

GEORGE KENNEY, MEMBER

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 BUREAU OF COMMUNITY PROGRAM
 LICENSURE & CERTIFICATION

January 14, 2008

Janice Staloski, Director
 Bureau of Community Program Licensure and Certification
 Pennsylvania Department of Health
 132 Kline Plaza, Suite A
 Harrisburg, PA 17104

Re: Department of Health – Proposed Regulations No. 10-186
 4 Pa. Code Section 255.5(b)
 Confidentiality of Patient Records and Information

Dear Ms. Staloski,

I am writing to express my concerns for the Department of Health's proposed regulations regarding confidentiality of drug and alcohol addiction treatment records and personal information (10-186).

These regulations, much like those proposed in February 2007, in essence replace state rules with ambiguous federal regulations. Pennsylvania Act 106 of 1989 previously provides guidelines for the criteria needed before an insured can obtain coverage for addiction treatment. Therefore, these regulations are not needed.

In addition to the fact that there is no need for these regulations, there are also many flaws within the proposed changes to 4 PA Code Section 255.5(b). Patient information and patient record are interchangeable terms in the proposed regulations. These terms in reality have very different meanings. The open ended definition at section (c)(2)(i) allows for the release of virtually any material that is discussed inside of the therapeutic relationship, which will compromise the patient/counselor relation. The patient record is to include all patient information in the proposed regulation and if released, could humiliate the patient. This will have a chilling effect on future patients, possibly preventing others from seeking help.

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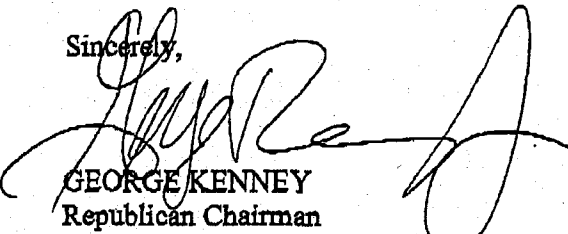
The language in section (c)(1) allows the entire patient record to be released to medical personnel, which includes a broad but vague description of persons not normally included in such a definition, resulting in discrepancies of who would be entitled to receive otherwise confidential patient information. Section (c)(1) also permits third-party payers/insurers to receive information that is necessary to accomplish the specific purpose for the disclosure, allowing the insurer to request information beyond a description of the insured's illness and what is needed for the purpose of diagnosis, referral or medical necessity reviews. The Department of Welfare committed to use the Pennsylvania Client Placement Criteria definition of medical necessity for purposes of treating people with addictions under HealthChoices/Medicaid. The new regulations will potentially undermine and require a change in procedures, contracts and the commitment of the Department of Public Welfare to the Placement Criteria during welfare reform.

The release of personal and private patient information only after the patient consents does not eradicate my concerns. The very nature of the patients who are addicts and users of drugs and/or alcohol and are seeking help or treatment is that they often fail to think responsibly and rationally and may not be capable of making the decision to release their personal and private information. Furthermore, section (f)(1)(viii) allows for oral consent and for patients under the influence of drugs and alcohol who are "physically unable to provide a signature", this section could be utilized to obtain consent.

Further consideration also needs to be taken to comply with the PA Advisory Council on Drug and Alcohol Abuse and Affected Parties. Under Act 63 of 1972, the Department of Health must seek written advice and consultation from the council regarding regulations for the purpose of carrying out the act. In January 2007, without prior consultation or written advice from the council, proposed regulations were prepared to alter the state confidentiality rules by the Department of Health. Once again, in November, neither the Council nor field groups were given the opportunity to review this new proposal. As a State Representative, I am discouraged by this blatant violation of and disregard for Pennsylvania law.

These are simply a few of the many concerns with proposed regulations 10-186. I strongly urge you to consider the ill effects these regulations will have on our drug and alcohol treatment services community. Not only will it inhibit them from providing and offering optimal care, it will discourage those suffering from drug or alcohol abuse from seeking the appropriate help needed for recovery.

Sincerely,



GEORGE KENNEY
Republican Chairman
Health and Human Services Committee
State Representative
170th Legislative District