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PACDAA
Pennsylvania Association of County Drug and Alcohol Administrators
An Affiliate of the County Commissioners Association of Pennsylvania

January 14, 2008

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Janice Staloski, Director
Bureau of Community Program Licensure & Certification
Department of Health
132 Kline Plaza, Suite A
Harrisburg, PA 17104-1579

Dear Ms. Staloski:

Thank you for the opportunity to comment on the proposed changes to the regulations regarding disclosure of client-oriented information. PACDAA, the Pennsylvania Association of County Drug and Alcohol Administrators, represents 49 Single County Authorities in all 67 Pennsylvania counties. Our members are responsible for planning, delivering and evaluating comprehensive substance abuse prevention, intervention and treatment services.

As the primary contact for local substance abuse programs, SCAs have working relationships with private and public payers of service, insurance companies and managed care organizations. We interact on a regular basis with courts, Children & Youth, the health care system, probation, mental health programs and other community organizations. Our focus in providing comments regarding confidentiality is to guarantee adequate protections for the client seeking our services.

The proposed regulations appear to make the system more complex, and create more confusion than currently exists. Changes should be made only if they can simplify the existing system.

Our greatest concerns focus on two substantial areas of change; the amount of information that may be released to the criminal justice system, and the scope of information that be shared with insurers and other private payers. We will detail specific concerns in these two areas and make suggestions that may afford the intended solutions without compromising the trust that is critical to the recovery process.

The current provisions of 255.5 and federal regulations contained in 42 C.F.R. protect clients from having to choose to release excessive amounts of information as a condition of receiving payment for treatment or complying with requirements of the legal system.

The proposed regulations will compromise the effectiveness of Pennsylvania's Act 106 of 1989. Insurance plans covered by Act 106 are mandated to pay for treatment services as prescribed by a physician or licensed psychologist. Thousands of Pennsylvanians have received treatment because of this legislation.

These proposed regulations do not include any reference to Pennsylvania Act 126 of 1998. This legislation currently gives broad access to drug and alcohol records agencies serving children and youth, and families when the children & youth are adjudicated dependent or delinquent or at risk.

- **Fear of prosecution** may seriously limit an individual's participation in treatment if the client perceives that courts and law enforcement officials have access to additional information. Addiction is not given the same protection as other diseases or disabilities; information contained in our client records is not guaranteed the same protection as other conditions that are protected by the Americans with Disabilities Act (ADA).

- **Further Clarification** is necessary regarding who determines how much information is an adequate amount to be released. Currently, providers are limited to releasing five pieces of information. If that protection is removed, clients may be harmed by the release of too much information. Insurers may deny payment if they demand and do not receive an entire client record.

- **Cost and Paperwork Estimate:** Extensive training will be required to implement these proposed changes, at significant cost. Training must be consistent across all areas that touch the records and confidential information. Training is a critical piece in implementing any regulations. Proposed changes should address who will be responsible for training providers, payers, courts and others who work in the field.

- **Effective Date:** Clarification is required regarding the effective implementation dates of these changes -- client information may not be released retroactively without consent. These changes should apply to records of individuals who are in treatment at the time of implementation.

- **Definitions:** Several issues regarding the definitions contained in the proposed regulations must be addressed.

  Program: Should be more clearly defined in terms that are consistent with the federal regulations. It is not clear if this term also refers to case management services or other programs currently in place such as student assistance.
  Patient Record: Again, there should be more consistency with the federal language that includes assessment and case management.
  Medical Authority: This definition is broadly defined and does not demonstrate any direct connection with the individual who is in treatment.

Medical personnel who have access to treatment records must have a direct connection with a patient.
Government Officials: This definition should be expanded to differentiate between government officials who are payers of service and those who are responsible for assisting patients in receiving services such as housing or social security benefits. There should also be a more clearly defined description of what is meant by "benefits due the patient". Patient information should be made available on a need to know basis only. What rules apply to government officials who are not directly related to client services?

- **Scope and Policy:** Clarification is required to ensure implementation for those in treatment on the effective date of implementation; not retroactively.

- **Consensual Release of Patient Records:** Written consent for limited and specific client information is already current practice; it is difficult to assess why this section has been included. The broad definition of *medical personnel* makes it difficult to assess the impact of this section. Access to complete client information by personnel not directly involved in treatment could easily result in increased payment denials by insurance companies. The risk is that the stigma experiences by this whole process will discourage individuals from seeking treatment and that medical authorities will use the increased access to information to deny future insurability.

The section that references information requested by a government official or third party payer is confusing and seems to be unnecessary. Case management and treatment personnel are already covered under section 257.4 of the existing regulations.

Payers should not have access to the complete record; only the information that is necessary to determine medical necessity. Permitting the release of additional information is potentially harmful to clients and burdensome to providers.

Overall, we would advocate for client rights and protections. Changes to regulations should reduce the complexity and eliminate confusion for clients and reduce the administrative burden on providers. The information released to insurers should be limited to the specific criteria described in the Pennsylvania Client Placement Criteria (PCPC) for adults and current American Society of Addiction Medicine (ASAM) patient placement criteria. The documents are attached for discussion purposes. The Criteria include a description of standard dimensions including:

Acute Intoxication and Withdrawal – the severity of the client's presenting substance use disorder, including an assessment of the severity of addiction and the degree of impairment in everyday functioning and the risks of withdrawal.

Biomedical Conditions and Complications – the client's overall physiological condition, medical problems and concerns, and the medical treatment that may be necessary

Emotional / Behavioral Conditions and Complications – The client's mental status in terms of the effects of any emotional or behavioral problems, the degree to which treatment may be necessary for psychological disorders and the client's response to emotional or environmental stressors.

Treatment Acceptance / Resistance –The client's attitude toward treatment, and an indication of the degree to which the client understands the nature and consequences of his addiction.

Relapse Potential – An analysis on the client's ability to maintain abstinence from alcohol and other drugs. This is a critical gauge of the degree of structure the client needs in his or her treatment.

Recovery Environment – An evaluation of the client's social and living environment in terms of how it promotes or denigrates the client's recovery efforts. Severe conditions can require relief from the social environment in a structured setting.

Section (c) ii, describing the process for releasing information to courts and court personnel, needs to more accurately describe the current partnerships such as treatment and specialty courts. Specific information should be released based on clearly defined roles of court related personnel. There is no mention of diversion programs, or acknowledgement of information that may be requested by judges.

Again, we would recommend that information released be consistent with the PCPC and ongoing information regarding progress and program attendance.

Excessive documentation of information regarding legal representation will place increased administrative burden on treatment providers.

- **Non-Consensual Release of Information:** This section must be consistent with and clearly reference federal regulations (42 CFR). The lack of consistency will only increase confusion.

- **Patient Access to Records:** There appears to be no material change to the current regulations.
- **Consent Form:** It is not clear if the requirement signatures of two witnesses are necessary for individuals who are physically unable to sign a document, or if it applies to situations where the client is not actually present to give consent. Requiring the signature of two witnesses will increase the administrative burden and complicate the process. The current practice of requiring the signature of one witness seems to be adequate. The proposed changes will result in a consent form that is not consistent with federal standards.

The purpose of any regulatory change affecting substance abuse services should focus on increasing the quality and availability of client care. All regulation should be client focused; convenience for payers and data systems should not be the driving force of

change. The current environment of identify theft and computer vandalism should also be considered.

Once information is released, there is no mechanism for monitoring the re-release of information. Payers and other entities, who will be receiving information that is well beyond the scope of current practice, are not held accountable to the same confidentiality standards as licensed treatment facilities.

Access to care should be carefully monitored. We would ask that data supporting the premise that care is being limited or denied due to the current regulations be shared widely. To this point, this information has only been shared anecdotally. A mechanism should be developed to monitor access to care.

In conclusion, PACDAA would support changes that would permit the release of client information, with consent, that is currently permitted through federal regulations and Pennsylvania 255.5 plus information available through PCPC and ASAM summary sheets. PACDAA does not support the proposed changes as described in Annex A because of our concern for the affect on individual privacy rights and the increase in administrative burden to our system.

We welcome ongoing dialog regarding the proposed changes, please contact the PACDAA office with questions or concerns.

Sincerely,

Michele Denk

Michele Denk
Executive Director

How to Use the Criteria

The Clinical Decision-Making Process: Gathering, Interpreting, and Applying Information

Gathering Information

A comprehensive clinical assessment is vital to the placement process, and must be conducted by a qualified professional prior to applying the PCPC for level of care determination. Because substance use disorders are biopsychosocial in nature, assessments must be comprehensive and multidimensional to determine the level of care and service needs of the client.

Assessing the client for any **special needs** is also an important part of this process. The Department of Health recognizes that clients who come from specific backgrounds, or whose lives are affected by special circumstances, may require placement in a program tailored to meet their specific needs. Appendix A of the Pennsylvania Client Placement Criteria includes sample assessment questions and narratives describing such programs for the following populations: **clients currently engaged in pharmacotherapy, clients with coexisting mental illnesses, women, women with children, clients from ethnic minorities, and gays and lesbians.**

Interpreting Information – The Dimensional Approach

Once assessment information is gathered, it can be related to each of the six dimensions specified in the PCPC. Individuals who have been diagnosed as having a substance use disorder are very often suffering with other conditions or problems at the same time. These additional difficulties can have a significant impact on the client's understanding and confrontation of his or her presenting problem and on the fulfillment of his or her long-term treatment goals. Client information is interpreted and related to the PCPC so that a clinical determination can be made according to dimensional specifications (see the dimensional matrix under each type of service for detailed specifications). While the dimensions are comprehensive in taking into account all of the factors involved in a client's addiction, the goal of each dimension is to capture a particular facet of the client's problem and gauge the severity or degree to which that facet contributes to the overall disorder.

The Pennsylvania Client Placement Criteria guides placement determinations based on severity and level of functioning in each of the following dimensions:

Acute Intoxication and Withdrawal – This dimension addresses the severity of the client's presenting substance use disorder. The interviewer attempts to assess the severity of the client's addiction and the degree of impairment in everyday functioning. Of particular concern is the risk of severe withdrawal syndrome. A client who is experiencing symptoms of withdrawal (or who is at great risk of doing so) may require treatment in an intensive type of service.

Biomedical Conditions and Complications – This dimension investigates the client's overall physiological condition in order to determine whether there are any medical problems or concerns. If a client is suffering from a medical problem that is complicated by the use of alcohol or drugs, or he or she has a health problem of such severity that medical care is immediately necessary, then the inclusion of medical management in the treatment setting becomes critically important.

Emotional/Behavioral Conditions and Complications – This dimension addresses the client's mental status, in terms of the effects of any emotional or behavioral problems on the presenting substance use disorder. The client is evaluated in terms of his or her emotional stability, and the interviewer attempts to assess the degree to which the client could present a danger to self or others. The goal of this dimension is to identify any psychological disorders which could complicate drug and alcohol treatment, and which may need to be treated concurrently. This dimension also identifies any unpredictable or self-defeating behaviors in response to emotional or environmental stressors.

Treatment Acceptance/Resistance – This dimension examines the client's attitude towards treatment. The degree to which the client understands the nature and consequences of his or her addiction, as well as his or her motivation to engage in recovery, are vital considerations to be made when deciding upon an appropriate setting for treatment.

Relapse Potential – This dimension's focus is the client's ability to maintain abstinence from alcohol and other drugs. It examines how the client deals with triggers and cravings, and attempts to assess what changes in behavior are needed for him or her to maintain abstinence. Like the treatment acceptance dimension, this is a critical gauge of the degree of structure the client needs in his or her treatment program.

Recovery Environment – This dimension evaluates the client's social and living environment in terms of how it promotes or denigrates the client's recovery efforts. Its main concern is whether or not the client's peers, family, and/or significant others are supportive of his or her recovery, either directly or indirectly. Severe conditions can require relief from the social environment in a structured setting, and information about the client's coping patterns can be valuable in developing his or her treatment plan.

Admission Criteria Overview*

	Minimal to no risk of withdrawal	Minimal to no risk of withdrawal	Minimal risk of severe withdrawal	Minimal to no risk of withdrawal	High risk of severe withdrawal, daily use of substance with physical dependence but without psychiatric or medical disorder
	Stable enough to permit participation	Not severe enough to warrant inpatient, but may distract from recovery efforts.	Not severe enough to warrant twenty-four-hour observation; relapse could severely exacerbate conditions	Conditions do not interfere with treatment and do not require monitoring outside of this level; OR relapse would severely aggravate existing condition	Medical condition severely endangered by continued use, requires close medical monitoring but not intensive care
	Non-serious, transient emotional disturbances; mental status allows full participation	Able to maintain behavioral stability between contacts, symptoms do not obstruct participation	Inability to maintain behavioral stability over seventy-two-hour period; OR mild risk of dangerous behavior; OR history of dangerous behavior	Conditions do not interfere with treatment and disorders may be treated concurrently; at least one serious emotional/behavioral problem is present	Psychiatric symptoms interfere with recovery, moderate risk of dangerous behaviors, impairment requires twenty-four-hour setting; self-destructive behavior related to intoxication
	Willing and cooperative; requires only monitoring and motivation rather than structure	Willing and cooperative; requires only monitoring and motivation rather than structure	Structured milieu required due to denial or resistance, but not so severe as to require residential setting	Cooperative and accepts need for twenty-four-hour structured setting	N/A
	Able to maintain abstinence with support and counseling	Needs support and counseling; difficulty postponing immediate gratification	Likely to continue use without monitoring and intensive support; OR difficulty maintaining abstinence despite engagement in treatment	Unaware of relapse triggers, impulsivity, would likely relapse without structured setting	N/A
	Supportive living environment or environment in which stressors can be managed so that abstinence can be maintained	Not optimal, but has supportive living environment or motivation to establish one; available supports willing to help facilitate recovery	Exposure to usual daily activities makes recovery unlikely; OR inadequate support for recovery from significant others; OR estrangement from potential support in living environment	Lack of supportive persons in living environment; significant stressors; OR logistic barriers to treatment at less intensive level of care	Living environment makes abstinence unlikely

Admission Criteria

	Minimal to no risk of severe withdrawal	Minimal to no risk of withdrawal with ongoing post acute withdrawal symptoms	Risk of severe withdrawal, with co-occurring psychiatric or medical disorder requiring medical management; OR overdose requiring medical management; OR only available setting that meets client's management needs	Minimal to no risk of withdrawal
	Continued AOD use places client in possible danger of serious damage to physical health	Continued AOD use places client in danger of serious damage to physical health	Complications of addiction require daily medical management; OR medical problem require diagnosis and treatment; OR recurrent seizures	Imminent danger of serious physical health problems requiring intensive medical management
	Psychiatric symptoms interfere with recovery; moderate risk of dangerous behaviors; impairment requires twenty-four-hour setting; self-destructive behaviors related to intoxication	Two of: disordered living skills, disordered social adaptation, disordered self-adaptiveness, disordered psychological status	Emotional/behavioral complications of addiction require daily medical management; OR risk of dangerous behavior; OR substance use would have severe mental health consequences	Two of: psychiatric complications of addiction; concurrent psychiatric illness; dangerous behaviors; mental confusion or other impairment of thought process
	Twenty-four-hour intensive program needed to help client understand consequences and severity of addiction	Twenty-four-hour intensive program needed to help client understand consequences and severity of addiction	N/A	N/A
	Inability to establish recovery despite previous treatment in less intensive settings; unable to control use in face of available substances in environment	Inability to establish recovery despite previous treatment in less intensive settings; unable to control use in face of available substances in environment	N/A	N/A
	Social elements unsupportive or highly stressful; coping skills inadequate to conditions	Social elements unsupportive or highly stressful; coping skills inadequate to conditions; OR anti-social lifestyle	N/A	N/A

* This section is intended to serve as a general overview ONLY; for accurate application of the criteria, one must use the detailed dimensional and scoring specifications found in the descriptive narratives for each level