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January 8, 2008

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

Re: Proposed Changes to State Confidentiality Rules

Dear Director Staloski:

Thank you for the opportunity to review and comment on the Department of Health's Proposed Regulation No. 10-186 regarding confidentiality of drug and alcohol addiction treatment records and information, as published in the Pennsylvania Bulletin, Vol. 37, No. 50, December 15, 2007.

I object to these proposed changes which loosen confidentiality protections of our clients. I base my personal objection on:

1. Section (6)(c)(ii)(E) allows for the release of "A brief description of the patient's progress in treatment related to the impact of substance use, abuse or dependence on life problems ...". This open-ended description allows for any material to be discussed outside of the therapeutic relationship and will inhibit effective client/counselor relationships, or prevent new clients from entering treatment as they fear disclosures of their personal information.

2. Section (d)(2) states "A program may disclose a patient record, without the patient's consent, under an order of a court of competent jurisdiction issued after an application showing good cause for the disclosure." Presently, Federal confidentiality law and regulations prohibit treatment programs from disclosing information concerning current and former clients in response to subpoenas. As those articles state, a program may not release information in response to a subpeona unless either:
   (a) the client about whom information is sought signs a proper consent form authorizing the program to release the requested information and the program determines that disclosure would be in the client's best interest; or,

(b) a court orders the program to release information or records after giving the program and the client an opportunity to be heard and after making a good cause determination under the confidentiality law and regulations.

Hence, a subpeona is not a court order under the confidentiality regulations; to which, a program may not release information in response to a subpeona even if it is signed by a judge. The wording within the noted section, "under an order of a court of competent jurisdiction issued after an application showing good cause for the disclosure" omits the specific definition of this phrase and will lead to various interpretations of the language. Individuals will interpret the phrase to constitute a subpeona and the process to issue one as "an order" and its "application", then act accordingly. Others will cite present federal confidentiality laws and act differently. Both parties will believe they are correct and will defend their positions as they interpret the law.

3. On July 26, 2007 the PA Commonwealth Court upheld the enforcement of Act 106. These proposed regulations seem to be in conflict with what our judicial system has upheld in terms of what can and cannot be released.

4. Terminology such as "brief description" or "information necessary to accomplish the specific purpose for the disclosure", among other phrases contained within the document, is open-ended and conflicts with established written limits allowable under the law. Without written limits the client will perceive any information can be disclosed, the provider will perceive any information can be disclosed, the third-party payer will perceive any information can be disclosed, the probation or parole office will perceive any information can be disclosed, and so forth. This may sound organizationally effective on paper but it will be operationally problematic while the client suffers.

Sincerely,

Ted M. Millard, MSW
Executive Director

cc: Independent Regulatory Review Commission
Representative Frank Oliver
Senator Edwin Erickson
Representative George Kenney
Senator Vincent Hughes
Deb Beck