

Appendix B: Examples of Policy Gaps in Pennsylvania’s Legal Framework for SUD Treatment Confidentiality

Gap Category	Citation (if any)	Summary of provision	Why this creates a policy gap
Lack of definition and vague or unclear statutory or regulatory language		A client’s insurance company may obtain 5 specific pieces of client-oriented data (with client consent) from a drug and alcohol treatment project; if this data is insufficient, the insurance company may (with client consent) appeal to the Executive Director requesting additional information	The term “Executive Director” is not defined – this title is used for both the head of DDAP as well as the head of each SCA
	4 Pa. Code § 255.5	Drug and alcohol treatment projects may release 5 specific pieces of client-oriented data to certain parties (both with and without client consent, depending on the party and the specific circumstances); this data includes “client prognosis” and “brief description of progress”	The terms “client prognosis” and “brief description of progress” are not defined; without an explicit restriction on the volume or nature of the information that would fall within these categories, it is unclear what exactly could be disclosed
		Coordinating bodies can gather and retain client-oriented data, provided they will receive or send only: (1) Client Admission Forms; (2) Treatment/Discharge Forms; and (3) Discharge Summary Records in assigning or transferring clients. Coordinating bodies will not disclose this data except to DDAP in a manner consistent with Chapter 255 of Title 4 of the Administrative Code and Act 63.	The term “coordinating body” is not defined; without a clear definition of this type of entity, it is unclear who would be permitted to gather and retain this type of data in accordance with this provision.
		Drug and alcohol treatment project staff may disclose client-oriented data to proper medical authorities without the client's consent, solely for purposes of providing treatment to the client when the client's life is in immediate jeopardy.	There is no definition of “life in immediate jeopardy,” or the parties entitled to make such a determination.
	71 P.S. § 1690.108	Patient information may be disclosed without consent only in emergency medical situations where patient's life is in jeopardy for purpose of providing medical treatment, to proper medical authorities.	

		SUD provider records may be disclosed (with patient consent) to government or other officials for the purpose of obtaining benefits	<p>There is no definition of “benefits;” it is thus unclear if benefits include health insurance, disability, worker’s compensation, FMLA, etc.</p> <p>There is no definition of “other officials;” it is thus unclear if other officials must be employed by a local, state, or federal organization or agency or whether this includes any entity with the power to grant, authorize, deny, or approve benefits (such as a private employer or school administration)</p>
42 Pa. C.S.A. § 6352.1		Authorizes the release of SUD treatment and related information regarding a dependent or delinquent child, or the parent of such child, to a court or county agency with the child or the child’s parent’s consent, or upon order of the court	<p>There is no definition of “related information;” the scope of the information that may be released is unclear</p> <p>It is unclear from the wording whether this provision would allow release of a parent’s SUD treatment records and for what purpose – the wording would suggest that any parent of a delinquent or dependent child may have their records released to a court or county agency for any purpose, subject to a court order and/or consent</p>
28 Pa. Code § 715.28		Programs must develop and implement policies and procedures to respond to inappropriate behavior by a patient causing disruption to the program	There is no definition of “inappropriate behavior” or “disruption to the program” – it is unclear who gets to make the determination that either has occurred or the permissible disclosures that made be made to remedy these situations
		Programs must develop and implement policies and procedures to respond to an incident with potential for negative community reaction or which the facility director believes may lead to community concern	There is no definition of “negative community reaction” or “community concern” nor guiding principles for making such a determination – it is unclear what kind of disclosures may be made to remedy these situations
28 Pa. Code §§ 709.34, 715.28		Programs must develop and implement policies and procedures to respond to various crimes by staff or clients	It is unclear from language whether these crimes must have occurred on the facility premises or could have occurred off-site but be attributable to a patient/client or staff member

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Unclear implementation, scope, or application		No provision governing use of client information within a drug and alcohol treatment project	There is no regulation or statute governing who within a drug and alcohol treatment project may access client-oriented information and for what purpose(s).
		An insurance company may obtain 5 specific pieces of client-oriented data (with client consent) from a drug and alcohol treatment project; if this data is insufficient, the insurance company may appeal to the Executive Director requesting additional information	There is no description of the process by which the insurance company may appeal
	4 Pa. Code § 255.5	Programs must have procedures for compliance with state and federal confidentiality law	There is no authorizing or implementing regulation that would grant these entities permission to disclose information in compliance with state mandatory reporting requirements, federal confidentiality laws (e.g., HIPAA’s required disclosures to individuals, personal representatives, Secretary of HHS for compliance audits), or state laws governing disclosures for law enforcement purposes
		Language of 255.5 refers to “projects.”	As applied to other providers through the DDAP Regulations (28 Pa. Code § 701 et seq.), it is unclear how providers should comply with the requirements 255.5 imposes on projects.
	28 Pa. Code § 701.11(a)	SCAs and projects may submit a written request to DDAP for an exception to a provision governing SUD providers	There is no description of the requirements for a written request for an exception or the process by which such an exception may be granted

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Conflicts with federal or other state law	42 Pa. C.S.A. § 6352.1	Authorizes the release of SUD treatment and related information regarding a dependent or delinquent child, or the parent of such child, to a court or county agency with the child or the child’s parent’s consent, or upon order of the court	This conflicts with 4 Pa Code § 255.5, which prohibits disclosure of these records to a county agency (even with a court order or consent) or to a court, other than in cases where treatment was part of a conditional release program
		Authorizes the release of SUD treatment information regarding a dependent or delinquent child to a juvenile probation officer	This conflicts with 4 Pa Code § 255.5, which limits the disclosure of information to a probation officer to only 5 specific pieces of information
	Various provisions authorizing disclosures to specific state entities		
	28 Pa. Code § 701.11(a)	SCAs and projects may submit a written request to DDAP for an exception to a provision governing SUD providers	This potentially conflicts with 4 Pa. Code 255.5, which does not have a mechanism by which a project/program may request an exception to those confidentiality requirements
		Creates no explicit right for patients to access or obtain copies of their own records	This conflicts with federal law (HIPAA), which requires that all Covered Entities (which would include most, if not all, drug and alcohol treatment projects as well as most, if not all, SUD providers or providers treating SUD patients) provide a copy of a patient’s records to the patient upon request
		Limits the parties who may receive client information and the information they may receive, even with client consent	This conflicts with federal law (HIPAA), which requires that all Covered Entities transmit a copy of a patient’s records to a third party designated by the patient, at the patient’s request