

Comments of the Independent Regulatory Review Commission



Department of Human Services Regulation #14-558 (IRRC #3466)

Mental Health Procedures

February 4, 2026

We submit for your consideration the following comments on the proposed rulemaking published in the December 6, 2025 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b)(RRA). Section 5.1(a) of the RRA (71 P.S. § 745.5a(a)) directs the Department of Human Services (Department) to respond to all comments received from us or any other source.

1. Legislative comments.

Representative Doyle Heffley, Republican Chairman of the House Human Services Committee, submitted to this Commission and the Department his review of the proposed regulation intended to align with Act 32 of 2022 (Act 32) and the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Representative Heffley observed that, although public comments were few in number, several substantive concerns were raised regarding the disclosure of minors' medical records.

Representative Heffley explained that Act 65 of 2020 (Act 65) aimed to expand access to mental health treatment by authorizing parents to provide consent on behalf of minors under 18 and permitting minors aged 14 and older to consent independently. He further reported that constituents have experienced inconsistent application of these provisions across the Commonwealth. In particular, parents have faced barriers when seeking care for minors over age 14, which appears contrary to the legislative intent of Act 65.

While the Department has issued guidance to clarify these requirements, Representative Heffley emphasized that further education and outreach are necessary. Furthermore, he underscored the importance of resolving questions raised by providers concerning parental access to minors' medical records to ensure clarity and consistency in implementation. We will evaluate the Department's response to these concerns as part of our determination of whether the proposed rulemaking is in the public interest.

2. Section 5100.33. Patient's access to records and control over release of records. – Possible conflict with statutes or existing regulations; and Clarity and lack of ambiguity.

The Preamble explains that Section 5100.33 subsections (a)–(e) are proposed for deletion because they conflict with HIPAA, which grants patients access to their own records. The

Department proposes adding subsection (e.1) to specify that patient access to and control over disclosure of the record are governed by 45 C.F.R. Parts 160 and 164 (relating to general administrative requirements; and security and privacy).

We received three public comments on the proposed regulation from providers and stakeholders of health and human services. While commentators are supportive of the Department's efforts to align its mental health procedures regulations with Act 32 and HIPAA requirements, they raise several substantive issues and questions.

A commentator seeks clarification on how the proposed amendment to subsection (a) intersects with existing standards for access to records and Act 65. Specifically, this commentator asks:

- Whether the requirement for a minor to understand the nature and purpose of releasing documents applies in addition to the age requirement (14 years and older), and if providers must document this determination;
- Whether Pennsylvania will maintain its current requirement for a court order to release records or align with HIPAA's standard permitting release based on a subpoena without a court order; and
- Whether, under the proposed regulations, parents of patients aged 14 to 17 will gain full access to records or be authorized to approve additional releases, given current limitations on parental access.

Another commentator asserts that the proposed revisions to this section eliminate previously clear language stating that, in cases where the client/patient is under 14 years of age or has been adjudicated legally incompetent, control over release of the client/patient's records may be exercised by a parent or guardian. While the proposed regulations would limit parental access, the commentator feels that the text does not clarify that this restriction applies only to patients aged 14 or older, leaving uncertainty about who can authorize disclosure for younger children—such as a 7-year-old—when a parent requests a full copy of the record.

This same commentator strongly opposes the proposed deletion of §5100.33(c)(1), which currently allows providers to withhold records when disclosure would “constitute a substantial detriment to the patient's treatment.” The commentator emphasizes that this exception is critical for pediatric patient safety, even if rarely used, and is consistent with HIPAA, which defers to state law on when and to whom a minor's records may be released.

Given these concerns, we request that the Department include, in the Preamble to the final-form regulation, a more comprehensive explanation of the rationale for the proposed amendments. The revised Preamble should cite, with greater specificity, the relevant statutes or federal requirements that justify each proposed change or deletion. Simply stating that sections are being deleted because they are inconsistent with HIPAA is not beneficial to stakeholders, providers or this Commission.

We recognize the complexity of patient privacy rules, particularly when it involves minors. Our determination of whether the final-form regulation serves the public interest will be based on the Department's response to these issues and the clarity provided in the final package. Additionally, we encourage the Department to engage stakeholders during the development of

the final rulemaking to ensure that concerns are addressed and that the final regulations support compliance.

Subsection (e.1)

This section addresses patient access to records and control over their release. The proposed language states:

“A patient’s access to and control over disclosure of the record and information contained therein shall be in accordance with 45 C.F.R. Parts 160 and 164 (relating to general administrative requirements; and security and privacy).” 5100.33(e.1).

This citation appears overly broad and lacks specificity relative to the scope of this section. 45 C.F.R. Part 160 includes general administrative requirements, definitions, and enforcement provisions. 45 C.F.R. Part 164 covers security and privacy, including subparts such as security standards, the Privacy Rule, and breach notification, many of which go beyond patient access rights. We also note that federal regulations treat access to and disclosure of a patient’s records separately. 45 C.F.R. 164.524 (Access of individuals to protected health information) and 45 C.F.R. 164.508 (Uses and disclosures for which an authorization is required). To improve clarity and reduce ambiguity, the final version of this rulemaking should include specific HIPAA provisions rather than referencing entire Parts 160 and 164. Additionally, the final-form regulation should treat patient access and disclosure as distinct concepts, with separate language addressing each. This approach will ensure alignment with federal standards and provide clearer guidance for compliance.

3. Section 5100.37. Records relating to drug and alcohol abuse or dependence. – Clarity.

A commentator recommends a technical amendment to clarify that the confidentiality provisions under Pennsylvania’s Drug and Alcohol Abuse Control Act (DAACA) apply specifically to the “treatment of” drug or alcohol abuse or dependency. This clarification would ensure consistency with DAACA, HIPAA, and 42 CFR Part 2, and Act 32. We concur with this suggestion and note that the title of this section should also be revised to reflect this clarification.