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DEPARTMENT OF HEALTH
DENNIS M. O'BRIEN
THE SPEAKER
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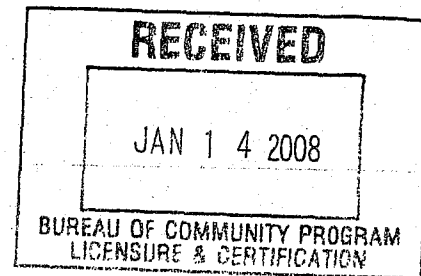
OFFICE OF LEGAL COUNSEL

HOUSE OF REPRESENTATIVES
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

2654

January 14, 2008

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



Re: Department of Health Proposed Regulations 10-186

Dear Ms. Staloski:

I am writing to you to express my strong concerns about the above-referenced Department of Health proposed regulations regarding confidentiality of drug and alcohol addiction treatment records and personal information. (Proposed Regulation 10-186)

My main concerns center on the provisions that provide for the dissemination of drug and alcohol addiction treatment records and other personal information to third party payers.

I am concerned that the proposed regulations purport to ensure that a patient's consent be the safeguard against the inappropriate dissemination of personal information to third party payers. But the reality is that any patient, particularly a patient with addiction issues, is going to have little choice but to sign the pile of forms presented to them at intake, including release authorizations. This is the case because following enactment of these proposed regulations, if unchanged; policies are likely to be written to require such consent as a condition precedent to payment. I believe the reality will be that virtually every patient will authorize the release to third party payers of every record in their file to the fullest extent permitted by the regulations.

I am concerned that the proposed regulations are written in such a way that the form of the inquiry from the third party payer controls the release of patient information. I cannot think of a single item in a patient record that a third party payer could not obtain simply by making a series of inquiries and stating broad reasons for each inquiry, i.e., "Please provide me with the complete patient file so that I can ascertain whether the proposed or continued treatment is medically necessary."

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I am concerned that third party payers will be obtaining information about a patient's practices, habits, behaviors, experiences, thoughts, fantasies, etc., through medical histories, social histories, self-revealed regrets and fears, all of which are necessary disclosures in the context of appropriate and effective addiction treatment and counseling. Not only do I seriously question the need for the dissemination of this information to third party payers entirely, I am concerned that the very real possibility of dissemination to third party payers will have a chilling effect on the revelation by the patient in the first instance and thus undermine the entire treatment process.

I am concerned that third party payers will be obtaining personal information about a patient's family members (and possibly others) as well. A patient's records are going to contain family medical and social history, including any addiction issues a family member may have. A patient's records are going to include a patient's social history which is likely to include information, medical and otherwise, not only about the patient but also about the patient's family, co-workers, friends and acquaintances. I believe any regulation authorizing the disclosure of this type of information about others to a third party payer is ill-advised and unacceptable.

I am concerned that the proposed regulations do not provide sufficient safeguards against subsequent intentional and unintentional dissemination by third party payers. While I recognize the proposed regulations require reauthorization prior to redisclosure, the persons to whom this applies is not clearly stated and redisclosure is not defined. Can a third party payer catalogue and store this patient information electronically in a system accessed by subsidiary, parent or sister operations? I hope not, but I can't tell from the regulations. This is particularly troubling at a time when many, including the administration and members of the General Assembly are advocating for the elimination of medical underwriting.

At present, the proposed regulations appear to create an information sharing system for the benefit of medical underwriters. If there is any possibility that the proposed regulations enable, lawfully or otherwise, a third party payer to provide access to this information in such a way that the third party payer or others can utilize the information about the patient OR INFORMATION ABOUT THE PATIENT'S FAMILY MEMBERS AND OTHERS to engage in medical underwriting, this possibility must be explored and eliminated.

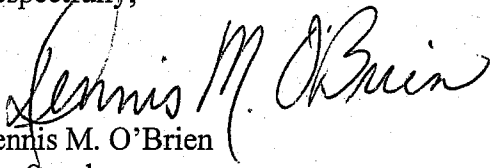
I am concerned that by essentially creating a repository of patient information in the offices of third party payers we are establishing new source for obtaining this information by subpoena or court order and I am skeptical of the degree to which any third party payer may challenge any such disclosure.

I am concerned that under the proposed regulations a patient is able to consent to the release of information to a third party payer that the patient themselves is not entitled to obtain and may not even be entitled to review.

Many of my concerns are not issues under the regulatory provisions currently in effect since authorized dissemination to third party payers is limited to only a few basic and relevant inquiries and to the extent access to patient records is authorized, that access is provided through onsite audits of providers. It is only when copies of actual patient records begin to leave the office of a provider and arrive in the office of third party payers that many of my concerns arise.

Thank you in advance for your time and consideration.

Respectfully,


Dennis M. O'Brien
The Speaker