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Treatment Trends, Inc.

18-22 S. SIXTH STREET P.O. BOX 685 ALLENTOWN, PA 18105

- Confront • Halfway Home of Lehigh Valley • Keenan House •
• Richard S. Csandi Recovery House •

May 21, 2008

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

RECEIVED
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INDEPENDENT REGULATORY
REVIEW COMMISSION

Dear Janice Staloski,

Thank you for the opportunity to comment on the third set of proposed changes to Department of Health's Proposed Regulation No. 10-186 regarding confidentiality of drug and alcohol addiction treatment patient records and information first available for comment on the BDAP Web site on April 25th, 2008.

In brief, these regulations should be withdrawn from the review process due to the severe, negative impact they will have on people needing chemical dependency services and the treatment providers who serve them.

It is critical that we keep the current standards intact, as they protect the confidentiality of persons served in treatment and do not require that treatment providers share highly sensitive and personal information with insurance companies and third party payers. This third set of proposed changes fails to protect patient's right of confidentiality, for both Act 106 and non Act 106 patients. In respect to non-Act 106 it leaves individuals with no choice other than to provide highly personal and sensitive information, including requiring the release of information about illegal activities, such as specific drug use. In this regard, they also serve to undermine the Pennsylvania Placement Criteria, which are the required medical necessity criteria for all publically funded clients within the state.

It is sad that these changes are being promoted by the Department to increase client autonomy by expanding the amount of information permitted to be released about their lives to insurance companies. There is no real choice offered here. As correctly stated by the Department on the BDAP, FAQ on the web site along with these proposed standards readily acknowledge that there are indeed no real choices to individuals suffering from this fatal disease than to hand over the information about such things as specific drug use, personal traumas and familial functioning with insurance companies or just not get any help.

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As BDAP has indicated:

"If a patient does not want to release information to an insurer to get benefits or coverage, the patient does not have to consent to the release of information. But if a patient does want to receive insurance benefits or coverage, under the proposed changes, he or she can consent to the release of limited information to an insurer."

Many of the proposed changes will be used to limit treatment as historically has been the case with insurance companies. Specific diagnosis and frequency of use information can be highly damaging to an individual, while information about vital signs and lab test results can and will be used to delay or deny treatment until after such information is gathered as part of the authorization of services process. People die from these kinds of delays; I have sadly seen such circumstances firsthand in my career. Information about motivation for treatment, emotional or behavioral problems and are also highly sensitive and will be used to deny rather than expand care to individuals. It is important to mention, that like the vast majority of treatment providers, we are not experiencing difficulties obtaining services within the guidelines of the current set of regulations.

Oddly, these proposed standards provide no consequences for insurance companies, third party payers or other entities beyond the provider for releasing any information beyond that which they permit. By not provisioning consequences to these entities, the proposed regulations indirectly support discrimination against persons with chemical dependency. They fail to consequence entities that would seek to obtain highly sensitive information for inappropriate purposes or whom fail to adequately protect records against theft, loss or misuse. Remember that currently, insurance companies and third party payers ask for all kinds of information from providers, and routinely remind them that they can and will ask for any information they want, even when they know it exceeds the standards. Additionally, by covering historic treatment experiences in the definitions of the scope and policy of the regulations in (b) (1), the regulations seem to permit the release of information in reliance to these proposed standards prior to the enactment of these changes. These points are highly disturbing.

This set of proposed standards seems to exceed the federal standards under 42 CFR by allowing broad access to court ordered release of records without patient consent. The federal standards set a higher bar than those delineated here, as they only permit the release of information with a special court order under very limited circumstance. These standards will cause needless confusion and possible breach of the federal standards through such confusion.

The definitions remain open ended in respect to Government officials, which would seem to permit a wide access to these records through the open ended nature of the definition.

The Department has previously claimed that there will be no additional monetary costs to agencies to comply with these proposed standards. These proposed standards would require that treatment providers document the specific information provided to insurance companies and third party payers. As they represent a much more open ended amount of information than the current five





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points permitted under the current regulations, there will be a significant increase in documentation and record maintenance for treatment providers under these new regulations. The Department should make public how they determined that there would be no additional cost increases in order that the regulated communities are able to evaluate it. I am aware of estimates by the treatment community that the changes represent millions of dollars in costs ultimately passed on to the consumer or taxpayer.

The proposed changes do not specify under what circumstances crime on the premises of a program or against program personnel or a threat to commit a crime can be reported. This seems less strict than the federal standards which are more specific in nature. Confusion between the two could lead to the reporting of minor crimes and would potentially reduce the number of individuals seeking help. The proposed standards would also represent a significant increase of information to probation officers and legal entities, which will result in fewer numbers of individuals seeking help out of concern that treatment information will not remain confidential.

It is important to question what value there would be in providing Service plans and specific information about medical diagnosis to probation officers. Information about specific diagnosis is at times incriminating, which may in itself reduce the number of individuals seeking help out of fear that they will get in legal trouble by trying to get help with their chemical dependency problem. Why is it seen as necessary to release such specific information to them and what training do they have to interpret such highly sensitive information. Once such information becomes part of the legal record or a probationer, how much of it no longer is considered protected information, but instead becomes part of the open record?

This third version of the proposed changes includes a provision to do oral consent to release information. This would increase the likelihood of non consensual release of information.

Please withdraw the proposed changes to these vitally important regulations. The replacement of our current standards with those proposed will result in the loss of a critical protection to privacy rights for those persons suffering from this highly stigmatized disease.

Sincerely

William Stauffer, LSW, CCS, CAC
Program Director,
The Halfway Home of the Lehigh Valley

cc: Independent Regulatory Review Commission
Representative Frank Oliver
Representative George Kenney
Senator Edwin Erickson
Senator Vincent Hughes





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