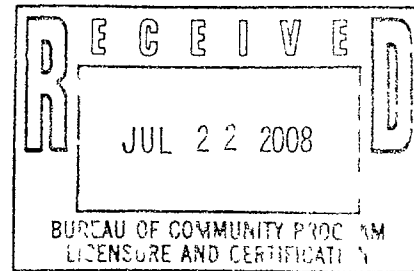




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INDEPENDENT REGULATORY
REVIEW COMMISSION



2654

January 11, 2008

Via Federal Express and Fax (717) 787-3188

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

Re: Comments on proposed changes to 4 PA Code 255.5

Dear Ms Staloski:

Magellan Health Services (including Magellan Behavioral Health and Magellan Behavioral Health of Pennsylvania) critically and fully supports the proposed changes to the Drug and Alcohol confidentiality regulations published in the December 15, 2007 Pennsylvania Bulletin.

Coordination of Care for Co-Occurring Disorders in the HealthChoices Program

The existing regulations (4 PA Code 255.5) were initiated statewide before the standardized use of the American Society of Addiction Medicine Patient Placement Criteria, 2nd Edition Revised, before required use of Pennsylvania's Client Placement Criteria for Adults (PCPC) and before the initiation of the Medicaid/HealthChoices network (consisting of both behavioral health and physical health services) across the Commonwealth. In addition, the existing regulations were in-effect as the Commonwealth introduced and prioritized the Co-Occurring Disorders Initiative with the consequent Certified Co-Occurring Disorders Professional (CCDP) credential and the February 2006 Co-Occurring Disorders Competency Bulletin requesting both mental health and drug and alcohol agencies to develop in-program expertise in addressing Co-Occurring clients.

In support of these changes we also emphasize that the existing regulations have remained as drug and alcohol programs have significantly modified their policies to accept clients who have major co-occurring disorders (often 50% of drug & alcohol afflicted population) requiring psychiatric and medication follow-up and/or major medical conditions necessitating medical monitoring. We emphasize that Magellan clinicians with co-occurring and drug and alcohol treatment specialties have participated

in state, county, and physical health workgroups over the last 6 years to resolve problems due to the existing 255.5 regulations! Essentially, those regulations do not permit licensed Magellan clinical care managers to follow-up on critical clinical information disclosed by the client during their initial calls requesting treatment in which a risk-assessment measure is conducted (either with client or clinician calling from ER/crisis-evaluation site). This may lead to the need for Magellan to coordinate medical and/or psychiatric clearance before treatment initiation. Magellan clinicians are denied basic information and indices that determine treatment designations under the required ASAM and PCPC-measures (including the drug/alcohol profile, withdrawal symptoms, vital signs, present and recent medical complications, medications-prescribed) following program admission---- even as the Magellan clinician has just coordinated admission to that program!

Co-occurring members may need initial stabilization in an acute psychiatric service with medication challenges (complications) which are reviewed with licensed Magellan clinicians supervised by our medical director----but on the "day" the member transitions to a drug & alcohol facility, much of the clinical detail relevant to comprehensive, continuous, integrated treatment is "off-limits" including any update/changes in medication protocols and the status of emotional/psychiatric concerns. On many occasions, the program contact expresses frustration in being severely limited by the existing regulations, even as Magellan is then prompted for specialized clinical resources for the member with expectation that Magellan will provide detailed information to the specialized-service (which might include HIV+/AIDS care managers, drug & alcohol intensive care managers, certified peer specialists, and others).

Recently, Magellan was contacted by a drug and alcohol provider in central Pennsylvania recommending adolescent residential treatment facility (RTF) placement with the client, her family, county staff and the Magellan psychiatrist in agreement with the recommendation where Magellan was responsible for coordinating the referral packet (including psychiatric assessment/recommendation) with multiple providers. The drug & alcohol program then refused to provide Magellan with the psychiatric assessment from the clinical record completed at the facility recommending RTF with clinical rationale and status update---based on 255.5 regulations (this provider welcomes co-occurring disorder referrals). In consultation with the drug & alcohol provider there was resolution---in the client being transported 25 miles from the site to be evaluated by an independent psychiatrist at extra cost to the referral process with the psychiatric evaluation sent independently from the provider's office.

We emphasize that Magellan has been contracted by counties to assist in coordinating behavioral and drug and alcohol care, that there is an expectation/mandate that clients will be followed clinically and that services will meet the clinical needs of the HealthChoices member----beyond merely approving and authorizing services! Magellan is involved in a collaborative effort with our counties to ensure quality-care within all designated treatment activities. Drug and alcohol providers have also recently informed Magellan and our counties that they cannot provide detailed information on required HealthChoices "adverse incident report forms" regarding our members due to 255.5 restrictions.

The present drug and alcohol confidentiality policies are often an obstacle to comprehensive clinical care management and to improving the quality-of-care for consumers! The proposed changes represent solid "clinical-sense" and reflect an appreciation for the complexities in coordinating clinical care within HealthChoices while respecting the confidentiality of health information for each consumer.

Utilization Review and Management of Member Benefits

We would like to note that 255.5 pre-dates much of the managed care insurance environment that we have today. Unlike care managed in the other 49 states, Magellan has struggled to obtain sufficient information to make determinations on medical necessity and appropriateness of proposed services in Pennsylvania due to the stringent restrictions on disclosure that exist in 255.5. No other state has a law that is this restrictive with regard to release of information to insurance companies. Making benefits determinations under the current regulation, with incomplete information in many cases, is not ideal and does not benefit the patients in any way. The proposed changes to 255.5 still limit this information in a much more prescriptive manner than other states, however we believe that the proposed language will permit us to access the information necessary to make decisions on the medical necessity of the proposed services. Proper management of the benefit is particularly important in a state like Pennsylvania, where substance abuse benefits are typically limited in most insurance contracts to the state mandated minimum of only 30 days for rehabilitation and/or outpatient treatment. If a member utilizes more of these days earlier in the year than may be necessary for their condition, they could exhaust their benefits for the remainder of the year. The proposed changes to 255.5 would permit us to better manage the care, which in turn would allow the members to get the most out of their benefits by ensuring that the benefits used are appropriate and medically necessary to treat their condition.

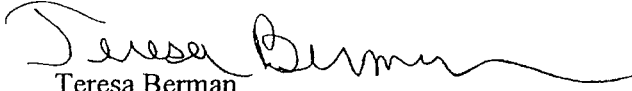
Confidentiality Protections

We believe that the proposed changes to 255.5 do not in any way weaken confidentiality protections for patients in Pennsylvania. 255.5 pre-dates many of the confidentiality protections that now exist in the law. 42 CFR part 2 - Confidentiality of Alcohol and Drug Abuse Patient Records, promulgated after 255.5, has very stringent protections related to substance abuse confidentiality. In addition the HIPAA Privacy regulations have also added confidentiality protections to further protect member information held by providers and insurance companies. Under both the federal law and the proposed changes to 255.5, the release of information related to a member's substance abuse treatment must be consented to in writing by the member and must specify the specific information being disclosed and the purpose of the disclosure. In addition, the federal requirements in 42 CFR Part 2 expressly prohibit the redisclosure of any information disclosed under this act. Magellan has very stringent policies and procedures in place to protect the confidentiality of patient information in our possession. Information released to us for utilization review is kept confidential and will not be disclosed in any manner that is not expressly permissible under the law. The stringent protections and safeguards

that will continue to exist in the amended 255.5, in addition to the federal laws, provide sufficient protections for member information.

We urge you to adopt the proposed changes to this regulation. We believe that these changes will make a very positive difference in the coordination of care in the HealthChoices program and in the management of insurance benefits for our commercial insurance members. The changes to this outdated regulation are necessary and will enhance our ability to provide the best care and services to our members. If you have any questions related to these comments you may reach me at 410-953-4710 or tbberman@magellanhealth.com to discuss.

Sincerely,

A handwritten signature in cursive script, appearing to read "Teresa Berman", with a long, sweeping horizontal flourish extending to the right.

Teresa Berman
Senior Legal Counsel
Magellan Health Services