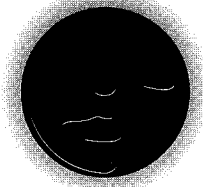


PRO•A



PENNSYLVANIA RECOVERY  
ORGANIZATIONS ALLIANCE INC.

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INDEPENDENT REGULATORY  
REVIEW COMMISSION

December 27, 2007

Janice A. Staloski  
Bureau of Community Program Licensure and Certification  
02 Kline Plaza, Suite A  
Harrisburg, PA 17104

Harrisburg, PA

Dear Janice Staloski,

Thank you for the opportunity to review and comment on the proposed changes to 4 PA Code §255.5, the state confidentiality regulations, that presently protect the privacy of patients and families seeking help for addiction to alcohol and other drugs.

On behalf of the PA Recovery Organizations Alliance (PRO-A), we are writing to express our overwhelming concerns regarding the proposed amendment to PA confidentiality regulations.

PRO-A is the only statewide recovery community organization committed to uniting PA regional recovery organizations, educating Pennsylvania communities about recovery and addiction and promoting better treatment for chemically dependent individuals. Our organization is volunteer-driven dedicated to reducing the stigma and discrimination associated with alcohol and other drug addiction and to represent the unique perspective of recovering communities in Pennsylvania. The PRO-A membership is comprised of approximately 2,000 individuals in recovery, family members, organizations and other supporters and stakeholders interested in changing public opinion and public policy on addiction related issues.

According to the information posted in the PA Bulletin on December 15, 2007, the proposed changes by the Department of Health to 4 PA Code 255.5 will: correct conflicts between state and federal confidentiality regulations, expand the amount of information shared with outside entities, and address outdated provisions that impede service delivery and the coordination of care for individuals in need of and currently receiving addiction treatment services. It was also stated that there is a "compelling public interest" in changing these regulations. Our organization, along with other statewide organizations, is not aware of such interest. PRO-A does, however, have grave concerns about the proposed amendment. They are as follows:

### **Impact on the Recovery Community**

Confidentiality is the cornerstone on which the drug and alcohol field was built. In the early 1970's, Congress recognized that the stigma associated with addiction and fear of prosecution deterred people from entering treatment and enacted legislation that gave patients a right to confidentiality. As a result, Confidentiality laws have afforded our field the opportunity to treat hundreds of thousands of individuals for over three decades affected by this horrific and destructive disease.

When an individual seeking help for their addiction is informed that the information they share is protected by state and federal laws, it opens the door for them to share painful experiences in a safe environment conducive to healing and growth. Many of our members, including myself, are previous service recipients of addiction treatment services. Through the process of exposing the pain and destruction of our disease, we made room in our lives for the knowledge and skills critical to sustaining our recovery. Those affected by the disease of addiction often spend most of their lives living in fear: fear of being arrested, exposed, and stigmatized, losing their jobs, families and even losing their lives. If these fears are not minimized through the protection offered by present confidentiality regulations, how can we expect individuals in treatment to expose the exact nature of their disease to get the help they need? The proposed changes will expose an already stigmatized population to additional risks in terms of their recovery, their future and their quality of life.

In 2001/2002, PRO-A along with the RASE Project, a regional recovery organization in central PA, held focus groups on the issue of confidentiality to gain the Recovery Community's perspective regarding the confidentiality laws in PA. We polled "hundreds" of

persons in recovery from different areas of the state and they were not in favor of changing these regulations. In fact, the Recovery Community was unanimous in its vote to keep the regulations as is. This should send a strong and clear message to the Independent Regulatory Review Committee (IRRC) and the Department of Health that there is no public interest or support from the Recovery Community in implementing changes to the present confidentiality laws in Pennsylvania.

### **Impeding Service Delivery and Coordination of Care**

It is stated the proposed changes to the confidentiality regulations would benefit individuals seeking treatment for substance abuse problems by "providing greater access to services, more appropriate lengths of stay and improved coordination between various levels and types of care". We strongly disagree and let me tell you why.

Barriers to accessing addiction treatment services and obtaining the appropriate length of stay are more greatly affected by funding and other resource limitations (limited providers, waiting lists, etc.) than barriers created by Section 255.5. Coordinated client care continues to be provided under the present regulations and will not dramatically improve by simply implementing the proposed changes to Section 255.5. New and more challenging issues will arise for treatment providers, clinicians, families, but more importantly for clients and others as a result of changing Section 255.5 that will extend well beyond the scope of this regulation change.

Many insurance providers claim that they need access to confidential information contained in client files to make appropriate level of care and length of stay determinations. Again, we do not agree and this leads us to question why the sudden need for additional information? Primary care physicians and trained clinical staff should be making treatment determinations, not insurance company personnel. When appropriate clinicians are making these decisions, there is no need for a treatment provider to expose additional information from client files to insurance companies for pre-authorization purposes. We do not believe the insurance companies will use this information in a way that would best serve clients. Many insurance companies are not presently adhering to ACT 106, consistently denying people seeking help even minimum coverage for addiction treatment services. What would make us think that this situation would improve once an insurance company has unlimited access to client information? And what would prevent them from using this information to deny future medical and/or clinical

services? Information in these files could be potentially damaging and hinder access to future services that might otherwise be covered.

Third party payers, in specific insurance companies and MCOs, along with many other agencies, entities and individuals, have continually requested additional and often specific information on clients in treatment and 4 PA Code Section 255.5 has consistently protected clients and their information. For years, 4 PA Code Section 255.5 has been in place and yet hundreds of thousands of PA residents have been able to access and receive addiction treatment services. So, why is this regulation suddenly being viewed as a barrier now?

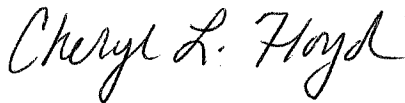
As an experienced treatment counselor and caseworker, I have had many opportunities to work with judges, probation officers, insurance providers, and others who often requested information beyond the scope of Section 255.5. In these circumstances, I was able to work on behalf of my clients without violating their confidentiality and yet work in collaboration with the above entities to support clients in successfully completing treatment. Although requested, additional information beyond the scope of Section 255.5 was not needed and did not serve as a barrier to meeting the client's needs.. Should Section 255.5 be altered, the courts, Managed Care Organizations (MCO), probation officers, etc. would not be subject to limitations on what could be released to them other than the limitations imposed by a written consent and the restrictions of 42 CFR Part 2, Subpart B, 2.13(a) which are not sufficient. And who would determine what is "**necessary and relevant information**" as stated in the proposed amendment – MCO/insurance companies, parole officers, judges, case managers? So again, I must ask, how will the proposed changes to 4 PA Code Section 255.5 help us better meet the needs of our clients?

Our organization works closely with addiction treatment providers throughout the state and **not one of these providers** have reported to us being denied payment for treatment services as a result of needing information protected by Section 255.5. We do not believe public interest justifies the proposed changes to this regulation.

PRO-A is a strong supporter of addiction treatment services and consistently advocates to eliminate barriers in accessing the service delivery system in the Pennsylvania. We acknowledge and support the multitude of avenues used by individuals seeking recovery and sound approaches used to sustain a life free of addiction. PRO-A works with regional recovery organizations throughout Pennsylvania to speak out on behalf of people affected by addiction that have lost their voice. We

look at how policies, laws and regulations with impact individuals in recovery and most importantly, people that will seek help in the future. We strive to assure that the doors that were open for us when we sought help remain open for those coming behind us. Based on the nature of our work, we are concerned that our members were not consulted about the initial recession of 255.5 or the present amendment prior to its development or publication. If consulted, we would have expressed our strong belief that 4 PA Code Section 255.5 in its present form adequately protects the rights of individuals in need of addiction treatment services and does not hinder access to these life-saving services. PRO-A is not in support of the proposed changes and it is our hope that IRRC will reject the proposed amendment.

Respectfully Submitted,



Cheryl L. Floyd, MSW, LSW, CCDP  
Executive Director-PRO-A

*Skip Carroll*

Skip Carroll  
Southeast Regional Public Policy Committee  
Pennsylvania Recovery Organization Achieving Community Together  
(PRO-ACT)

*Robin Spencer*

Robin Spencer, MS, MHS, CCDP  
Executive Director  
Message Carriers

*Denise Holden*

Denise Holden, MHS, CAC  
Executive Director  
The RASE Project

Cc: Independent Regulatory Review Commission  
Representative Frank Oliver  
Senator Edwin Erickson  
Representative George Kenney  
Senator Vincent Hughes  
PA Statewide Associations  
PRO-A Board of Directors  
Bureau of Drug and Alcohol Programs