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**ADDITIONAL COMMENTS ON DEPARTMENT OF HEALTH  
ADVANCE NOTICE OF PROPOSED RULEMAKING ON  
HARM REDUCTION CENTERS  
[216-RICR-40-10-25]  
Second Round: October 22, 2021**

These comments are a supplement to the written testimony that the ACLU of Rhode Island submitted on September 29<sup>th</sup> and the verbal comments we provided at the October 18<sup>th</sup> ANPR meeting hosted by the Department. We appreciate that some changes were made in the second iteration of this proposal based on our initial comments, and we hope consideration will be given to the additional amendments suggested below.

- ***Confidentiality of Records.*** As we have previously stressed, we believe that strong assurances of confidentiality will be crucial to the success of harm reduction centers. We have noted that state laws protecting medical records' confidentiality – laws that the proposal requires HRCs to follow – contain numerous exceptions for law enforcement access. In addition, current state support for HRCs and the necessary anonymity underlying them could change with an election. Further, with Rhode Island being the country's leader in establishing HRCs, the rules should provide a strong confidentiality model for other states to follow. It is with these considerations in mind that we urge amendments to strengthen the proposal's confidentiality provisions in the ways explained below.

While the proposed rule provides that “[c]lients shall be anonymous,” § 26.5.1(B) – and therefore, in theory, there won't be individually-identifiable records to disclose – these facilities

may also be providing clients other services for which identifying information is required. In order to better promote greater confidence in clients that their use of an HRC will be anonymous, and in recognition that there is a distinction between confidentiality and anonymity, we recommend these revisions:

\* Amend § 26.4.1(F)(8), “Governing Body and Management,” to read: “A statement relating to confidentiality of information and the anonymity of clients using drug consumption services.”

\* Amend § 26.4.2(A), “Personnel,” by adding an additional training requirement: “5. Confidentiality of medical information and anonymity for clients of drug consumption services.”

\* Amend § 26.5.1(B) as follows: “Clients shall be anonymous and ~~do not need~~ shall not be asked to provide identification to utilize Center drug consumption services.”

\* Amend § 26.5.2(A)(4)(c) as follows: “Confidentiality and anonymity.”

\* Amend § 26.4.6, “Confidentiality,” to read: “Disclosure of any health care information relating to individuals shall be subject to the provisions of R.I. Gen. Laws Chapter 5-37.3 and other relevant statutory requirements; provided, however, that no health care information or other information respecting clients shall be disclosed to law enforcement agencies or officials unless specifically required by those statutes.” As we have noted in previous testimony, some of the state’s medical record confidentiality laws authorize (but do not mandate) release of information to law enforcement under various circumstances. *See, e.g.,* R.I.G.L §5-37.3-4(b)(4)(ii) (authorizing release of medical information without consent upon request of an officer “for the purpose of identifying or locating a suspect...”). This suggested amendment would bar release of that information except where mandated.

- ***Center Confidentiality.*** Just as important as the confidentiality of medical records is the physical privacy afforded individuals making use of HRCs. We urge an amendment to § 26.4.1, “Governing Body and Management,” as follows: “H. No Center shall knowingly admit a law enforcement officer to a Center in the absence of a warrant or exigent circumstances.” We believe such a restriction is clearly within the Department’s ability to regulate.

- ***Rights of Clients.*** We have previously noted the utility of HRCs acting as a resource for the dissemination of basic “know your rights” information to clients regarding encounters with the police. This is a clientele that will almost certainly have had, or will have, such encounters. We therefore urge an amendment in recognition of that fact by revising § 26.5.2(A)(6), “Client Orientation,” as follows: “Such other matters as may be deemed appropriate, including literature addressing the rights of individuals during encounters with the police.”

- ***Language Assistance.*** The original version of this proposal, § 26.4.5(C), “Rights of Clients & Code of Conduct,” required HRCs to make language assistance available to clients. That was removed from the revised proposal, but we believe some language assistance requirement, even if not as detailed as the original version, should be reinstated. Particularly since these facilities may be providing clinical services as well, they will already be under a legal obligation, pursuant to federal and state anti-discrimination laws, to provide language assistance services to clients when necessary. Because the removal of subsection (C) suggests otherwise, we would urge the reinstatement of some language to that effect. An HRC will be failing in its mission, we submit, if it is not seen as welcoming, or appropriately able to provide for, clients who are not English-language proficient.

- *Criminal record checks.* If an HRC job applicant is already subject to a criminal record check as a state-licensed professional, there should be no need for them to get another one. We would recommend an amendment to § 26.4.2(D), “Personnel,” CRC, to make clear that another check is not required to be employed by a center under those circumstances.

The ACLU of RI again appreciates your consideration of these views. We hope that they are helpful and will be incorporated in any revisions to the draft regulations that will be submitted for a public hearing in the next round.

Submitted by: Steven Brown, Executive Director