**SCG Policy Regarding the Treatment of Sex Offenders**

Background

Sanctuary Counseling Group is committed to serving all persons regardless of gender, race, sexual orientation, legal status, or marital status, and we do not turn persons away due to an inability to pay.

Working with sex offenders presents a unique challenge for both a health care facility as well as for the clinician and raises questions and the need for a policy that both protects SCG, all of its satellite facilities (including employees, staff, and other persons – parishioners and students), the clinicians and the rights of those sex offenders seeking treatment.

In 2004, the Government Accountability Office (GAO) issued a report concerning the prevalence of registered sex offenders living in long-term care facilities.  Among other things, this report addressed the broad discretion that states have in implementing general sex offender registration and notification statutes, which are mandated by the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act of 1994.  Although each state has adopted a unique approach to sex offender notification and identification, the report notes that long-term care facilities across the country face complex questions when a resident has been identified as an offender.  Such questions include whether a facility can disseminate information about an offender's prior convictions to employees and/or other patients, or whether disclosing this information would violate the Privacy Rule of the Health Insurance Portability and Accountability Act ("HIPAA").  Ensuring the confidentiality of protected health information ("PHI") and averting serious consequences that could result from indiscriminate disclosure of such information are among the most challenging issues confronting all health care providers today, and not just skilled nursing facilities.  Accordingly, we believe that all health care facilities should address these concerns.

While SCG is not a long-term care facility, we do engage in out-patient psychotherapy that may continue over a long period of time. It is therefore prudent that we adopt a policy that is in accordance with and does not violate the privacy rule of HIPAA. Several questions should be addressed and are in bold below.

**Is the fact that a client is a registered sex offender itself PHI?**

The HIPAA Privacy Rule broadly defines PHI as "individually identifiable health information ("IIHI") that is:  1) transmitted by electronic media; 2) maintained in any medium described in the definition of electronic media; or 3) transmitted or maintained in any other form or medium."  45 CFR § 160.103.  The Privacy Rule further defines individually identifiable health information as health information that is collected, created, or received by a health care provider, health plan, employer, or health care clearinghouse and that pertains to the physical or mental health or condition of an individual or the provision of health care to that individual.  When asked whether information that a patient is a sex offender is PHI, some health care providers (and some attorneys) respond that it is not, because the information is available on a sex-offender registry and therefore is public information, *regardless* of how the health care provider learned of the patient's status as a sex-offender. At SCG we believe that such an analysis is incorrect.  The "P" in "PHI" stands for "protected," not "private." The definitions of PHI and IIHI do not have an exception that allows disclosure if the PHI or the IIHI is publicly-available; instead, these definitions apply to information that is received by a covered entity from *any* source, so long as it is related to the provision of health care.  The conventional analysis also ignores the fact that most, if not all, health care providers actually learn of a patient's sex-offender status from the patient or from another provider, not from a sex-offender website.  For these reasons, the health care facility should consider such information to be PHI.  Additionally, when a health care facility documents information related to the patient's conviction, such as the professional observation that a patient's tendency to commit offenses increases when he or she stops taking certain medication, such information also is PHI and, as a result, should be protected pursuant to HIPAA.

**Nevertheless, when a sex offender is a patient at a health care facility – in this instance, SCG – can this information be disseminated to staff members and employees as well as other persons (parishioners and students) at that particular location?**

Although the fact that a patient is a convicted sex-offender is PHI, the HIPAA Privacy Rule contains a narrow exception that enables use or disclosure of PHI when such use or disclosure is "necessary to prevent or lessen a serious or imminent threat to the health or safety of a person or the public" and is to "a person or persons reasonably able to prevent or lessen the threat, including the target."  Therefore, if a health care facility in good faith determines that the patient poses a serious or imminent threat, and that in order to prevent harm it is necessary to tell others of the patient's criminal history, the health care facility may notify staff members, employees, and other persons (parishioners, students) of a patient's prior conviction as a sex offender.  Nonetheless, the facility should inform staff members and employees that such information is PHI and therefore should not be disclosed to third parties absent patient consent, a court order, or another applicable exception to HIPAA.

**What actions should a health care facility take to protect others from the actions of a sex offender that may amount to sexual harassment or a hostile work environment?**

When the facility's management becomes aware that a patient is a sex offender, it must take appropriate steps to protect its employees, staff, and other persons (parishioners, students) from the actions of that individual.  Should the patient remain under care, there must be follow-up to assure that the adjudicated behavior has not reoccurred and does not continue.  Although there may be a duty to protect the information that a patient is a sex offender, liability could apply to a facility that has knowledge that a person is prone to act in that manner.  Therefore, the facility has a heightened obligation to take the necessary steps to protect others from a sex offender's actions.

**Nevertheless, when a sex offender is a patient at a health care facility – in this instance, SCG – can this information be disseminated to employees, staff, and other persons (parishioners/students)?**

The decision to inform employees, staff, and other persons (parishioners) of this information again depends upon whether the patient poses a serious or imminent threat to the health or safety of the employees, staff, and other persons (parishioners, students).  The analysis should be made specific to a particular danger, and accordingly, only those persons who need to know the information in order to protect themselves or those under their care and supervision should be informed.  They also should be informed that this information is confidential, and that they should not disclose it to others.  Realistically, this may not happen, and questions may arise as to the facility's liability in the event another resident or family member repeats the information. Because it is the covered entity, and not its patients or family members, who must comply with HIPAA, the facility cannot force employees, staff, and other persons (parishioners, students) to comply with the request for privacy, but by the same token, the facility is not liable for a disclosure by an employee, staff member, or other person (parishioner, student) if the facility can demonstrate that it disclosed the information to such persons due to the imminent threat posed by the sex-offender resident.

**Policy and Procedures for Working with Registered Sex Offenders**

**Policy: Sanctuary Counseling Group may at times work a registered sex offender. SCG clinicians will work with this particular type of patient in a manner consistent with how they work with any other person seeking help within our organization. SCG also acknowledges that working with this type of patient presents some unique challenges regarding protection of the patient and their rights, the protection of the host satellite and its staff, employees, and other persons (parishioners and students), and the clinician engaged in the actual work with this type of patient. We will act in a manner that is respectful of all individuals while complying with the guidelines related to the Privacy Rule of HIPAA.**

**In the unlikely event that a patient of record fails to disclose that they are a sex offender, once the clinician of SCG discovers this fact, they will act in accordance with the guidelines of the policy spelled out below.**

**Procedures: The following definitions and procedures provide guidance for the implementation of this policy.**

1. **Definitions**
2. *The HIPAA Privacy Rule* – defines PHI as "individually identifiable health information ("IIHI") that is:

1) transmitted by electronic media;

2) maintained in any medium described in the definition of electronic media; or

3) transmitted or maintained in any other form or medium."  45 CFR § 160.103.

1. *Individually Identifiable Health Information* – health information that is collected, created, or received by a health care provider, health plan, employer, or health care clearinghouse and that pertains to the physical or mental health or condition of an individual or the provision of health care to that individual.
2. *Personal Health Information* – the “P” in “PHI” stands for "protected," not "private." The definitions of PHI and IIHI do not have an exception that allows disclosure if the PHI or the IIHI is publicly-available; instead, these definitions apply to information that is received by a covered entity from *any* source, so long as it is related to the provision of health care.
3. *Permissible disclosure* – disclosure that enables use or disclosure of PHI when such use or disclosure is "necessary to prevent or lessen a serious or imminent threat to the health or safety of a person or the public" and is to "a person or persons reasonably able to prevent or lessen the threat, including the target."
4. *Sex offender* – a sex offender is any person, adult of juvenile, who is convicted of a sexual offense under the laws of North Carolina as contained in Chapter 14, Article 27a – Sex Offender and Public Registration Protection Programs. Sanctuary Counseling Group will utilize Chapter 14, Article 27a as the definitive guide for any work undertaken with an individual registered under this particular statute.
5. *Registered Sex Offender* – due to the stringent requirements regarding persons convicted of a sexual offense under the laws of North Carolina, specifically Chapter 14, Article 27a, Sanctuary Counseling Group elects to use the terms “*sex offender*” and “*registered sex offender*” interchangeably.
6. **Intake Procedure**
7. Intake will follow the normal procedure for all patients who present for treatment.
8. Awareness that the patient is listed on the North Carolina Registry of Sex Offenders will require notification of the appropriate persons.
9. **Notification Procedure with Sanctuary Counseling Group**
10. Upon learning of the status of the patient as a registered sex offender, the clinician is to immediately notify both the Executive Director and the Clinical Coordinator/Director.
11. Determination of the specific nature of the sexual offense of the patient should be noted and documented in the chart.
12. Appropriate analysis by the clinician as to whether the patient poses a serious or imminent threat to the health or safety of the employees, staff, and other persons (parishioners, students) should be made. The analysis should be made specific to a “particular danger,” rather than whether the patient poses a general threat.
13. Communication with the probation officer or the parole officer of the patient should be initiated with the acknowledgement and consent of the patient and with the concomitant obtaining of appropriate release forms by the clinician. Failure to consent on the part of the patient will result in the patient not being seen by the SCG clinician. The patient will be referred to other resources in the community for help.
14. Consent by the patient for the SCG clinician to see the patient is a requirement. Failure to provide consent for the clinician to communicate with the parole or probation officer will result in the patient not being seen by the SCG clinician. The patient will be referred to other resources in the community for help.
15. Should the patient miss a scheduled appointment, the parole or probation officer is to be notified of this occurrence and the clinician should make appropriate documentation in the patient’s chart.
16. **Notification Procedure with the Satellite Host**
17. Insuring the safety of any and all persons connected to the satellite host, be they paid staff, volunteers, or parishioners, is a preeminent concern of SCG, its board, and its clinical staff. Based on consultation with the Executive Director and following appropriate analysis as to the threat that the patient may pose, and after conferring with either the probation or parole officer of the patient:
18. The appropriate persons on staff as well as appropriate employees of the satellite host should be notified that registered sex offender is being seen at the satellite office.
19. Those notified should also be informed that this information is confidential and as such should not be indiscriminately disclosed to others.
20. The clinician should work with reassuring the appropriate persons who have been notified of the measures being taken to insure the safety of the staff, employees, and other persons (parishioners and students)
21. When psychotherapy with this particular patient is terminated, notification of the appropriate staff would be initiated by the clinician.
22. **SCG Requirements for Working with Registered Sex Offenders**
23. Clinicians who choose to work with registered sex offenders will need to seek supervision of their work with that type of patient.
24. Clinicians will need to obtain prior approval of the supervisor providing supervision of their work with registered sex offenders from the Executive Director and the Clinical Coordinator/Director before working that type of patient.
25. Clinicians will provide evidence of this supervision to the Executive Director and the Clinical Coordinator/Director.