider determine that involuntary hospitalization is no longer anticipated for the patient, ***the community treatment provider, in collaboration with the Wyoming State Hospital, shall submit a 14-81 form to the Court*** for the discharge of the patient, following the procedures set forth in W.S. § 25-10-116(b). With the participation of the patient, the patient's guardian, if applicable, the patient's caregiver, if applicable, the patient's family, if applicable and the community treatment provider, the Wyoming State Hospital shall prepare a discharge plan.
- (c) If the patient is on Convalescent Leave but is later returned to the Wyoming State Hospital or designated hospital and then placed on Convalescent Leave status, the one year follow up shall be based on the date of the most recent Convalescent Leave.

Section 7. Two Year Discharge Process.

- (a) At the patient's two year anniversary on Convalescent Leave, ***the community treatment provider, in collaboration with the Wyoming State Hospital, shall submit a 14-81 form to the court***, seeking the discharge of the patient, pursuant to W.S. § 25-10-116(b). The 14-81 ***form should note the client's success during the two year Convalescent Leave period, and include a discharge plan*** prepared by the Wyoming State Hospital in conjunction with the patient, the patient's guardian, if applicable, the patient's caregiver, if applicable, the patient's family, if applicable, and the community treatment provider.