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Treatment Trends, Inc.

18-22 S. SIXTH STREET P.O. BOX 685 ALLENTOWN, PA 18105

• Confront • Halfway Home of Lehigh Valley • Keenan House •
• Richard S. Csandl Recovery House •

January 9, 2008

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

INDEPENDENT REGULATORY
REVIEW COMMISSION

2008 JAN -9 PM 12:00

RECEIVED

Dear Janice Staloski,

Thank you for the opportunity to comment on the proposed changes to Department of Health's Proposed Regulation No. 10-186 regarding confidentiality of drug and alcohol addiction treatment patient records and information.

In brief, these regulations should be withdrawn from the review process due to the negative impact they will have on people needing chemical dependency services and the treatment providers who serve them.

The replacement of our current standards with those proposed will result in the loss of a critical protection to privacy rights for those persons suffering from this highly stigmatized disease. People who seek help for drug and alcohol problems often share very sensitive, sometimes illegal and often personally embarrassing information about themselves with the treatment provider. The proposed changes are highly subjective - the release of any information which is necessary to carry out the purpose of the disclosure would be open to a wide interpretation of what is needed.

The current standards are one of the few protections offered to clients and the providers who serve them to shield this highly sensitive information. Under these proposed and very subjective standards, the provider would likely be forced to provide any information requested as part of a condition to receive funding as the payer would simply assert that the information was necessary. This will have a detrimental effect on the client counselor / relationship and potentially keep people from seeking help. This alone has very serious implications for all families suffering from addiction within the state, those working to help them and the communities they live in.

It is a surprise to hear that one of the purposes for the proposed changes would ostensibly be to increase lengths of stay by providing more information to payers. This is a flawed perspective. It is widely acknowledged that over the last several years there has been an increase in both the complexity and chronicity of the clinical needs of the clients we serve. Despite the increased level of need of our clientele - which we are able to communicate quite well to funding sources under current regulations - lengths of stays in treatment and access to longer term service are being significantly reduced. It is important to note that under the existing regulations there is a manner in which a third party entity can request in writing additional information by specifying why it is necessary. This has not occurred on any occasion at our

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facility within at least the last decade. Why would we undermine our existing regulations when there is a way to get additional information under the current standards if it is truly necessary? This seems particularly true based on the fact that within our program we have been able to communicate information adequately under the current regulations without any written requests for additional information.

There are many examples when payers request information of little or no clinical relevance. One recent example of this was a situation in our facility when a client in mid-treatment had their funding shift from Single County Authority funding to Healthchoices when they became eligible for Medicaid. Due to our Electronic Verification System (EVS) not having up to date information (a common glitch for all facilities across the state), there were several days in which the managed care organization would have been responsible for payment of services that we did not know of until several days later. Despite acknowledging that the client met treatment criteria before and after those dates, the payer asked for a full retrospective review of the entire client file. This was presented by the organization contact as standard operating procedure for the company. In this situation, we were able to explain to the MCO, who provides Healthchoices drug and alcohol service in multiple counties across the state that we were not permitted to release an entire chart due to the five points of information permitted under the current 255.5 standards. Without the protections afforded under the current standards, we would not have had the ability to easily rebuff the demand for the entire client chart as we would have no legal protection to do so. Such circumstances will result in significant time expenditures and even potential legal challenges if the 255.5 regulations are altered in the manner proposed as treatment agencies and payers debate what information is necessary for the purpose of the disclosure and counselors attempt to make sure that the clients are fully aware of the information released to the requester.

These kind of situations are commonplace in our facility and other providers we talk with and highlight a system in which:

- Funding sources of drug and alcohol services in Pennsylvania routinely request information that go well beyond that which they need to make clinical decisions - asking probing questions about client's legal charges or behavior unrelated to clinical or medical necessity needs.
- Payers are routinely asking for information that exceeds existing standards without apparent concern that this is in disregard to existing regulation or apparent oversight from government sources to insure that they are complying with applicable laws or regulations.
- Payment for services – and requests for information to pay for service are used as a weapon to force providers to provide information that they want to reduce the amount of services, not increase them.

The Department indicated in its Regulatory Analysis portion of the proposal that “The proposed amendments would not create any additional costs or savings to the regulated community”. The Department assertions that these regulations will not result in any additional costs to providers are simply ludicrous. Replacing the current standards with vague language allowing the “release of any information which is necessary to carry out the purpose of the disclosure” will result in a significant increase in time





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and resources spent by providers in attempting to obtain authorization for services from payers. This is an important consideration, as often payers will request that we provide them the same information over and over again to justify keeping a person in treatment and as a result wear down the service provider. The proposed changes increase the subjectivity of information requested and would serve to increase the time spent by providers and payers determining what information is necessary to carry out the purpose of the disclosure. It may also very likely reduce rapport with the client, as instead of the five points of information we now obtain permission to release to funding sources and other non treatment agencies, we will need to spend time with the client making sure they are aware of the specific information being requested and making sure of their continued consent, which will occur many multiple times through the treatment process.

It is well recognized that there are already significant existing administrative burdens that are undermining the health of our service delivery system. Under the proposed changes, the collection, documentation and increased time in determining what information is needed will result in yet another significant increase in administrative costs to service providers who are already operating under very marginal circumstances. Service providers would need to spend additional resources to gather requested information, discuss the need to release it with the third party entities, insure that the client is fully aware of the information to be released and agrees that the facility may do so, disclose the information if it is determined to be necessary, and to document the disclosure of the information. Again, it is beyond comprehension how the Department reached the conclusion through their regulatory analysis that these time consuming and resource draining tasks would result in no additional costs to treatment providers within the regulated community.

Finally, it is disheartening to see the Department of Health pursue these changes. It is difficult to believe that the proposed changes, as troubling as they are, were presented in an open manner for input by service providers, client advocates and other interested parties. The Department of Health's Proposed Regulation No. 10-186 is highly objectionable, not in the interest of our State, and should not be permitted to proceed through the regulatory process.

Sincerely,

William Stauffer, LSW, CCS, CAC
Program Director,
The Halfway Home of the Lehigh Valley

cc: Independent Regulatory Review Commission ✓
Representative Frank Oliver
Representative George Kenney
Senator Edwin Brickson
Senator Vincent Hughes

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P. SRS



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