

PCPA



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INDEPENDENT REGULATORY REVIEW COMMISSION

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JAN 14 2008
BUREAU OF COMMUNITY PROGRAM LICENSURE & CERTIFICATION

January 14, 2008

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

Dear Ms. Staloski:

The purpose of this letter is to support the proposed regulation amendment of the client confidentiality provisions for patients who are receiving drug and alcohol services. The Pennsylvania Community Providers Association (PCPA) is a statewide trade association whose mission is to promote a community based, responsive, and viable system of agencies providing quality services for individuals receiving mental health, addictive disease, mental retardation, and other related human services. The association represents 225 community providers, which cover all 67 counties. One hundred of PCPA's members provide treatment for alcohol and other drug addictions. Many of PCPA members either provide co-occurring services or soon will be providing them.

PCPA has advocated for change in 255.5(b) for over a decade. Numerous statewide meetings have taken place to discuss the problem and search for solutions. The current regulations are outdated, unnecessary and impede the coordination of care. The Federal regulations are more than sufficient. The current confidentiality law no longer achieves its intended purpose: To protect. In fact, we contend that the outdated laws hurt the client/family seeking treatment.

Considerations for the Client

1. Clients in need of drug and alcohol services should be able to get their services *as soon as possible*, at the *appropriate provider*, at the *right level of care* and for the *right amount of time* to assure success. For many years the 255.5(b) regulations have caused major problems for clients as they attempt to access needed drug and alcohol treatment services. It is hard for the client to understand that in many cases that, even with their support and informed consent, the regulations do not allow the provider to share information outside the realm of the "five elements." The 255.5(b) regulations make it difficult to get appropriate approvals/authorizations from insurance companies and managed

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care organizations for higher levels of care, continued care, and appropriate medications.

The increase in and development of co-occurring treatment has made this problem even more apparent. Individual with primary substance use disorders and secondary mental health problems are sometimes forced to access services in the mental health program in order to make it easier to get the services they need. These types of barriers do not exist in the mental health system where equally important concerns about confidentiality and stigma exist.

2. Individuals in the drug and alcohol service system often need help navigating other systems and applying for much needed benefits. The problems with 255.5(b) make it difficult to work with other important partners in the individuals recovery process such as needed recovery supports/mentors, the child welfare system, the Social Security Administration, and the criminal justice system.
3. In this day of promoting recovery and empowering clients it is inappropriate that under 255.5(b) clients are not even given the right to decide even the most basic information that a provider can share with critical partners in their recovery.
4. The client's confidentiality rights will continue to be protected by federal regulations 42 CFR (which impose restrictions on both the disclosure and the use of information about individuals receiving drug and alcohol services), HIPAA, and other Pennsylvania state regulations. In fact, the federal regulations provide among the most stringent client protections in the entire health care system.
5. It is important to emphasize that the recommended changes in 255.5(b) will not allow insurance companies to obtain complete treatment charts and every detail about a client's personal history. This change will not allow any entity to have access to personal information the client wants to keep confidential.

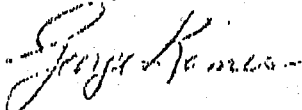
Considerations for Service Delivery

1. Providers, counties, recovery organizations, and other social service agencies have wrestled with this issue for many years and have been frustrated by their inability to get needed services to the individual/family in the drug and alcohol treatment system (as clearly stated in the 2003 Legislative Budget and Finance Committee report.)
2. In the past, providers have sometimes been encouraged to find "creative ways" to share what needed to be shared without actually stating what needed to be stated. This practice is ridiculous, confuses everyone, and flies in the face of good medical care.

3. Providers have been put between a rock and a hard place – either share what needs to be shared (with the client's consent) to get the needed services approved and risk citation by licensing or not share the information and have services denied. Fortunately, most PCPA members have chosen to get the client the services they need and lived in fear of citations.
4. New medications for the treatment of alcohol and other drugs are becoming more prevalent and require additional information to be shared in order to receive reimbursement by the payer. The provider is prohibited to respond to simple, yet critical information requests, such as vital signs and medications used.
5. Treatment providers should never be compelled to release any more information than is absolutely necessary and should always err on the side of caution on behalf of those we serve.

We are hopeful that once and for all needed changes can be made to the confidentiality regulations in Pennsylvania in order to improve access to much needed drug and alcohol services.

Sincerely,



George Kimes
Executive Director

PCPA



Pennsylvania
Community
Providers
Association

**Pennsylvania Community
Providers Association**

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To: Janice Staloski
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From: George Kimes
Date: January 14, 2008
Re: Chapter 255.5 Confidentiality

Original letter will follow.