

Module 8: Reporting Requirements and Confidentiality Issues

Purpose

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

Lessons

1. State Adult Protective Services
2. Mandatory Reporting Requirements
3. Confidentiality Issues

Learning Objectives

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

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

Participant Worksheet

- Worksheet 8.1, Reporting and Maintaining Confidentiality

1. Adult Protective Services

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?

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.

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.

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 5 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.

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..."

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.”

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

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.

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.

3. Confidentiality Issues

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.
- 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.

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).

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.

- 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?

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.

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.

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.

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.

You 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.

References

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

Stiegel, Lori and Klem, Ellen. *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 Klem, Ellen. *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.

