

Pennsylvania Law and Policy Governing the Confidentiality of Substance Use Treatment Information: Challenges and Opportunities

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Executive Summary

Pennsylvania has very restrictive legal provisions governing the disclosure of information about individuals enrolled in substance use disorder (SUD) treatment programs and information about substance use contained in medical records. The two most significant provisions of law are the confidentiality of records provision of the Pennsylvania Drug and Alcohol Abuse Control Act, codified at 71 P.S. § 1690.108, and the regulations implementing that statutory provision, codified in the Administrative Code at 4 Pa. Code § 255.5. Subsection (a) of Section 255.5 limits the permissible purposes and/or recipients of SUD patient information and subsection (b) limits the content of permitted disclosures. These provisions are more restrictive than federal law under the HIPAA Privacy Rule, which governs the confidentiality of individually identifiable health information held by Covered Entities (health plans, healthcare clearinghouses, and most healthcare providers) and their Business Associates. They are also more restrictive than 42 C.F.R. Part 2, which governs the confidentiality of substance use disorder patient records obtained by federally assisted SUD treatment programs. As written, Section 255.5 governs disclosure of information by public or private organizations responsible for the administration and delivery of SUD services as a component of a Single County Authority (a local agency designated to plan, fund and administer drug and alcohol activities in a county). However, subsequent state legislation and regulation extended the application of Section 255.5 to other types of organizations, including mental health providers, freestanding drug and alcohol treatment facilities, and healthcare facilities that provide drug and alcohol treatment services in inpatient or outpatient settings, through licensure or certification requirements.

While compliance with confidentiality requirements is a condition of their licensure or certification, Pennsylvania SUD treatment providers may be subject to other laws that require disclosures regardless of these confidentiality provisions. For example, disclosures to state entities, such as public health or law enforcement agencies, may be required by state law despite general confidentiality requirements. In addition, some aspects of state confidentiality laws are preempted by federal requirements, such as the right of patients (including individuals receiving SUD treatment) to obtain a copy of their records from a provider and to direct that their records be transmitted to third parties (such as to an insurance company for a coverage determination).

These many, sometimes conflicting, legal requirements contribute to confusion among providers and patients in Pennsylvania. Confusion also may stem from a lack of definitions of key terms and

vague legal language in Pennsylvania's statutes and regulations. SUD treatment providers have expressed confusion and conflicting opinions about what information they can disclose and how it may be done in compliance with the law. Because the restrictions on information-sharing may inhibit care coordination or full use of health insurance or public program benefits, some providers perceive the restrictions on information sharing as harmful to the patient.

This brief provides an analysis of the legal and policy challenges surrounding the disclosure of substance use treatment information in Pennsylvania. It was prepared by the Health Information & the Law Project at the George Washington University Milken Institute School of Public Health for the Overdose Prevention Program at Vital Strategies in support of its ongoing work in Pennsylvania. This analysis consists of a review of Pennsylvania statutes and regulations governing the disclosure of substance use treatment information, including comparisons with federal law and a discussion of policy gaps, conflicts, and areas of confusion under Pennsylvania law. The analysis concludes with a review of available legal and policy options to address these challenges.

Attached are three appendices that provide more detail of the gaps, conflicts, and challenges identified in this analysis. Appendix A is a table showing the application of core Pennsylvania laws by type of disclosure, who is regulated, what is covered, and limits that apply to the disclosure. Appendix B is a table of examples of policy gaps in Pennsylvania's legal framework for SUD treatment confidentiality. Appendix C is a table comparing Pennsylvania's state laws with the major federal laws governing SUD treatment information confidentiality. Together, these appendices provide the reader with an opportunity to understand more detail about how the laws apply in Pennsylvania and identify areas of the law that may need to change.

To address these and related concerns, legislators and regulators in Pennsylvania may consider a variety of options. These may include legislative changes to the structure of the confidentiality provisions that govern SUD records and/or regulatory changes within the current statutory structure, such as additional definitions to clarify existing legal requirements. They also may include guidance from administrative agencies to clarify how the laws are interpreted and applied in the course of licensure or certification. Pennsylvania also may consider harmonizing its requirements with federal law to simplify compliance for providers and improve understanding of patient records confidentiality for all stakeholders.