

Information D&A Professionals can Release to CYS

Everyday Situations:

42 CFR Part 2, HIPAA, and 4 Pa. Code Subsection 255.5(b) require strict client information confidentiality. In most instances, with a signed Release of Information form, professionals in the D&A system can only release:

- Whether the client is or is not in treatment;
- The prognosis of the client;
- The nature of the project;
- A brief description of the progress of the client; and,
- A short statement as to whether the client has relapsed into drug, or alcohol abuse and the frequency of such relapse.

Special Situations:

The following information comes from 45 CFR Parts 160 through 164 and lists the special occasions on which Drug and Alcohol treatment personnel can offer information to the Child Welfare system. Keep in mind that, although this is a Federal Law, HIPAA dictates that the stricter of the two laws (either State or Federal) applies in all instances.

§ 164.512 Uses and disclosures for which consent, an authorization, or opportunity to agree or object is not required.

A covered entity may use or disclose protected health information without the written consent or authorization of the individual as described in §§ 164.506 and 164.508, respectively, or the opportunity for the individual to agree or object as described in § 164.510, in the situations covered by this section, subject to the applicable requirements of this section. When the covered entity is required by this section to inform the individual of, or when the individual may agree to, a use or disclosure permitted by this section, the covered entity's information and the individual's agreement may be given orally.

(a) Standard: uses and disclosures required by law.

(1) A covered entity may use or disclose protected health information to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law.

(2) A covered entity must meet the requirements described in paragraph (c), (e), or (f) of this section for uses or disclosures required by law.

This section relates that a covered entity can disclose otherwise confidential information to parties offered in parts *c* of this section. Part *c* pertains to reporting issues that pertain to child abuse or neglect. Other parts of the law pertain to the release of information to other parties such as those involved in judicial and administrative proceedings. This document offers only parts *b* and *c*, as those parts relate to Child Welfare.

Information D&A Professionals can Release to CYS (cont'd)

Special Situations (cont'd):

(b) Standard: uses and disclosures for public health activities.

(1) Permitted disclosures. A covered entity may disclose protected health information for the public health activities and purposes described in this paragraph to:

(ii) A public health authority or other appropriate government authority authorized by law to receive reports of child abuse or neglect;

This section relates that a covered party may reveal otherwise confidential information to parties authorized by law to receive reports of child abuse or neglect to the extent of the stipulations below. This is the case as the standards set below specifically define more tight standards of reporting. In all instances, D&A Professionals must adhere to the stricter of any State or Federal law.

(c) Standard: disclosures about victims of abuse, neglect or domestic violence.

(1) Permitted disclosures. Except for reports of child abuse or neglect permitted by paragraph (b)(1)(ii) of this section, a covered entity may disclose protected health information about an individual whom the covered entity reasonably believes to be a victim of abuse, neglect, or domestic violence to a government authority, including a social service or protective services agency, authorized by law to receive reports of such abuse, neglect, or domestic violence:

(i) To the extent the disclosure is required by law and the disclosure complies with and is limited to the relevant requirements of such law;

(ii) If the individual agrees to the disclosure; or

(iii) To the extent the disclosure is expressly authorized by statute or regulation and:

(A) The covered entity, in the exercise of professional judgment, believes the disclosure is necessary to prevent serious harm to the individual or other potential victims; or

(B) If the individual is unable to agree because of incapacity, a law enforcement or other public official authorized to receive the report represents that the protected health information for which disclosure is sought is not intended to be used against the individual and that an immediate enforcement activity that depends upon the disclosure would be materially and adversely affected by waiting until the individual is able to agree to the disclosure.

(2) Informing the individual. A covered entity that makes a disclosure permitted by paragraph (c)(1) of this section must promptly inform the individual that such a report has been or will be made, except if:

(i) The covered entity, in the exercise of professional judgment, believes informing the individual would place the individual at risk of serious harm; or

Information D&A Professionals can Release to CYS (cont'd)

Special Situations (cont'd):

(c) Standard: disclosures about victims of abuse, neglect or domestic violence (cont'd)

(ii) The covered entity would be informing a personal representative, and the covered entity reasonably believes the personal representative is responsible for the abuse, neglect, or other injury, and that informing such person would not be in the best interests of the individual as determined by the covered entity, in the exercise of professional judgment.

This section relates that a covered party may reveal otherwise confidential information to those authorized by law to receive reports of child abuse or neglect in special situations, such as the release of the client's information protecting either the client or another from abuse or neglect. Keep in mind; many Drug and Alcohol treatment personnel will not readily report such information. Without a release of information form, Child Welfare Professionals must relate just cause and prove that the information would not immediately damage the individual in treatment; otherwise, unless forced to do so by a court order, the D&A Professional most likely will not release the information.



Information D&A Professionals can Release to CYS (cont'd)

Act 126 of 1998:

Act 126 of 1998 amended the Juvenile Act to allow for the release of drug and alcohol treatment information to a court, county children and youth agency, or a juvenile probation officer. Therefore, Act 126 removed the state law restrictions and required compliance only with federal confidentiality provisions, thereby expanding the degree to which systems are allowed to share confidential information. The amendment allows for joint case planning between the child welfare, juvenile justice and drug and alcohol systems. Bulletin 00-02-03 establishes protocols to share drug and alcohol information in compliance with federal law, consistent with best practice and respectful of the need to balance the issues of child safety, family and individual privacy and the integrity of the therapeutic process. The hope is to achieve better outcomes for the entire family, not just the individual receiving services.

In order to access the information, the child welfare worker must first attempt to obtain a written consent from the client to release and exchange drug and alcohol information. Should the client refuse, then the child welfare worker should provide a copy of the court order to the drug and alcohol treatment provider (this court order should also be provided when the client does sign a consent form).

Information which may be requested and exchanged includes:

County Children and Youth Agency

Court Order
Court Report
Permanency Plan

Risk Assessment
Social Summary

Drug and Alcohol Providers

Treatment Plan
Aftercare Plan
Service Plan (Intensive Case Management)
Discharge Summary
Progress Report (verbal and written)

Act 126 information resource: Lancaster County Children and Youth Services **PROTOCOL FOR ACCESSING DRUG AND ALCOHOL INFORMATION.**

For other beneficial information see HHS's The Confidentiality of Alcohol and Drug Abuse Patient Records Regulation and the HIPAA Privacy Rule: Implications for Alcohol and Substance Abuse Programs at <http://www.hipaa.samhsa.gov/download2/SAMHSA'sPart2-HIPAAComparisonClearedWordVersion.doc>