

**AMENDMENTS TO CONFIDENTIALITY OF DRUG AND ALCOHOL TREATMENT
PATIENT RECORDS AND INFORMATION
(4 Pa. Code § 255.5)**

The Department of Health is posting a copy of draft final rulemaking for 4 Pa. Code § 255.5 on its website to solicit comments on changes made to the proposed rulemaking, which was published at 37 Pa.B. 6529 (December 15, 2007). The Department is requesting specific written comments on the draft final rulemaking for 4 Pa. Code § 255.5. A copy of the draft final rulemaking is available below and is also available through the following link: <http://www.health.state.pa.us/draftregs>. A Frequently Asked Questions ("FAQ") document is also posted on the Department's website to provide some answers to questions which have been presented to the Department through comments to the proposed rulemaking and in subsequent discussions. The FAQ document may be updated as the Department deems necessary, and it is important to review the FAQ document when reviewing and providing comments on the draft final rulemaking. All comments must be received by the Department no later than 5 p.m. on Wednesday, July 23, 2008.

§ 255.5. Confidentiality of patient records and information.

(a) *Definitions.* The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

Government officials -- Elected or appointed representatives or employees of Federal, State or local government agencies responsible for assisting a patient to obtain benefits or services due to the patient as a result of the patient's drug or alcohol abuse or dependence. Government officials includes officers, directors, or employees of non-governmental entities whose employees are treated, because of their status or other reasons, as government officials under applicable federal, state or local law.

Medical personnel -- A physician, nurse, emergency medical technician or other person licensed, certified, or otherwise authorized by the laws of the jurisdiction where the person is located, to

provide medical, mental health or addiction treatment to a patient. Medical personnel does not include a health care practitioner who is an employee or agent of a third-party payer.

Patient record -- A record, document or other information, whether written, electronic, or in any other form or format, relating to a patient's treatment for drug or alcohol abuse or dependence that is prepared or obtained by a program. A patient record may include medical, psychological, social, occupational, and financial information prepared or obtained as part of the diagnosis, classification and treatment of a patient.

Program -- A medical facility, clinic, rehabilitation or treatment program, institution, practitioner, project or other entity licensed to provide diagnosis, treatment, or referral for treatment for drug or alcohol abuse or dependence, or any government agency authorized to provide diagnosis, treatment, or referral for treatment for drug or alcohol abuse or dependence.

Third-party payer -- An entity, such as an insurance company or its employees or agents, that pays for diagnosis, treatment, or referral for treatment services provided to a patient, or provides disability or death benefits to the patient.

Treatment -- The provision, coordination, or management of health care and related services, including drug and alcohol abuse services, by one or more medical personnel or programs, including coordination or management of health care by medical personnel or programs with a third party; consultation between medical personnel or programs relating to a patient, or the referral of a patient for health care from one medical personnel or program to another.

(b) *Scope and policy.*

- (1) This section applies to the patient record of a patient seeking, receiving or having received addiction treatment services from any program.
- (2) A patient is entitled to the expectation that information about the patient will be treated with respect and confidentiality. Confidentiality of the information in a patient record is necessary to develop the trust and confidence between the patient and the program that is important for therapeutic intervention.
- (3) The patient record is the property of the program. The patient shall exercise control over the release of information contained in the patient record except as limited by subsections (c) and (d), and shall be provided with access to the patient record except as limited by subsection (e).
- (4) Unless otherwise permitted by this section, redisclosure of information from a patient record is prohibited unless specifically authorized by the patient. A program that discloses information from a patient record in violation of this section may be subject to action to revoke its license or such other penalties as provided by law. This section does not limit any cause of action in law or equity against any person who has disclosed information from a patient record in violation of this section.
- (5) Information from the patient record may not be used to initiate or substantiate criminal charges against the patient.
- (6) The release of information from a patient record not addressed in this section shall be limited as provided in 42 CFR Part 2 (relating to confidentiality of alcohol and drug abuse patient records).

(c) *Consensual release of information from patient records.*

(1) With the patient's written consent, a program may release information from a patient record to medical personnel for the purpose of diagnosis, treatment or referral for treatment.

(2) With the patient's written consent, a program may release information from a patient record to government officials and third-party payers to obtain benefits and services due to the patient as a result of his drug or alcohol abuse or dependence.

(i) A program shall limit the information released to government officials and third-party payers to the information necessary to obtain benefits or services due to the patient as a result of his drug or alcohol abuse or dependence. For a patient covered by any policy that provides benefits pursuant to act 1989-106 (40 P.S. §§ 908-1 – 908-8), the release of information shall be limited to a certification and referral from a licensed physician or licensed psychologist that the patient is a person suffering from alcohol or other drug abuse or dependency.

(ii) If the information requested by a government official or third-party payer is necessary to determine medical necessity for service admission, continued stay, discharge, referral, concurrent review, coordination of care and payment for services, a program shall limit the information released to the government official or third-party payer to the following:

(A) A statement of whether or not the patient is in treatment for drug or alcohol abuse or dependence.

(B) The 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.

(C) The patient's vital signs, specific medical conditions to include pregnancy, specific medications taken and laboratory test results.

(D) The patient's specific diagnosis, prognosis, level of functioning, treatment history, and emotional or behavioral problems requiring treatment or negatively impacting responses to emotional or environmental stressors.

(E) 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.

(F) The patient's risk level for resuming substance use, abuse or dependence based on patterns of use, relapse history, existing relapse triggers and coping skills to maintain recovery.

(G) The patient's social support system, environmental supports and stressors that may impact ongoing recovery.

(3) With the patient's written consent that includes confirmation of legal representation, a program may disclose information from a patient record to any lawyers representing the patient as a client.

(4) With the patient's written consent, a program may disclose information from a patient record to the patient's probation or parole office if the following occur:

(i) Participation in the program is a condition of the patient's probation or parole.

(ii) The probation or parole office has a need for the information in connection with its duty to monitor the patient's progress. The probation or parole office that receives information under this sub-section may only use or redisclose the information to carry out its official duties with regard to the patient's conditional release from custody.

(iii) A program shall limit the information released to a probation or parole office under this subsection to the following:

(A) A statement of whether or not the patient has entered into treatment for drug or alcohol abuse or dependence.

(B) A statement of whether the patient is attending and participating in treatment as required by the terms of the patient's probation or parole.

(C) The patient's specific diagnosis and prognosis.

(D) The patient's services plan.

(E) A brief description of the patient's progress in treatment.

(F) The patient's medical needs and medical conditions.

(G) The patient's discharge date.

(H) The patient's aftercare plan if the patient is being discharged from inpatient treatment.

(I) Information relating to violations of the patient's conditions of probation or parole as established by law or court order.

(5) With the patient's written consent, a program may disclose information from a patient record to judges who have imposed sentence on a particular patient where such sentence is conditioned upon the patient entering a program, or who have assigned a

patient to a program under a pre-sentence, conditional release program. Pre-sentence conditional release programs include pre-indictment or pre-conviction conditional release such as accelerated rehabilitative disposition, probation without verdict or disposition in lieu of trial under sections 17 and 18 of Act 1972-64 (35 P. S. §§ 780-117 and 780-118).

(6) With the patient's written consent, a program may disclose information from a patient record to a patient's employers to further the rehabilitation of a patient; or, to a prospective employer who affirmatively expresses that the information is sought to enable the employer to engage the patient as an employee. The information released under this paragraph shall be limited to whether the patient has or is receiving treatment with the program.

(d) *Nonconsensual release of information from patient records.*

(1) A program may disclose information from a patient record, without the patient's consent, to proper medical authorities in emergency medical situations when the patient's life is in immediate jeopardy.

(2) A program may disclose information from a patient record, without the patient's consent, under an order of a court of competent jurisdiction issued after an application showing good cause for the disclosure.

(3) A program may disclose to law enforcement personnel information from a patient record, without the patient's consent, that is directly related to a patient's commission of a crime on the premises of the program or against program personnel or a threat to commit a crime. The information released under this paragraph shall be limited to the circumstances of the incident, including the patient status of the individual committing or

threatening to commit the crime, that individual's name and address and that individual's last known whereabouts.

(4) A program may disclose information from a patient record, without the patient's consent, when reporting incidents of suspected child abuse in accordance with 23 Pa.C.S. Chapter 63 (relating to child protective services) to the appropriate Federal, State or local authorities, except that restrictions on redisclosure of information from a patient record in this section and in Federal law and regulations relating to confidentiality of drug and alcohol abuse patient information, including the prohibition against redisclosure and use in civil or criminal proceedings that may arise out of the report of suspected child abuse and neglect, continue to apply.

(5) A program may disclose information from a patient record, without the patient's consent, for the purpose of conducting scientific research if the disclosure is made in accordance with 42 CFR § 2.52 (relating to research activities) and upon agreement in writing from the person conducting the scientific research that patient names and other patient identifying information will not be disclosed.

(6) A program may disclose information from a patient record, without the patient's consent, to persons reviewing records on program premises in the course of performing audits or evaluations on behalf of any Federal, State or local agency which provides financial assistance to the program or is authorized by law to regulate its drug or alcohol abuse or dependence treatment activities, or on behalf of any third-party payer providing financial assistance or reimbursement to the program or performing utilization or quality control reviews of the program.

- (i) A disclosure made in the course of audit or evaluation activities shall be made in accordance with 42 CFR § 2.53 (relating to audit and evaluation activities).
 - (ii) A report produced as a result of an audit or evaluation may not disclose patient names or other patient identifying information.
- (7) When information from a patient record is disclosed without patient consent under this sub-section, a project shall:
- (i) Fully document the disclosure in the patient records.
 - (ii) Inform the patient, as readily as possible, that the information was disclosed, for what purpose and to whom.
 - (iii) Inform the patient of their right to review and obtain a copy of the information released, or other information in their patient records, under subsection (e).
- (e) *Patient's access to records*
- (1) A patient has the right to inspect and obtain a copy of the patient's own records.
 - (i) The program may temporarily remove portions of the records prior to inspection by or providing a copy to the patient if the program determines that the information may be detrimental if presented to the patient.
 - (ii) The program shall document reasons for removing portions of the records and keep them on file.
 - (2) The patient has the right to appeal a decision limiting access to his own records to the program.

- (3) The patient has the right to request the correction of inaccurate, irrelevant, outdated or incomplete information from his records.
 - (4) The patient has the right to submit rebuttal data or memoranda to his own records.
- (f) *Consent form* A patient's consent to disclose information from a patient record must be in writing and include the following:
- (1) The name of the patient.
 - (2) The name of the program or person making the disclosure.
 - (3) The name and title of the person to whom disclosure is being made or the name of the organization to which disclosure is being made, or both.
 - (4) The specific information being disclosed.
 - (5) The specific purpose of the disclosure.
 - (6) The dated signature of the patient, following a statement that the patient understands the nature of the disclosure and the dated signature of a witness. For purposes of a patient who is incompetent or deceased, the program must obtain the dated signature of a person authorized to give consent or sign on behalf of the patient.
 - ~~(7)~~ The dated signature of the person obtaining the consent from the patient.
 - (8) A place to record an oral consent to release of information given by a patient physically unable to provide a signature and a place for the signatures of two responsible persons who were in the presence of the patient and witnessed that the patient understood the nature of the release and freely gave oral consent.
 - (9) The expiration date of the consent, or the event or condition the occurrence of which will cause the consent to expire.

(10) A statement that the consent is subject to revocation at any time except to the extent that the program or person who is to make the disclosure has already acted in reliance on it.

(g) *Costs for reproducing records.* A program may charge for access to or reproduction of information from a patient record pursuant to the provisions of 42 Pa.C.S. Chapter 61, Subchapter E (relating to medical records).

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