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Community Behavioral HealthCare Network of Pennsylvania

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INDEPENDENT REGULATORY
REVIEW COMMISSION

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

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JAN 31 2008
BUREAU OF COMMUNITY PROGRAM
LICENSURE AND CERTIFICATION

RE: Comments on proposed changes to 4 PA Code 255.5

Dear Ms. Staloski:

While we are outside of the normal 30-day comment period for this proposed rulemaking, we hope that you may still consider the following comments on the confidentiality of patient records and information as outlined in the proposed amendment to 4 PA Code 255.5 (related to drug and alcohol projects and coordinating bodies). CBHNP is one of five behavioral health managed care organizations (BH-MCOs) operating HealthChoices managed Medicaid programs under the auspices of the Department of Public Welfare, Office of Mental Health and Substance Abuse Services, and county primary contractors for the program. CBHNP fully supports the proposed changes to the drug and alcohol confidentiality regulations published in the December 15, 2007 Pennsylvania Bulletin.

Under the current regulations, CBHNP has repeatedly encountered barriers to the appropriate review and coordination of care in the HealthChoices program. The current regulations do not allow drug and alcohol providers to share information outside the realm of the "five elements." The 255.5(b) regulations make it difficult as a managed care organization to obtain the necessary information to make an informed medical necessity decision, even with client support and informed consent. As part of the HealthChoices requirements, CBHNP Clinical Care Managers are required to apply medical necessity criteria and level of care decision-making as outlined in Pennsylvania's Client Placement Criteria and the ASAM Placement Criteria. However, the 255.5(b) regulations preclude the drug and alcohol providers from providing the level of information required, placing the managed care organization in the position many times of making a level of care decision with significant client impact with very limited information. We have repeatedly encountered cases where the following important information was not provided: medications the client was taking, full diagnoses, co-occurring issues (mental health and substance abuse), and even a full picture of the severity and nature of the substance abuse problem. Another example is the safety net provided by HealthChoices mandated reporting of critical incidents by providers. Again, the existing 255.5(b) regulations have precluded drug and alcohol providers from notifying CBHNP of important safety concerns that arise with Members in treatment. For their part, providers are also put in an untenable situation. If they provide what needs to be shared (with the client's consent) to get service approval as quickly as possible, then

they are running the risk of a licensing citation. If they share minimal or no information, the services may be delayed or denied.

The current regulations also make it difficult to coordinate care with other important partners. The county Single County Authorities and MH/MR systems need to work very closely with the HealthChoices program to coordinate behavioral health care, housing needs, child welfare needs, and many times probation and parole involvement. Without the possibility of partnership and shared information, the potential for service coordination and client success is curtailed. Lastly, another important partner is the Physical Health Service System for the client, where current limit the sharing of information, even with client consent. It is clear that the current drug and alcohol confidentiality policies are a significant barrier to comprehensive care coordination and quality monitoring that is vital and integral to the HealthChoices program.

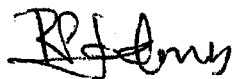
These primary issues outlined briefly above are successfully addressed by the proposed changes, while still providing the necessary protections and limits of confidentiality. The federal regulations of 42 CFR part 2, Confidentiality of Alcohol and Drug Abuse Patient Records (promulgated after 255.5(b)) offer strong confidentiality protections and expressly prevents re-disclosure of any information obtained by CBHNP in the conduct of managed care functions.

We recommend that the Department of Health adopt the proposed changes to the drug and alcohol confidentiality regulations as published in the December 15, 2007 Pennsylvania Bulletin without further edits or revision. The 255.5(b) regulations are outmoded in the current healthcare environment. As is the case throughout healthcare, the need for coordination of care in the HealthChoices program is a paramount goal. These changes are necessary to enable managed care organizations and providers alike to provide the best care possible to clients. Please feel free to contact me at 717-671-6535 or sdaubert@cbhnp.org for any required clarification or discussion. Thank you for the opportunity to comment.

Sincerely,



Scott D. Daubert, Ph.D.
Chief Operating Officer
CBHNP



Rajni Lad, M.D.
Medical Director
CBHNP