



# AIDS Law Project of Pennsylvania

a non-profit, public interest law firm

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April 30, 2008

2008 JUN 26 PM 1:52

Hon. George T. Kenney, Jr.  
108 Ryan Office Building  
PO Box 202170  
Harrisburg, PA 17120-2170

2654

INDEPENDENT REGULATORY  
REVIEW COMMISSION

RE: Department of Health Proposed Regulation No.: 10-186

Dear Representative Kenney:

We write on behalf of the HIV-Policy Collaborative to express our concerns regarding the above-referenced proposed regulation. The HIV-Policy Collaborative is a statewide network of HIV/AIDS Service Organizations providing services to persons with HIV/AIDS in thirty-seven of Pennsylvania's sixty-seven counties. The members of our collaborative provide medical services, social services and legal services to persons living with HIV/AIDS in Pennsylvania.

We have essentially four concerns about the proposed regulation.

First, as current law permits providers to access any patient records or information necessary for treatment with a patient's informed written consent, any proposal that purports to provide access to information is duplicative and unnecessary.

Second, we are concerned that this proposal is in fact an attempt to permit insurers, not providers, more access to patient information and such an attempt may likely lead to the denial of coverage for treatment.

Third, not only does the proposed regulation permit greater access to patient information for insurers but the proposal distinguishes between indigent patients who seek payment for treatment from publicly funded insurance programs and those patients who are covered by Act 1989-106 and therefore seek payment for treatment from privately funded insurers. In what we believe is both inappropriate and possibly illegal, the proposed regulation permits greater access to indigent patient information by an insurer than to the information of those patients covered by Act 1989-106.

Finally, we are concerned about the ambiguous wording of the proposed regulation which includes sections that seem to contradict each other: on the one hand strictly limiting the information that can be released to insurers when the patient is covered by Act 1989-106 and in the very next section stating that insurers have access to seven broadly delineated types of patient information. A detailed explanation of our concerns follows.

**I. The proposed regulation is unnecessary for purposes of improving treatment as Federal and State law already provide any necessary access through the written and informed consent of the patient.**

To the extent that this proposal is attempting to provide freer access to information for service providers, ostensibly so that treatment can be less fragmented and more tailored to the

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**II. The proposed regulation merely provides a tool for insurers to gain access to more information which can be used to limit or deny payment for addiction services.**

We are concerned that the proposed regulation is primarily about releasing what is currently highly confidential and stigmatizing information to insurers. The regulation does not, in any way, effect the ability of providers of social, medical, or addiction services to gain access to information for purposes of improving treatment or to change the way that the services are currently provided. While we do not advocate any loosening of current confidentiality protections, we are especially concerned when a regulation is proposed merely to provide the payers of such services more tools to terminate or deny services.

**III. Section 255.5(c)(2)(i) distinguishes between publicly and privately insured in an inappropriate and possibly illegal manner.**

Section 255.5 (c)(2)(i) makes a distinction between what can be released to insurers for patients covered by Act 1989-106 and those that are not covered by this Act. As you are likely aware, those covered by Act 1989-106 are those whose treatment is paid for through private insurers while others receive treatment paid for by government insurance programs. Permitting greater access to information for those covered by public insurers only serves to ensure that those who are poor and uninsured or underinsured will be unable to obtain coverage for the treatment they seek. As they are indigent, they will not be able to pay for the treatment themselves so any failure to provide coverage will result in no treatment.

An addict who needs and wants treatment is, by definition, someone who is having a great deal of difficulty coping without such treatment. Therefore, if, in accordance with these rules, an addict seeking treatment consents to the provision of his or her records and the governmental payer can get as much information as they need to deny payment, little recourse is left to the indigent addict who will now have extreme difficulty obtaining and maintaining employment and consequently tending to his or her basic needs for food and shelter. The distinction between public and private insurers and the amount of a patient's information which they are permitted to access pursuant to this proposed regulation is unwarranted and will only serve to ensure that poor addicts are left untreated without support and create a greater burden on their surrounding communities. Additionally, while the indigent are not a protected class, to the extent that minority populations can be shown to be a majority of the indigent seeking coverage for addiction services, and that therefore this section has a disparate impact on minorities, the

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distinction in this section of the law could be considered a violation of the Fourteenth Amendment of the Constitution.

**IV. Section 255.5(c)(2)(ii) directly conflicts with Section 255.5(c)(2)(i) rendering the proposed regulation unenforceable.**


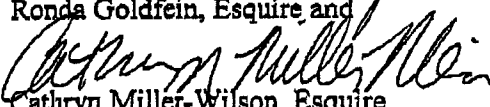
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Again, as already stated, the release of all of this information can only serve as a further tool to deny treatment. Addiction, like HIV-disease, is a highly stigmatizing illness. Obtaining a diagnosis and seeking treatment are tremendously psychologically difficult. When a person suffering from addiction reaches out and makes an attempt to get treatment, every governmental effort should be behind ensuring that effective treatment is available - not enabling the reduction of available resources in a climate where effective treatment resources are already fairly limited.

Addiction devastatingly impacts a family, a neighborhood and a community. Therefore untreated addiction, like un-diagnosed HIV-disease, ripples so far outward that it too, creates a public health crisis. Since insurers provide neither the diagnosis nor the treatment, but simply the payment for those services, access to confidential information can only be used by them to limit this payment. Passing a regulation which would permit this access and the consequent reduction in services is, in light of the predictable public health crisis, irresponsible governing at best.

For all of these reasons, we urge you to vote against the passage of this proposed regulation and to maintain the confidentiality protections that exist under current and state law. Thank you for your time and consideration. If you have any questions or concerns, please feel free to contact us.

Sincerely,

  
Ronda Goldfein, Esquire and  
  
Cathryn Miller-Wilson, Esquire

On Behalf of the HIV-Policy Collaborative of Pennsylvania



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Hon. Frank Louis Oliver  
34E East Wing  
PO Box 202195  
Harrisburg, PA 17120-2195

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INDEPENDENT REGULATORY  
REVIEW COMMISSION

RE: Department of Health Proposed Regulation No.: 10-186

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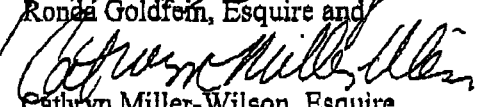
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On Behalf of the HIV-Policy Collaborative of Pennsylvania



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Senator Edwin B. Erickson  
 281 Capitol Building  
 Senate Box 203026  
 Harrisburg, PA 17120-3026

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INDEPENDENT REGULATORY  
 REVIEW COMMISSION

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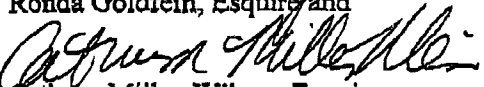
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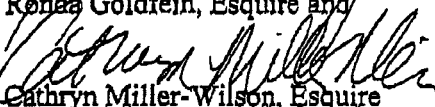
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