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TESTIMONY ON DEPARTMENT OF HEALTH PROPOSED RULES ON HARM REDUCTION CENTERS
[216-RICR-40-10-25]
December 14, 2021

The ACLU of Rhode Island appreciates the opportunity to testify on these important regulations, which are a key step in the critical, life-saving creation of state-authorized harm reduction centers. We also appreciate the fact that the Department has already offered the public two opportunities to submit testimony through the Administrative Procedures Act's advance rule-making process. As a result of that process, we commend and thank the Department for taking into account some of the comments we have made about the previous iterations of this proposal.

Having said that, we believe there is one particular area where these proposed regulations remain deficient, and it is an important one – the relationship of the HRCs with the police. We believe that perhaps the biggest obstacle to the success of these centers will be the potential reluctance of at least some substance users to make use of them for fear of police involvement.

This concern is certainly not an irrational fear, which is why we strongly believe, to the extent possible, these regulations should address the issue. As everybody is aware, the establishment of these centers is on the edge of federal criminal law. The statute enacted this year authorizing HRCs required inclusion of a lengthy section aimed at providing clients, owners and employees immunity from prosecution under a series of state laws, and the attempt to establish an HRC in Philadelphia was stymied when federal officials challenged in court its legal validity. It is therefore far from hyperbolic to recognize and address this concern.

In order to at least partially approach this problem, our earlier testimony suggested three amendments to the proposed regulations. It is our understanding, however, that they were all rejected by the advisory committee assisting with the regulations. At an informal meeting last week, a respondent to our comments on this issue offered two reasons why our suggestions were not incorporated in the regulations: they were redundant, and they placed the DOH in an extra-jurisdictional role of regulating police conduct. Respectfully, none of the three proposals bears out those objections. To the contrary, the proposed amendments add client protections that would otherwise not be available, and they were crafted to ensure they do not go beyond the bounds of the DOH's lawful authority.

We therefore once again urge adoption of these amendments, and provide a more detailed explication of them below in response to the Department's stated concerns:

1. Confidentiality of Records. Strong assurances of confidentiality will be crucial to the success of harm reduction centers. The proposed regulations do a very good job of recognizing this – except for one area. 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 law enforcement 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 an amendment to strengthen the proposal's record confidentiality provisions in one key respect.

Specifically, we ask that § 26.4.6, "Confidentiality," be amended 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."

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…"). We realize that, for the most part, HRCs will not be collecting or maintaining health care information or other identifying information from clients. However, this section of the regulations nonetheless recognizes that potentiality. Our suggested amendment would simply ensure, in those instances where such information is available, it is not provided to police except when mandated by law. There is nothing redundant about this; absent its inclusion, identifiable information of HRC users could lawfully be disclosed to law enforcement authorities in a variety of circumstances when not required. This proposed cautionary language better ensures that HRC clients – and staff – do not have to fear that possibility.

2. Center Confidentiality. Just as important as the confidentiality of medical and other identifiable 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."

Again, there is certainly nothing redundant about this proposed addition, and we believe such a restriction is clearly within the Department's ability to address. To the extent that it is "regulating" police, it is doing so in a manner that does not in any way conflict with the governing

statute. Police have no uncontestable right to randomly enter a facility, and this proposed revision will protect HRC employees from coercion – subtle or otherwise – in any circumstance where an officer seeks to do so.

3. Rights of Clients. HRCs offer an excellent opportunity to serve 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 reinstating a previous provision, § 26.5.2(A)(6), "Client Orientation," and revising it as follows: "Such other matters as may be deemed appropriate, including literature addressing the rights of individuals during encounters with the police." Making "know your rights" materials available to clients would serve an important educational and outreach function, and is neither redundant nor an imposition on police conduct in any way.

Once again, we applaud the Department for its work in drafting these regulations and for its strong support for the establishment of harm reduction centers. In furtherance of that goal, we urge your consideration of our proposed amendments and their incorporation into the final version of the regulations.

If the suggestions we have made are not adopted, we request, pursuant to R.I.G.L. §42-35-2.6, a statement of the reasons for not accepting these arguments. Thank you for your attention to our testimony.

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