GatewayRehab

4/28/08
c: J. Kopelman
S. Mitchell
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cc: Jan

Kenneth S. Ramsey, Ph.D.
President and Chief Executive Officer

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INDEPENDENT REGULATORY REVIEW COMMISSION

April 25, 2008

Secretary Calvin B. Johnson, M.D., M.P.H.
Pennsylvania Department of Health
Room 802, Health &Welfare Building
Harrisburg, PA 17108

Dear Secretary Johnson:

On behalf of the Pennsylvania Advisory Council on Drug and Alcohol Abuse, I am submitting our written advice on proposed draft final rulemaking Regulation No. 10-186 that we suggest will weaken the confidentiality protections of drug and alcohol addiction treatment records.

At the 4/16/08 meeting of the Pennsylvania Advisory Council on Drug and Alcohol Abuse, we voted to advise you and to **strongly urge you to extend the public review period for this draft rulemaking for a minimum of 90 days.** This request is necessitated because of the many problems that are implicit in this draft which surfaced at the April 16, 2008 meeting, by the failure of the Department to distribute the new draft to all the affected parties prior to the 4/16/08 meeting of the Council, and because the Department was unable to provide answers to the many questions that arose during our meeting.

During the public comment portion of the Council meeting, you expressed surprise that few of those in attendance had received copies of the latest draft. You also asked for suggestions on how to remedy the evident communication problem. One obvious suggestion made by us and many others was to urge the Department to send a

copy of this new draft to all of the 140+ individuals and organizations who commented on the first draft. Also, because of the time limits enforced at the Council meeting, many urged that a transparent, less time-pressed and more deliberative forum be established for review and discussion of the draft with the Department.

At the Council meeting, one member expressed concern about the ability of treatment programs to obtain records from other programs. Many speakers, including the head of the Division of Drug and Alcohol Program Licensure, pointed out that under the current rules, treatment programs are already able to transfer whole records freely to one another. Although this concern about current rules was addressed at the meeting, our questions regarding the pending draft rule went unanswered by the Department.

A summary of some of our concerns with the draft rules follows for your review.

1) DEFINITION OF GOVERNMENT OFFICIALS – see Page 5, (a).

This section is unclear and requires more specific detail via examples and references to the particular "applicable federal, state, or local laws".

For example, this section defines the term government officials for the purpose of receiving patient information to assist in obtaining benefits or services for the patient. This definition provides essentially no limits on who can access the patient's private information including "elected representatives" (the House of Representatives?) and officers and employees of non-governmental entities, their subcontractors and their subcontractors.

In fact, there appears to be no difference here between governmental and non-governmental entities for the purpose of receiving sensitive patient information. This draft rule will throw open the window to sensitive patient files and allow private information to be exposed to numerous unspecified individuals, subcontractors and their subcontractors.

In addition, according to this section, non-governmental entities and their employees are to be treated "because of their status or other reasons", as government officials under applicable federal, state or local law. Which local, state and federal laws are applicable here? Workman's comp? Tax law? Minimally, this section could confer immunity from liability for misdeeds to private managed care entities.

Again, this definition sets no limits on who or what entity can receive records.

2) DEFINITION OF PROGRAM – see Page 6, (a).

The definition of the term program includes licensed treatment programs and also unlicensed governmental agencies. ". . . any government agency authorized to provide diagnosis, treatment, or referral for treatment for drug or alcohol abuse or dependence."

Under this definition, a governmental agency will be able to provide diagnosis, treatment and referral WITHOUT A LICENSE. (How and which governmental agency is authorized to provide this service and how will competency be determined?) This language as drafted will grossly undermine licensure standards and remove all oversight of the treatment of addicted individuals.

In the prior section, governmental agency is defined to include non-governmental agencies. These two sections combined could allow non-governmental agencies including managed care entities to do diagnosis and become addiction treatment programs – without being required to obtain a license.

3) DEFINITION OF PATIENT RECORDS - Page 7, (b)(1).

For purposes of disclosure of sensitive information, the draft rule applies to the records of patients ". . . seeking, receiving or having received addiction treatment . . ." Although past treatment history is pertinent to the treating facility, this information is frequently used by the payer to down code or deny services all together – regardless of

the determination of the treating physician. We question why the records of patients that have received treatment are included here at all.

3) ENFORCEMENT AND PENALTIES FOR VIOLATIONS of the state and federal confidentiality regulations – see Page 8, (b)(4).

This section re-states the existing penalty provisions for violations of the confidentiality rules by licensed addiction treatment programs. No similar penalties or rules are proposed for insurers and payers that violate the rules or that solicit and demand the breaking of the rules as they currently do.

What penalties can be utilized to enforce the rules with payers?

In addition, what is the penalty for unauthorized disclosure and re-disclosure as may be reflected in Philadelphia's centralized database (DSS-Cares) that combines and seeks to combine records from mental health, mental retardation, housing, criminal justice, drug and alcohol addiction treatment and HIV status?

4) ACT 106 of 1989, requiring all group health plans to provide treatment for addiction – see Page 9, (c)(2)(i).

This section appears to be intended to clarify that the proposal will not affect Act 106. However, the language proposed here fails to protect ALL of Act 106 and lists only outpatient and non-hospital residential services. We ask for the inclusion of detoxification and partial hospitalization.

5) INFORMATION TO BE RELEASED WITH CONSENT, Pages 10 and 11 (c)(2)(ii) A-G.

This section mixes up items of information already provided to payers under 255.5(b) and the Summary Sheet of the Pennsylvania Client Placement Criteria with requests for additional, unnecessary information. Privacy of the patient and others in

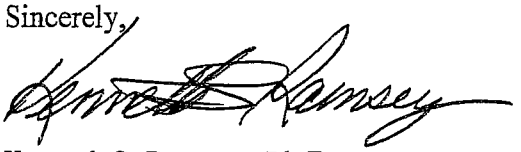
his/her life is currently protected by handling much of this information in a more general way through the Summary Sheet of the Pennsylvania Client Placement Criteria.

Under the current rules, we already provide information on admission to treatment, diagnosis including the names of the drugs of addiction, mental health diagnosis – if available, related biomedical complications and addiction related illnesses, summaries of progress in treatment, prognosis for recovery including general information on the patient's recovery environment and information on relapse. This seems to us to be comprehensive and adequate to meet payer needs. Why would they demand more unless to seek information which would make it easier for them to deny access to care?

The new regulations ask for information not pertinent to the diagnosis and at the same time, include items of information commonly used to deny or minimize the need for addiction treatment. For example, (ii) (E) on page 10, we suggest that "and motivation to change" be deleted.

Thank you for giving us this opportunity to express our opinion about the proposed confidentiality regulation changes.

Sincerely,



Kenneth S. Ramsey, Ph.D.
President and CEO
Member: **The Pennsylvania Advisory Council on Drug and Alcohol Abuse**

cc: Chairmen, Senate Public Health & Welfare Committee
Chairmen, House Health & Human Services Committee
Representative DiGirolamo
Independent Regulatory Review Commission
Drug and Alcohol Service Providers Organization of Pennsylvania
Pennsylvania Association of County Drug and Alcohol Administrators
Pennsylvania Recovery Organizations-Alliance
Janice Staloski, Director, Bureau of Community Program Licensure and Certification

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