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January 14, 2008

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

RE: Proposed Regulations 10-186

Dear Ms. Staloski:

Thank you for the opportunity to review and comment on proposed regulations dealing with confidentiality of drug and alcohol addiction treatment records.

We commend the Department of Health for their work on these regulations. However, we believe that section (c) dealing with the consensual release of patient records exceeds federal HIPAA law and therefore exceeds the scope of authority of the Department of Health. As you may know, state law may make regulations more protective of patient privacy from the standpoint of the patient, but they cannot make regulations that undercut patient privacy from the standpoint of the patient.

HIPAA permits release of records to third parties insurers that includes medication prescription and monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of clinical tests and any summary of the following items: diagnosis, functional status, the treatment plan, symptoms, prognosis and progress to date.

However, these proposed regulations go beyond those disclosures permitted by HIPAA. The chart below shows the HIPAA requirements, the proposed regulations of the Department of Health, and the manner in which some of the Department of Health proposed regulations conflict with HIPAA.

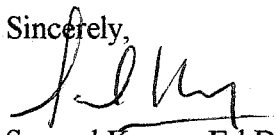
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INDEPENDENT REGULATORY
REVIEW COMMISSION

HIPAA Wording	Proposed Regulation Wording	Discrepancy
medication prescription and monitoring	“the patient’s vital signs, specific medical conditions to include pregnancy, specific medications taken and laboratory test results” (C)	no discrepancy
counseling session start and stop times	not required	no discrepancy because the DOH draft regulations do not require counseling session start and stop times
modalities and frequency of treatment	not required	no discrepancy because the DOH draft regulations do not require modalities and frequency of treatment
results of clinical tests	“the patient’s vital signs, specific medical conditions to include pregnancy, specific medications taken and laboratory test results” (C)	no discrepancy here
summary of diagnosis	“patient’s specific diagnosis”	HIPAA permits only as a summary
summary of functional status	patient’s “level of functioning”	HIPAA permits only as a summary
summary of treatment plan	not required	no discrepancy because the DOH draft regulations do not require summary of treatment plan
summary of symptoms	“Patient’s level of intoxication from alcohol, illicit drugs or medication, including the quantity, frequency and duration of use, and any specific withdrawal symptoms exhibited by the patient currently or in the past” (B)	HIPAA permits only a summary of symptoms.

HIPAA Wording	Proposed Regulation Wording	Discrepancy
summary of prognosis	<p>“patient’s treatment history” (D)</p> <p>“The patient’s risk level for resuming substance use, abuse or dependence based on patterns of use, relapse history, existing triggers and coping skills to maintain recovery” (F)</p>	HIPAA permits only a summary of the prognosis.
Summary of progress to date	<p>“A brief description of the patient’s progress in treatment related to the impact of substance use, abuse or dependence on life problems, participation in program activities and motivation to change” (E)</p> <p>Patient’s social support system, environmental supports and stressors that may impact ongoing recovery” (G)</p>	HIPAA permits only a summary of progress to date

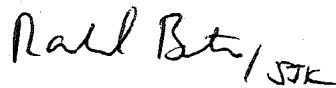
Based on this analysis, we see several places where the proposed regulations exceed the information permitted to be released to third party payers under HIPAA. We therefore cannot support the regulations as proposed.

Sincerely,



Samuel Knapp, Ed.D.

Director of Professional Affairs



Rachael Baturin, MPH, JD

Professional Affairs Associate

cc: Scott Schalles, Independent Regulatory Review Commission