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PENNSYLVANIA RECOVERY
ORGANIZATIONS ALLIANCE INC

July 10, 2008

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Bureau of Community Program Licensure and Certification
Pennsylvania Department of Health
132 Kline Plaza, Suite A
Harrisburg, PA 17104-1579

INDEPENDENT REGULATORY
REVIEW COMMISSION

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On behalf of the PA Recovery Organizations Alliance (PRO-A) and our Regional Affiliate Organizations - Message Carriers, PRO-ACT and the RASE Project, we are writing to express our opposition to the Department of Health's new Draft Final Rulemaking Regulation No. 10-186 regarding confidentiality of drug and alcohol addiction treatment records. We are strongly opposed to this proposed regulation and recommend keeping intact the current regulations embodied in 4 Pa. Code 255.5.

Since December 2007, the Department of Health has proposed three draft versions of Rulemaking No. 10-186 regarding the state confidentiality protections of drug and alcohol treatment records. Each version has provoked grave concerns for members of PRO-A and our Regional Affiliate Organizations. We have attended and participated in the Pennsylvania Advisory Council on Drug and Alcohol meetings, met with the Independent Regulatory Review Commission (IRRC) and submitted letters of concerns to appropriate parties clearly identifying our position on the proposed draft rulemaking. We, and the thousands of Addiction Recovery Professionals and volunteers in our memberships, believe that these proposed changes will jeopardize the legally protected confidentiality of many of those seeking and/or in treatment. This can come about as a result of unwarranted revelation of past or present addiction disease diagnoses, prognoses and treatment, to insurers, employers, agencies and medical personnel not involved in the patients' current addiction disease treatment. Confidentiality is a critically important key to addiction recovery. The process of recovery is one of many fragile steps and this too can be placed at jeopardy by unnecessary exposure of this most sensitive information.

As leaders in an interlocking network of recovery communities across Pennsylvania, we play a critical role in both representing and providing information to individuals, families and other recovery organizations throughout the state. In considering regulatory changes of this magnitude, due consideration should be given to input from these Recovery Community Organizations.

Definitions

There are terms used in the draft rulemaking that are not clearly defined and which lend themselves to misinterpretation and too broad application. This could have potentially damaging effects on the populations we serve. Terms such as "government officials" and "governmental and non-governmental entities" greatly expand the pool of individuals who will be able to access highly sensitive information within a client's file. Not only does this language offer insufficient protection for those seeking treatment services, it renders an already stigmatized population more vulnerable to society's tainted perception of the disease.

We are equally concerned with the use of terms such as "health care and medical personnel" in place of "addiction treatment" and "addiction treatment personnel". Addiction is the primary disease addressed through addiction treatment services and it should be clearly identified as such in the draft.

Consensual Release of Information from Patient Records

Motivation

Treatment is a very challenging and often painful process. For many, treatment offers the first true opportunity to get a clear perspective of the impact their addiction has had on them and others without the influence of drugs. In addressing issues that directly impact their addiction, an individual's level of commitment to remain in treatment is fragile and often fluctuates. This should not be a determining factor in authorizing continued stay in treatment for a person who has already met criteria for admission. We are also unclear on the meaning of statements such as "emotional or behavioral problems requiring treatment or *negatively impacting responses to emotional and environmental stressors*". Such ambiguous language opens the door to individual interpretation that could create new roadblocks for people seeking help.

Relapse History

Research clearly identifies addiction as a chronic relapsing disorder. Studies show that relapse rates for treatment of alcohol, opiates, and cocaine are less than those for hypertension and asthma, and equivalent to those of

diabetes. Yet, an individual with one of these medical conditions is not denied treatment because they failed to comply with medical recommendations (e.g. medication management, dietary and other lifestyle changes). Why are we holding individuals with an addiction to a higher standard? Prior treatment history is highly important during the treatment process but should not be a determining factor in providing services to individuals that already meet medical necessity.

Legal Impact of Rulemaking

We believe that these proposed changes contain very serious legal and administrative conflicts as they relate to Federal Law (HIPAA) and State Law (Act 106) and as confidentiality is an important key to addiction recovery, this too is at jeopardy. Although we have been assured that this rulemaking will not interfere or modify ACT 106, which requires all group health plans in Pennsylvania, including insurance and Health Maintenance Organizations (HMO), to provide coverage for the treatment of alcohol and drug addictions, we do not see how the language in this draft rulemaking provides protection to this existing statute. In fact, the lack of clarity in this section of the draft rulemaking could easily offer Managed Care Organizations the basis for both denying care and creating new barriers for individuals seeking help for their addiction.

Oral Consent

The thought of offering verbal consent to release highly sensitive information sends shockwaves through the recovering community. A consent form is a moral and legally binding document. It is a commitment to adhere to state regulations with clearly defined repercussions if not followed. A purported oral consent could replace or supersede a written consent, undermining the very process the present confidentiality regulations are in place to protect. People seeking treatment are often in a vulnerable state when they reach out for help. They are often willing to agree to anything in order to get the help they need. No one should be given an opportunity to exploit them at their weakest time.

PRO-A and our Regional Affiliates are strong supporters of addiction treatment services and consistently advocate to eliminate barriers in accessing the service delivery system in Pennsylvania. We look at how policies, laws and regulations will impact individuals in recovery and most importantly, people that will seek help in the future. We strive to assure that the doors that were open for us when we sought help remain open for those coming behind us.

As stated in previous responses to the proposed draft rulemaking, we strongly believe that 4 PA Code Section 255.5 in its present form adequately

protects the rights of individuals in need of addiction treatment services and does not hinder access to these life-saving services. PRO-A and our Regional Affiliates are *not* in support of any changes to the present confidentiality regulations in Pennsylvania and hope that our comments will be strongly considered throughout the decision-making process.

Respectfully Submitted,



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Cc: Independent Regulatory Review Commission
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Representative Pashinski
Senator Edwin Erickson
Senator Vincent Hughes
PA Statewide Associations
Bureau of Drug and Alcohol Programs
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