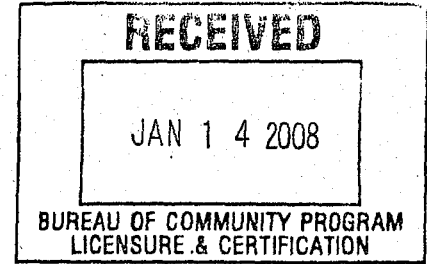




January 14, 2008

Janice Staloski, Director
Bureau of Community Program Licensure and Certification
Department of Health
132 Kline Plaza, Suite A
Harrisburg, PA 17104-1579
VIA FACSIMILE 717-787-3188

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OFFICE OF LEGAL COUNSEL
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Dear Ms. Staloski:

On behalf of Eagleville Hospital and its outpatient affiliate, Riverside Care, Inc. (collectively "Eagleville"), we appreciate the opportunity to comment on the regulations proposed in the PA Bulletin on December 15, 2007 with respect to 4 Pa. Code Section 255.5 (the "Proposed Regulations"). We have advocated for a review of regulation and welcome this attempt to make regulation more appropriate to current needs.

Eagleville Hospital is the only specialty-licensed hospital in the Commonwealth to provide the full continuum of substance abuse treatment to residents in the metropolitan Philadelphia area, as well as the suburban and rural counties spanning the eastern half of the state. Eagleville offers both hospital level treatment for patients with addiction and complex medical and emotional needs as well as a full spectrum of short and moderate term residential treatment. Additionally, we dedicate resources to the delivery of inpatient geriatric psychiatry services. For outpatient care, patients from Eagleville and the community at large may be referred to our affiliate, Riverside Care. Riverside consists of six sites in Southeastern and Eastern Pennsylvania, which offer individual and group counselling to both adolescents and adults suffering from addiction.

Eagleville commends the efforts made by the Department of Health ("Department") to promote service delivery and coordination of care while continuing to protect the confidentiality of sensitive patient information. Eagleville agrees with the Department's approach of clarifying Section 108 of the Pennsylvania Drug and Alcohol Abuse Control Act (71 P.S. 1690.108) while attempting to conform Pennsylvania requirements with the federal regulations governing Confidentiality of Alcohol and Drug Abuse Patient Records, 42 CFR Part 2 ("Part 2").

While changes to the regulations will be welcomed, our close review has generated several questions and concerns. Please refer to the attached memorandum for formal comment.

Very truly yours,

Maureen King Pollock (handwritten signature)

Maureen King Pollock
Acting Chief Executive Officer

Enclosure

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INDEPENDENT REGULATORY
REVIEW COMMISSION

HOSPITAL • 100 Eagleville Road • P O Box 45 • Eagleville, PA 19408-0045 • (610) 533-8000
FOUNDATION • P O Box 255 • Eagleville, PA 19408-0255 • (610) 536-0009
RIVERSIDE CARE, INC. • 100 Eagleville Road • P O Box 220 • Eagleville, PA 19408-0220 • (610) 635-7408
31 South 10th Avenue • Suite 5 • Coatesville, PA 19320 • (610) 383-9500
1007A West Lehigh Avenue • Philadelphia, PA 19133 • (215) 226-1600
5822B Market Street • Philadelphia, PA 19128 • (215) 747-6480
1217 Sansom Street • 6th Floor • Philadelphia, PA 19107 (215) 925-2780
44 East Broad Street • Suite 020 • Bethlehem, PA 18018 (610) 868-0435
158-180 South Third Street • Suite 21 • Easton, PA 18042 (610) 263-0780
Visit us on the web at www.eaglevillehospital.org



Eagleville Hospital's Comment to Proposed Revisions

Eagleville Hospital finds the proposed regulations to be a significant improvement in the following areas:

Consensual Disclosure to Probation/Parole Officers. Significant numbers of individuals with substance use disorders and are involved on some level with the Criminal Justice system. There is great interest in creating opportunities to assure that offenders receive appropriate treatment in order to reduce criminal recidivism.

Non-Consensual Disclosure to Law Enforcement. The proposed revision appears to balance the need for privacy with the need to assure public safety regarding offender participation in treatment.

Consensual Disclosure for the Purpose of Obtaining Benefits. Public funding for treatment is limited; significant pressures exist to ensure that scarce dollars are managed in an efficient way. The proposed revision allows reasonable disclosure of information relevant to the needs of payers in authorizing care.

Despite the improvement noted above, Eagleville Hospital has identified the following issues for which it seeks further clarification.

Definitions (Section 255.5(a)). Please clarify the terms set forth below:

a. *Patient Record:* The proposed definition of "patient record" is limited to information relating to a patient's treatment for drug or alcohol abuse or dependence. *Does this include all patient information prepared or obtained by a program, or is some information excluded from the definition?* Furthermore, the term "patient record" is not the same as "patient information".

b. *Disclose:* This term is referred to throughout the proposed regulatory language but not defined. The Health Insurance Portability and Accountability Act of 1996 ("HIPAA") defines this term differently than 42 C.F.R. Part 2.11. *Please clarify the intended definition of the term "disclose" or "disclosure".*

Scope of Permitted Consensual Disclosure. While the revision is a significant improvement, the proposed regulations leave confusion regarding the scope of disclosure permitted with written consent of the patient.

a. *General.* While Act 63 and existing regulations only permit consensual disclosure in a few limited situations, the proposed regulations broadly permit the patient to "...exercise control over the release of information contained in the record except as limited by subsections (c) and (d)". (Proposed 255.5(b)(3)). Therefore, any consensual disclosure not described in or limited by subsections (c) and (d) would be permissible.

Please clarify whether a program may disclose patient records with written consent of the patient when such disclosure is not described in subsection (c) or (d). For example, the proposed 255.5(c)(4) (addressing the disclosure of patient information to a probation or parole office) does not include disclosure to other related persons such as a sentencing judge.

Eagleville Hospital's Comment to Proposed Revisions
Continued

Would such a disclosure be permitted upon written consent of the patient? Or, is a program permitted to disclose patient information in a civil matter upon request of the patient, to any person other than an attorney representing the patient?

b. "As necessary." The proposed regulations permit disclosure on an "as necessary" basis to (i) government officials and third-party payers and (ii) a probation or parole office. The "as necessary" standard will, in effect, burden the program to determine what patient information is permissible to disclose and produce conflict between the program and requesting party regarding what information is necessary. For example, proposed 255.5(c)(4)(ii) does not specify what kind of information is needed to monitor the patient's progress, thereby leaving the probation or parole office open to a broad interpretation of what might be allowable for disclosure purposes. In addition, proposed section 255.5(c)(2) does not address the issue of accountability for third-party payers who request disclosure that exceeds the "as necessary" standard. *What process will exist to assure that third-party payers adhere to their limitations under these regulations, Act 63, and Act 106 of 1989?*

Non-Consensual Disclosure to Law Enforcement. Proposed section 255.5(d)(3) should clarify that both 3(i) and 3(ii) must be met together. We suggest adding the word "and" in between these two clauses in order to fully meet the federal standard before disclosure can be made.

Disclosure to Public Health Authorities. The proposal does not address the disclosure of communicable diseases to public health authorities as described in the Commonwealth of Pennsylvania Policy Bulletin dated October 22, 2002. *Will this Policy Bulletin still be valid under the proposed regulations?*

Disclosure to Business Associates and Qualified Service Organizations. The proposed regulations do not address Business Associate Agreements ("BAA") and Qualified Service Organization Agreements ("QSOA"). HIPAA regulations (45 C.F.R. Part 164.501 et seq.) require BAAs if we share protected health information with certain other individuals and organizations that provide services for or on our behalf and are not part of our workforce. Part 2 regulations (42 C.F.R. §2.12) permit disclosure to Qualified Service Organizations as an exception to the federal confidentiality requirements. *Please clarify how a program should handle communications with individuals or organizations providing services on the program's behalf (which meet the definition of "business associates" or "qualified service organizations").*

Consent Form. We are uncertain about the inclusion of oral consent since the current regulations permit disclosure in emergency situations if the patient is physically incapacitated. *Please clarify.*

Training Requirements. *Please comment upon mandatory staff training requirements related to the proposed regulations. The current mandatory six (6) hour confidentiality training for all staff is burdensome. Additional six (6) hour training on the revised regulation would incur a significant cost on agency and/or program resources.*

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