PENNSYLVANIA PSYCHOLOGICAL ASSOCIATION

75 Anniversary

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416 Forster Street • Harrisburg, Pennsylvania 17102-1748 • Telephone 717-232-3817 • Fax 717-232-7294

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May 22, 2008

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

RE: Draft Regulations, No. 10-186

Dear Ms. Staloski:

On behalf of the Pennsylvania Psychological Association, I am writing to thank you for the second opportunity to review and comment on proposed regulations dealing with confidentiality of drug and alcohol addiction treatment records. We had commented on a previous version of the regulations, but none of our concerns were addressed in the revisions or the commentary to the revisions. Nonetheless, we will reiterate and expand upon those concerns.

The salient issue deals with the information which can be sent to insurers. The list of information that would be permitted under these regulations far exceeds that which is permitted under the federal HIPAA law. As you may know, state law may make regulations more protective of patient privacy from the standpoint of the patient, but they cannot make regulations that undercut patient privacy from the standpoint of the patient.

We acknowledge that the application of HIPAA to substance abuse treatment is not always clear. **Nonetheless, we argue that the HIPAA Privacy Regulations as pertaining to mental health patients should, in this context, also apply to patients receiving treatment for drug and alcohol disorders.** We note that the Pennsylvania Department of Health, in conjunction with the Department of Public Welfare, had issued a joint bulletin allowing for the licensure of facilities that can treat patients with both substance abuse and mental health disorders. This memo noted that, among things, "concurring disorders are an expectation, not an exception" and that "when psychiatric and substance abuse disorders exist, both disorders should be considered primary." A copy of the relevant portions of this bulletin is enclosed.

If, according to the Pennsylvania Department of Health, a coexistent mental disorder is an expectation in a person presenting for substance abuse treatment, and mental health and substance abuse diagnoses are equally primary, then it would appear that the HIPAA privacy rules applying to mental health treatment should be applicable. Consequently, the restrictions that HIPAA places on the information that should be released to insurance companies on mental health patients should also apply to the information released about drug and alcohol patients. As we noted previously the proposed regulations of the Department of Health would permit detailed information that exceeds a reasonable determination of what constitutes a summary and what would be minimally necessary according to HIPAA standards.

We request that IRRC reject these draft regulations until they come into compliance with existing federal law.

Sincerely,

Samuel Knapp, Ed.D.
Director of Professional Affairs

cc: Scott Schalles, Independent Regulatory Review Commission

BULLETIN

COMMONWEALTH OF PENNSYLVANIA
Department of Public Welfare
Department of Health

NUMBER.	ISSUE DATE.	EFFECTIVE DATE.
		Immediately

SUBJECT: **Co-Occurring Disorder Capable Criteria for All Facilities Licensed by the Department of Health, Division of Drug and Alcohol Program Licensure, or the Department of Public Welfare, Office of Mental Health and Substance Abuse Services**

BY:	BY:
Estelle B. Richman **Secretary of Public Welfare**	**Calvin B. Johnson, M.D., MPH** **Secretary of Health**

SCOPE:

County MH/MR Programs
Single County Authorities
Licensed Substance Abuse Facilities
Licensed Mental Health Facilities
County Human Service Administrators

PURPOSE:

In the context of statewide infrastructure development for services to individuals and families with co-occurring psychiatric and substance use disorders, as part of the SAMHSA Co-Occurring State Infrastructure Grant activity, and in recognition of the high prevalence, poor outcomes, and high cost of sequential treatment services, the Department of Health and the Department of Public Welfare have jointly developed this bulletin to accomplish the following objectives:

- To provide the framework for delineating objective criteria for defining Co-Occurring Disorder Capability for any facility within the Commonwealth licensed by the Department of Health, Division of Drug and Alcohol Programs or the Department of Public Welfare, Office of Mental Health and Substance Abuse Services;
- To describe the process by which licensed facilities can achieve Co-Occurring Disorder Capability;
- To provide direction for County MH/MR Programs and Single County Authorities in supporting the development of Co-Occurring Disorder Capable programs in all facilities; and.
- To move the entire behavioral health system toward the achievement of core capacity to serve individuals with co-occurring psychiatric and substance use disorders who are already engaged in a facility program.

DEFINITIONS:

Co-occurring Disorder Capable Facility: A facility that is currently licensed to treat psychiatric or substance use disorders or both, which routinely welcomes and admits individuals with co-occurring disorders, who are otherwise eligible to participate in its program. The facility addresses co-occurring psychiatric and substance use disorders in its policies and procedures; provides an integrated assessment process, incorporates

ppropriately matched interventions for co-occurring disorders into routine staff competencies and treatment relationships, coordinates treatment planning to address both disorders. addresses co-occurring disorders in both individual and group programming. develops interagency coordination procedures for co-occurring services. and ensures co-occurring disorder discharge planning occurs. Program staff are able to address the interactions between psychiatric and substance-related disorders and their effect on the individual's readiness to change, as well as relapse and recovery issues througnout the program content. (ASAM 2001, p.362). (Adapted from COCE. 2005).

Co-Occurring Disorder: One or more mental disorders as well as one or more substance use disorders. Both disorders are considered primary.

Co-occurring Disorders Enhanced Facility: A dually-licensed facility that has the programmatic capacity to provide integrated substance abuse and mental health treatment to individuals who present with symptomatic or functional impairment or both as a result of the co-occurring disorder. The facility address co-occurring disorders using an integrated philosophy and treatment model in a single setting.

Co-occurring Disorders Professional Credential (CCDP): A Pennsylvania Certification Board competency-based credential for a professional who provides co-occurring mental health and substance use treatment.

Integrated Treatment: Any mechanism by which treatment interventions for co-occurring disorders are combined within the context of a primary treatment relationship or service setting with an individual clinician or clinical team. The integrated treatment relationship recognizes the need for a unified treatment approach to meet the substance abuse. mental health. and related needs of an individual or family, and is a characteristic of the standard of care in programs that have achieved Co-Occurring Disorder Capability.

BACKGROUND:

The Departments of Health and Public Welfare have been working collaboratively since 1997 to develop a statewide system of care for individuals with co-occurring psychiatric and substance use disorders. The objective of both Departments is to provide the most appropriate care for individuals with co-occurring disorders, neither of which is primary or secondary to the other. The U.S. Surgeon General's 1999 report indicated that "forty-one to sixty percent of individuals with a lifetime substance abuse disorder also have a lifetime history of at least one mental disorder, and about fifty-one percent of those with one or more lifetime mental disorders also have a lifetime history of at least one substance abuse disorder" (U.S. DHHS). Research indicates that long-term recovery is significantly increased when both disorders are treated concurrently.

Consequently, the Departments of Health and Public Welfare continue to collaborate to ensure the entire system develops a welcoming, accessible, capable. and comprehensive process for service delivery, in which each facility is, at a minimum. Co-Occurring Capable. The goal is to have all facilities become Co-Occurring Disorder Capable over time. The time frame for this transition has not yet been determined. but it is recommended that all programs begin to understand the criteria for Co-Occurring Disorder Capability and establish a plan to begin the transition to co-occurring capable.

To provide programs with assistance in developing co-occurring disorder capable policies and procedures. the Departments recognize and support the following "Principles of Successful Treatment" for individuals with co-occurring disorders (adapted from Minkoff, 1998, 2000).

1. Co-Occurring Disorders are an expectation. not an exception.
2. Empathic, hopeful, integrated treatment relationships are one of the most important contributors to treatment success in any setting.
3. Case management and care must be balanced with empathic detachment, expectation, contracting, consequences, and contingent learning for each individual, and in each service setting.
4. When psychiatric and substance use disorders co-exist, both disorders should be considered primary.