

February 26, 2007

Dear Colleague

The Administration is planning to propose the rescission of 4 PA Code Section 255.5 (b). Rescinding these regulations will allow individuals receiving drug and alcohol treatment to make a more informed decision about their records while continuing to receive comprehensive confidentiality and privacy protections provided by state and federal statutes and regulations.

Attached, please find a copy of this package. Please provide your comments on this regulatory package by March 23, 2007 to:

Division of Drug and Alcohol Program Licensure  
Attn: Cheryl Williams  
PA Department of Health  
132 Kline Plaza, Suite A  
Harrisburg, PA 17104

Thank you for taking the time to give your comments on these regulations.

Notice is hereby given that the Department of Health (“Department”) proposes to rescind Section 255.5(a), in part, and Section 255.5(b) of Title 4, Chapter 255 of the Pennsylvania Code.

**A. STATUTORY AUTHORITY:**

The Department is authorized to regulate drug and alcohol treatment facilities pursuant to Articles IX and X of the Public Welfare Code (62 P.S. §§ 901-1087) as transferred to the Department under Reorganization Plan No. 2 of 1977 (71 P.S. § 751-25) (transferring duties under the Public Welfare Code with regard to regulation, supervision, and licensing of drug and alcohol facilities to the Governor’s Council on Drug and Alcohol Abuse (“Council”) and Reorganization Plan No. 4 of 1981 (71 P.S. § 751-31) (transferring the functions of the Council to the Department). The Department is also authorized to promulgate regulations under Section 4 of the Pennsylvania Drug and Alcohol Abuse Control Act (71 P.S. §§ 1690.104).

**B. PURPOSE:**

The Department seeks to rescind Section 255.5(a), in part, and Section 255.5(b) of Title 4, Chapter 255 of the Pennsylvania Code because these provisions are outdated and impede service delivery and the coordination of care for individuals with substance abuse problems. The rescission is in the public interest.

These sections were issued pursuant to the Pennsylvania Drug and Alcohol Abuse Control Act, 71. P.S. §§ 1690.101-1690.115, and govern the release of a drug and alcohol client’s confidential information. More specifically, Section 255.5(b) identifies what information may be released to judges, probation or parole officers, insurance companies,

health or hospital plans and government officials “for the purpose of determining the advisability of continuing the client with the assigned project.” The information that may be released includes: (1) whether the client is or is not in treatment; (2) the prognosis of the client; (3) the nature of the project; (4) a brief description of the progress of client; and (5) a short statement as to whether the client has relapsed into drug, or alcohol abuse and the frequency of such relapse. Under Section 255.5(b), treatment providers may not disclose any other information to these entities even if the client consents to the release of additional information.

Although the Department had clarified Section 255.5(b) by issuing an Interpretive Guideline, third party payers continue to request additional information believed to be required in order to determine the type, level and duration of service needed, authorize care, coordinate care, and perform the appropriate utilization and retrospective review to ensure appropriateness of service. It is believed that Section 255.5(b) does not permit the disclosure of sufficient information for third party payers to make such determinations. For example, third party payers have at times stated that they cannot obtain the information they need to authorize payment for drug and alcohol treatment services and have declined to authorize services on this basis. Accordingly, even though the intent of Section 255.5(b) is to protect the confidentiality interests of individuals seeking treatment for substance abuse problems, in practice, it can prevent this group of individuals from receiving needed services.

In addition, if the regulation is rescinded, the confidentiality of drug and alcohol treatment records would continue to be protected by the provisions of the Pennsylvania Drug and Alcohol Abuse Control Act, 71 P.S. § 1690.108(b) and (c) (“Confidentiality of

Records”), the Department of Health regulations, 28 Pa. Code § 709.28 (“Confidentiality”), and the relevant Federal regulations, 42 CFR Part Two (“Confidentiality of Alcohol and Drug Abuse Patient Records”). Pennsylvania law and the Federal regulations provide that drug and alcohol treatment providers may only disclose drug and alcohol treatment information to third party payers and others if the individual consents to the release of such information. Further, these provisions also dictate that the specific information to be disclosed be identified, that the specific purpose of the disclosure be identified, that the disclosure is limited to the information necessary to carry out the purpose of the disclosure, that the specific individual or entity receiving the information be identified, that the consent be time-limited to allow for a disclosure only to the extent necessary to achieve the purposes of the disclosure, that the disclosure be signed and dated by the client and signed and dated by a witness, and that redisclosure is prohibited unless specifically reauthorized by the client.

It is noted that the Pennsylvania Insurance Commissioner issued a Notice in August 2003, interpreting Act 106, 40 P.S. § 908-1 et seq., which requires group health insurers to provide substance abuse treatment in its policies. The Notice states that the only lawful prerequisites to a patient obtaining coverage for substance abuse treatment are: (1) the certification by a licensed professional that the patient is addicted; and (2) the referral of that patient for a certain type and duration of treatment. This regulation does not affect that Notice. Those insurance companies covered by Act 106 still may not use any patient information in any manner that would violate Act 106 or any other insurance law.

Moreover, the rescission of these regulations does not affect the ability under current regulations and statutory provisions of one licensed treatment provider to disclose to, transfer to, or receive from another treatment provider, with the client's consent, the treatment records of the client.

As a result, public interest justifies the rescission of this regulation.

**C. REQUIREMENTS OF THE REGULATION:**

The Department is proposing to rescind 4 Pa. Code Section 255.5(a), in part, and 4 Pa. Code Section 255.5(b) (relating to projects and coordinating bodies: disclosure of client-oriented information).

The rescission of parts of subsection (a) corrects a long standing conflict with Federal regulations at 42 CFR Part 2. The Federal regulations were promulgated after the state regulations were promulgated and disallow disclosure of an individual's drug and alcohol treatment records without the individual's consent, except in certain limited circumstances permitted by both Federal and state law and regulation (for example, in medical emergencies). Therefore, the language allowing disclosure without consent of the client must be removed. Additionally, subsection (a) is being amended to delete references to subsection (b), since subsection (b) is being rescinded in its entirety.

Subsection (b) restricts the type of drug and alcohol treatment information that treatment providers may disclose to judges, probation or parole officers, insurance companies, health or hospital plans and government officials. More specifically, Section 255.5(b) provides that with an individual's consent, only certain information from the individual's drug and alcohol treatment records may be disclosed "for the purpose of determining the advisability of continuing the client with the assigned project." This

rescission will permit those specifically identified persons or entities seeking information to better tailor their requests for information to obtain exactly what is needed to perform the specific functions that will enable clients to access the care and continue receiving the treatment that they need.

**D. AFFECTED PERSONS:**

The rescission of this regulation will benefit individuals seeking treatment for substance abuse problems. Individuals seeking treatment will benefit from the rescission because they will have greater access to services, more appropriate lengths of stay, and improved coordination between various levels and types of care. In addition, individuals seeking treatment will have the ability to control the disclosure of their confidential information by authorizing the release of specific protected information via a signed consent. Licensed treatment facilities will also benefit from the rescission of this regulation because the rescission will eliminate certain restrictions as to what drug and alcohol treatment information and records may be disclosed to third party payers. Licensed treatment providers will be able to coordinate care by providing specific information that is needed for utilization and review of services as requested by third party payers. However, insurance companies covered by Act 106 will still be required to comply with that Act and any other applicable insurance law governing the provision of and payment for services.

**E. FISCAL IMPACT:**

No additional costs will be incurred as a result of this proposed repeal.

**F. COST AND PAPERWORK ESTIMATE:**

There would be neither additional costs nor additional paperwork as a result of rescinding this regulation.

**G. EFFECTIVE DATE:**

The repeal of Title 4, Chapter 255.5(a) in part, and 255.5(b), of the Pennsylvania Code would be effective upon final publication in the *Pennsylvania Bulletin*. At that time, compliance with the repealed regulation would no longer be required. No sunset date is necessary.

**H. REGULATORY REVIEW:**

Under Section 5(a) of the Regulatory Review Act, 71 P.S. § 745.1, *et seq.*, the Department submitted a copy of the proposed regulation on \_\_\_\_\_, 2007 to the Independent Regulatory Review Commission and to the Chairpersons of the House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare. In addition to submitting the proposed regulation, the Department has provided the Commission and the Committees with a copy of a detailed Regulatory Analysis Form, and a copy of a Repeal Analysis Form. A copy of this material is available to the public upon request.

Under Section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed regulation with 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria which have not been met. The Act specifies detailed procedures for review, prior to final publication of the regulation, by the

Department, the General Assembly and the Governor of the comments, recommendations or objections raised.

**I. CONTACT PERSON:**

Interested persons are invited to submit all questions, comments, suggestions or objections regarding the proposed regulation to: Carol A. Williams, Director, Bureau of Community Program Licensure and Certification, Pennsylvania Department of Health, 132 Kline Plaza, Suite A, Harrisburg, Pennsylvania 17104, (717) 783-8665, within 30 days after publication of this notice in the *Pennsylvania Bulletin*. Persons with a disability who require an alternate format of this notice; for example, large print, audiotape, Braille, should contact Ms. Williams at (717) 783-8665, or for speech and/or hearing impaired persons, V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Services at 1-800-654-5984.

**ANNEX A**

**DEPARTMENT OF HEALTH**

**TITLE 4 – ADMINISTRATION**

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**PART XI. GOVERNOR’S COUNCIL ON DRUG AND ALCOHOL ABUSE**

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**CHAPTER 255. MANAGEMENT INFORMATION, RESEARCH AND**

**EVALUATION**

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**§ 255.5. Projects and coordinating bodies: disclosure of client-oriented information.**

(a) *Disclosure.* Information systems and reporting systems shall not disclose or be used to disclose client oriented data which reasonably may be utilized to identify the client to any person, agency, institution, governmental unit, or law enforcement personnel. Project staff may disclose client oriented data only under the following situations:

(1) With [or without] the consent of the client information may be released to those judges who have imposed sentence on a particular client where such sentence is conditioned upon the client entering a project. [Information released shall be limited to that provided for in subsection (b).]

(2) With [or without] the consent of the client, information may be released to those duly authorized probation or parole officers or both who have assigned responsibility to clients in treatment if the probation or parole of the client is

conditioned upon his being in treatment. [Information released shall be limited to that provided for in subsection (b).]

(3) With [or without] the consent of the client, information may be released to judges who have assigned a client to a project under a pre-sentence, conditional release program. Presentence conditional release programs include preindictment or preconviction conditional release such as Accelerated Rehabilitative Disposition, probation without verdict or disposition in lieu of trial under sections 17 and 18 of Act 64 (35 P.S. §§ 780-117 and 780-118).

(4) With the consent of the client, information may be released in writing, to a judge in order to assist that judge in deciding whether to initiate conditional release programs including those specified in paragraph (3).

(5) Projects may disclose any information to the attorney of a client provided as follows:

- (i) The client consents, in writing to the disclosure of information.
- (ii) The attorney is representing the client in a criminal, civil or administrative proceeding.

(6) Projects may disclose with the consent of a client, in writing, the information to employers of a client to further the rehabilitation of a client; or, to a prospective employer who affirmatively expresses that information is sought to enable the employer to engage the client as an employee. Such information shall be limited to whether the client has or is receiving treatment with the project.

(7) Projects may disclose information [as set forth in subsection (b)] with the consent of a client, in writing, to an insurance company, health, or hospital plan or

facsimile thereof, which has contracted with the client to provide or will provide medical, hospital, disability or similar benefits. In the event that an insurance company, health, or hospital plan remains dissatisfied with the content of the information released with regard to a client in accordance with this paragraph, such insurance company, health or hospital plan may apply to the Executive Director for additional information with the written consent of the client and, upon approval by the Executive Director, such information may be released.

(8) Projects may disclose information [as set forth in subsection (b)] with the consent of a client, in writing, to governmental officials for the purpose of obtaining governmental benefits due the client as a result of his drug or alcohol abuse or dependence.

(9) In emergency medical situations where the life of the client is in immediate jeopardy, projects may release client records without the consent of the client to proper medical authorities solely for the purpose of providing medical treatment to the client.

(10) Projects shall keep and maintain a written record of all information and data which are disclosed under this section.

(b) [*Restrictions*. Information released to judges, probation or parole officers, insurance company health or hospital plan or governmental officials, under subsection (a)(1), (2), (4), (7) and (8), is for the purpose of determining the advisability of continuing the client with the assigned project and shall be restricted to the following:

- (1) Whether the client is or is not in treatment.
- (2) The prognosis of the client.

- (3) The nature of the project.
- (4) A brief description of the progress of the client.
- (5) A short statement as to whether the client has relapsed into drug, or alcohol abuse and the frequency of such relapse.] **Reserved**.

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