

Module 8: Reporting Requirements and Confidentiality Issues

Time Required

1 hour, 15 minutes (Including 15-minute Module 5 – 7 Quiz)

Purpose

To review mandatory reporting requirements and confidentiality issues with crime victim and disability service providers.

Lessons

1. State Adult Protective Services (10 minutes)
2. Mandatory Reporting Requirements (10 minutes)
3. Confidentiality Issues (40 minutes)

Learning Objectives

By the end of this module, participants will be able to:

- Explain general reporting requirements under APS laws.
- Describe reporting requirements in their states.
- Explain why confidentiality issues can be problematic.

Participant Worksheet

- Worksheet 8.1, Reporting and Maintaining Confidentiality

Equipment and Materials

No special equipment or materials are required.

Preparation

No special preparation is required.



Show Visual 8-1.

Introduce Module 8 by **explaining** that the purpose of this module is to review mandatory reporting requirements and confidentiality issues with crime victim and disability service providers.



Show Visual 8-2.

Review the learning objectives.

By the end of this module, participants will be able to:

- Explain general reporting requirements under APS laws.
- Describe reporting requirements in their states.
- Explain why confidentiality issues can be problematic



Show Visual 8-3.

Paraphrase:

Once again, we're going to start the module with a quick review of the information we covered in Modules 5 through 7.

Introduce the activity.



Activity: Module 5 – 7 Quiz (15 minutes)

- 1. Ask participants to raise their hand if they know the answer, and to wait until they are called on to respond.**
- 2. Show slides 8-4 through 8-23.**
- 3. Pause after each Question slide to obtain a response before you show the answer on the following slide.**
- 4. Call on a participant with hand raised for answers. It is not necessary to call on the person who raises their hand first; try to involve as many participants as possible.**
- 5. Ask participants to keep track of how many correct answers they have.**
- 6. At the end of the quiz offer a round of applause to the participant who answered the most questions correctly.**

1. Adult Protective Services (10 minutes)



Show Visual 8-24.

Ask the following questions:

- How many of your organizations have written policies to ensure that confidential client information is not released without the consent of the client? If your organization doesn't have these policies in writing, encourage management to create them.
- How many of you know what your state reporting laws are? Are you a mandatory reporter?

Paraphrase:

If you aren't familiar with your state's laws governing confidentiality and reporting of abuse of individuals with disabilities, you should be. Each state is different in the way it handles confidentiality and reporting requirements.



Show Visual 8-25.

Paraphrase:

There are a number of type of state laws that govern confidentiality and reporting of abuse of individuals with disabilities. These include:

- Adult Protective Services (APS) laws and programs
- Institutional abuse laws
- Long-Term Care Ombudsman Programs (LTCOP) laws and programs.

Of these, APS laws and programs are the most important to service providers.



Show Visual 8-26.

Paraphrase:

According to the National Center on Elder Abuse (NCEA), all 50 states and the District of Columbia have enacted Adult Protective Services laws. In addition to people who are elderly, most APS laws are designed to protect "vulnerable" or "endangered" adults. In most cases, this includes individuals who lack the physical or mental capacity to provide for themselves. Although statutes vary by state, the general age range is 18-59 for vulnerable adults.

However, there are currently five states in which APS laws do not cover “vulnerable” or “endangered” adults. These states are Connecticut, Nevada, Ohio, Rhode Island, and Pennsylvania.

APS programs receive and investigate reports of suspected abuse or neglect of vulnerable adults. If an investigation substantiates a report, then the APS program provides or arranges for protective services for the abused or neglected individual.

Ask: Do you know how your own state defines “vulnerable adults”?



Show Visual 8-27.

Paraphrase:

States vary in their definitions of what constitutes a “vulnerable” or “endangered” adult. For example, Indiana (Code IC 12-10-3-2) defines an “endangered adult” as an individual who is at least 18 years of age and “incapable by reason of mental illness, mental retardation, dementia, habitual drunkenness, excessive use of drugs, or other physical or mental incapacity of managing or directing the management of the individual’s property or providing or directing the provision of self care...”



Show Visual 8-28.

Paraphrase:

While North Dakota’s definition (Code 50-25.2-03) reads simply:

“Vulnerable adult” means “any person older than age 18, or emancipated by marriage, that has a substantial mental or functional impairment.”



Show Visual 8-29.

Paraphrase:

States also vary in the types of abuse they cover in their APS laws. Physical abuse is always covered, but other types of abuse may or may not be covered.

Be sure to become familiar with your own state’s laws, because they also contain reporting requirements in case of abuse or suspected abuse of vulnerable adults.

2. Mandatory Reporting Requirements (10 minutes)



Show Visual 8-30.

Paraphrase:

According to the American Bar Association, as of December 31, 2007, the APS laws in 45 states, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands include “mandatory reporting.” This means they require certain professionals to report suspected abuse of vulnerable adults to APS or other authorities under circumstances defined in state law. Reporting is voluntary in Colorado, New Jersey, New York, North Dakota, and South Dakota. It’s critical that you know your state reporting requirements before asking questions and obtaining releases of information.



Show Visual 8-31.

Paraphrase:

Statutory categories of mandatory reporters vary widely. In 18 states, the laws provide that “any person” or “any adult” is a mandatory reporter (American Bar Association 2007).

In some states, only designated groups of professionals are mandatory reporters. Designated groups may include law enforcement professionals (which may include both system and community-based victim service professionals), health care professionals, lawyers, clergy, nonprofessional long-term care facility employees, and financial professionals (such as bank tellers).

Some states include professionals with certain types of licenses or job responsibilities, such as licensed social workers or counselors among mandated reporters. A victim or disability service professional may be a mandated reporter because of his or her license.

Refer participants to the mandatory reporting matrix in Appendix J in the Participant Manual, and advise participants to locate and become familiar with the mandatory reporting requirements in their own states.

3. Confidentiality Issues (40 minutes)



Show Visual 8-32.

Paraphrase:

You also need to know what type of information is protected by state law so you can accurately tell crime victims what information is confidential, what might need to be disclosed, and with whom that information will be shared.

Even if your organization has well-defined policies on confidentiality, these policies do not override state law governing confidentiality. According to the American Bar Association, for example:

Many states require that the name of the victim or information gathered during the course of an investigation be kept confidential; this would supersede any organizational policies allowing the release of information.



Show Visual 8-33.

Paraphrase:

- Other states authorize interagency communication and information sharing, or provide exceptions to the confidentiality provisions for law enforcement investigations or court proceedings; this would supersede any organizational policies prohibiting the release of information.



Show Visual 8-34.

Paraphrase:

Sometimes there are conflicts between a state's mandatory reporting provisions and its confidentiality requirements. Even within a state, the confidentiality and disclosure laws or rules affecting mandatory reporters may differ depending on whether the reporter is system-based or community-based. And finally, confidentiality policies may be imposed by other state statutes or funding sources, and often these policies are in conflict with mandatory reporting laws (National Clearinghouse on Abuse in Later Life 2011).



Show Visual 8-35.

Paraphrase:

As a result, you need to maintain client confidentiality even though it sometimes inhibits your ability to work with another agency. But in many cases, disability organizations can still provide important information and work collaboratively with victim service professionals to ensure the victim's needs are met in a timely and appropriate manner. If necessary, look for guidance from appropriate state or federal personnel.

In other words, don't let that be an excuse as to why your agency doesn't get involved.



Show Visual 8-36.

Discuss the following situations:

- What should you do if you are mandated by state APS laws to report abuse of an individual with disabilities but required by a funding source to maintain the individual's confidentiality?
- What if the individual says she will deny the abuse if you report it?
- What if the individual keeps changing his or her version about what happened?
- What if you suspect an individual who has complex communication needs has been abused, although family and caregivers deny any abuse has occurred?

Ask: How can we support individuals with disabilities to make informed choices about what they share, while minimizing any potential discomfort they may feel because of our reporting requirements?



Show Visual 8-37.

Introduce the activity.



Activity: Reporting and Maintaining Confidentiality (15 minutes)

- 1. Refer participants to Worksheet 8.1, Reporting and Maintaining Confidentiality, in the Participant Manual.**
- 2. Allow participants a few minutes to read the case study and note Marcy's ethical dilemmas.**
- 3. After they have finished reading, ask participants to identify Marcy's dilemmas.**
- 4. Explain that Marcy has two ethical dilemmas: 1) how to balance Raymond's best interest with respect for his own wishes; and 2) how to resolve the conflict between Raymond's right to confidentiality and the requirements of mandatory reporting.**

Ask: Raymond is not incompetent and has the right to make his own decisions. But Marcy believes that his wishes may not be in his best interests. What should she do?



Show Visual 8-38.

Cover the following points if participants do not.

- Marcy should discuss safety planning with Raymond. It is critical that Raymond understand his rights, and how to protect himself. He should also understand what abuse is, that's it not his fault, and how to report it.
- Marcy should contact Karen, the disabilities advocate that Raymond has been working with. Because Karen has known Raymond for several years, she may be able to provide important information about Raymond's background, his relationship with his son, or any past history of abuse. But unless Raymond volunteers this information, how will Marcy know who to contact? Although having more information about Raymond might help Marcy, it is important to remember that Raymond would need to give his permission for the two professionals to share information. Raymond might decline to give consent.
- She should make sure Raymond understands all his options, and that his decision is not based on fear or coercion. At the same time, she should be aware of the potential for exacerbating the situation.
- Marcy should find some way to get Raymond the supports he needs, even if she does not know about Raymond's connection with a disability service provider or self advocacy organization. For example, she should refer his case to social service agencies that could arrange a visiting nurse or home health services. A home health assessment might shed more light on Raymond's situation. She might try to speak with Wyatt, explaining that "I think your father needs more care than you can provide – let's talk about the options."
- She should try to preserve her relationship with Raymond, because Raymond's testimony is needed to convict the suspect in Raymond's assault.
- Marcy should provide follow-up and continue the visits, whether or not Raymond receives multidisciplinary services.



Show Visual 8-39.

Ask the following What if? questions:

- Suppose Raymond had complex communication needs? How would you gain permission from him to contact and share information with Karen?

- Some individuals with disabilities have legal guardians or conservators who must be included in the case. The guardian may be the only person who can assert the individual's right to release or refuse to release information. If Raymond had a guardian, how would Marcy work with that person? What if Wyatt were the guardian?

Ask: What should Marcy do if Raymond's mistreatment continues and/or escalates? Is reporting in Raymond's best interest? If Marcy does report, will she violate Raymond's right to confidentiality? What is her liability? What is the law?



Show Visual 8-40.

Cover the following points if participants do not:

- Marcy must decide if Raymond's situation is serious enough that she is legally required to report. For more perspective, she may discuss Raymond's case with Karen or other social service agencies *to the extent allowed by state law*. When discussing a case it is always important to explain why sharing information is in the victim's best interest and to ask the victim for written permission.

If it is clear that the situation falls under mandatory reporting requirements, Marcy should report it immediately. If it is not clear, she must ask herself if Raymond will be better or worse off if she reports. She needs to be concerned about how reporting suspected abuse would affect her relationship with Raymond. But *who* decides what is in Raymond's best interest? This is an ethical dilemma – does the victim service professional respect Raymond's wishes, or does she assume what Raymond needs? It is important that the staff person does not take away or diminish Raymond's power.

- If Marcy decides Raymond's case is serious enough to report, her legal duty to report generally supersedes any confidentiality requirements.
- Legally, Marcy is protected from liability if she makes the report in good faith.



Show Visual 8-41.

Paraphrase:

Jurisdictions with mandatory reporting laws generally provide sanctions for the failure to report. Sanctions vary from state to state, but may include fines, criminal penalties, or professional discipline. In some states a mandated reporter may be held liable for damages incurred by an abused person as a result of the reporter's failure to report the abuse.



Show Visual 8-42.

Paraphrase:

Some state APS laws prohibit retaliation against an individual who makes a report of abuse to APS or another agency authorized to receive abuse reports. These laws usually provide for civil liability or criminal penalties against an individual or agency that retaliates against a reporter.



Show Visual 8-43.

Paraphrase:

As of December 31, 2006, every state except South Dakota, plus Puerto Rico, has provisions in their APS law(s) that generally provide immunity from civil, criminal, or administrative liability for reporting suspected abuse of vulnerable adults and other activities that may stem from those reports (such as testifying in a court or administrative proceeding) as long as the reports were made in good faith or in accord with some other standard set forth in the statute. Many of the statutes also say that the immunity will not apply if the reporter is found to have committed the abuse that he or she reported.



Show Visual 8-44.

Paraphrase:

The whole question of confidentiality versus reporting is quite complex. Many victim service providers working in mandatory reporting states are concerned about violating the confidence and trust of the crime victim – and justifiably so.

Obtain legal advice, if necessary, and always follow the law. But remember that your primary goal is to maximize choice, respect, and dignity for the crime victim with a disability.



Show Visual 8-45.

Advise participants that they can obtain more information about mandatory reporting under the APS laws of their states or other states by reviewing the “Mandatory Reporting to Adult Protective Services” explanation and charts on the ABA Commission on Law and Aging Elder Abuse Web site, www.abanet.org/aging/about/elderabuse.shtml.



Show Visual 8-46.

Review the learning objectives and **ask** whether these were met.

- Explain general reporting requirements under APS laws.
- Describe reporting requirements in their states.
- Explain why confidentiality issues can be problematic.



Show Visual 8-47.

Ask if there are any final questions before moving to the next module.

References

National Clearinghouse on Abuse in Later Life (NCALL), *Mandatory Reporting of Elder Abuse: Implications for Domestic Violence Advocates*. 2011.

Stiegel, Lori and Ellen Klem. *Mandatory Reporters: Comparison Charts of Categories in Adult Protective Services Laws, by State*, American Bar Association Commission on Law and Aging for the National Center on Elder Abuse. 2007.

Stiegel, Lori and Ellen Klem. *Mandatory Reporters: Confidentiality of Information and Records: Comparison Chart of Provisions in Adult Protective Services Laws with Citations, by State*, American Bar Association Commission on Law and Aging for the National Center on Elder Abuse. 2007.