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AMERICAN CIVIL LIBERTIES UNION  
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INDEPENDENT REGULATORY  
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January 9, 2008

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**RE: DEPARTMENT OF HEALTH PROPOSED REGULATION NO. 10-186  
PROPOSED CHANGES TO 4 PA Code Section 255.5(b)**

Dear Ms. Staloski:

I write on behalf of the more than 19,000 members of the American Civil Liberties Union of Pennsylvania to express our opposition to the Department of Health's Proposed Regulation No. 10-186. We believe that the proposed changes will weaken 4 Pa. Code Section 255.5(b), the state regulation that currently provides important privacy protections to patients seeking treatment for their substance abuse addictions.

The ACLU is committed to protecting the freedoms and liberties granted to all Americans. One of the most important values we fight for is the right to privacy. In a variety of contexts, Pennsylvania law provides its citizens with greater privacy protections that the federal government provides to Americans. We remain vigilant in defending the added privacy protections that Pennsylvanians enjoy and from which they derive important benefits.

We are very troubled by the latest proposed changes to Section 255.5(b). The existing regulation has established independent state privacy protections for patients seeking substance abuse treatment. We do not believe that Pennsylvania should abandon its independent state privacy protection. We think it ill-advised for Pennsylvania to solely rely on the federal regulations in this area (42 CFR Chapter 1). The existing state regulation should not be altered to permit the release of additional information as will occur under the proposed regulation.

We think that the federal regulations as well as the proposed regulation will provide very little protection for sensitive patient records. The federal regulation and the proposed modification of 255.5(b) pale in comparison to the existing Pennsylvania regulation in this area. The proposed erosion of existing state privacy protection may lead to situations where patients are coerced into releasing much more information than is currently the practice in Pennsylvania.

The existing Pennsylvania regulation restricts the information that can be released to judges, probation or parole officers, insurance company health or hospital plan or government officials, to the following kinds of information:

- Whether the client is or is not in treatment.
- The prognosis of the client.
- The nature of the project.
- A brief description of the progress of the client.
- A short statement as to whether the client has relapsed into drug, or alcohol abuse and the frequency of such relapse.

4 Pa. Code Section 255.5(b).

If these limitations are removed, and the regulations are changed as the Department of Health is proposing, it is virtually certain that much more confidential information will be disclosed.

Neither the federal regulation nor the proposed state regulation make clear what kind of information may be disclosed and what kind of information can be withheld. The lack of certainty and specificity will lead to disclosure of confidential information by those who are acting in good faith in trying to comply with this regulation. The lack of certainty and specificity will also lead to disclosure of confidential information in situations where the recipient, acting in less than good faith, threatens some kind of sanction for failure to disclose.

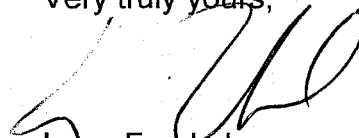
We fear that, unless the existing stronger state privacy protections are maintained, sensitive information and private data will become subject to disclosure. We expect that this will undermine the effectiveness of treatment and may even discourage some addicts from seeking treatment. We think that the proposed change will send the wrong message to patients as well as those who seek access to greater amounts of information. They will believe that Pennsylvania has dramatically relaxed its privacy and confidentiality standards.

We believe that there is no sound justification to take away from vulnerable Pennsylvanians the protections they currently enjoy. We think that Pennsylvania should continue to uphold the privacy interests at the heart of Section 255.5(b).

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For these reasons, we are opposed to the Department of Health's Proposed Regulation No. 10-186 which would weaken 4 Pa. Code Section 255.5(b) and thus weaken the confidentiality protections of drug and alcohol treatment records.

Very truly yours,



Larry Frankel  
Legislative Director

cc: Independent Regulatory Review Commission ✓  
The Honorable Edwin Erickson  
The Honorable Vincent Hughes  
The Honorable Frank Oliver  
The Honorable George Kenney