

Module 8

Reporting Requirements and Confidentiality Issues

OVC Can Help You Put the Pieces Together



OVCTTAC

Learning Objectives

- ❖ **Explain general reporting requirements under APS laws.**
- ❖ **Describe reporting requirements in my state.**
- ❖ **Explain why confidentiality issues can be problematic.**

Activity

Modules 5 – 7 Quiz

- ❖ You'll be shown a series of slides with questions.
- ❖ If you know the answer, don't say it – raise your hand.
- ❖ Keep track of how many answers you know.

Question 1

What does “unearned privilege” mean, and how do those with and without unearned privilege react to it?

Question 1 – Answer

What does “unearned privilege” mean, and how do those with and without unearned privilege react to it?

Unearned privilege is the result of advantages one has by virtue of birth, social position, or concession. Those who have unearned privilege may not be aware of it, but those who do not have it are very aware.

Question 2

Under Titles II and III of the ADA, which organizations are required to have a compliance plan?

Question 2 – Answer

Under Titles II and III of the ADA, which organizations are required to have a compliance plan?

Public entities and most public and nonprofit agencies.

Question 3

Which Act provides funds to make services accessible to crime victims with disabilities?

Question 3 – Answer

Which Act provides funds to make services accessible to crime victims with disabilities?

The Victims of Crime Act (VOCA).

Question 4

Most victims – regardless of whether they have a disability – react the same way when victimized.

True or False?

Question 4 – Answer

Most victims – regardless of whether they have a disability – react the same way when victimized.

False. You can't predict how an individual will react when victimized.

Question 5

Where do our values come from?



Question 5 – Answer

Where do our values come from?

Our values are a product of our culture and a reflection of our background – how we were raised, what we've been taught, whom we've met, and other experiences.

Question 6

Many of the basic guidelines for assisting crime victims are the same as for assisting an individual with a disability.

True or False?

Question 6 – Answer

Many of the basic guidelines for assisting crime victims are the same as for assisting an individual with a disability.

True. The fact that a person has a disability should not be a factor unless the disability affects communication.

Question 7

What is the best way to address our fears of the unknown...especially of people who are not like us?

Question 7 – Answer

What is the best way to address our fears of the unknown...especially of people who are not like us?

Becoming acquainted with those who are not like us will help eliminate fear of the unknown.

Question 8

Why is discomfort often good?



Question 8 – Answer

Why is discomfort often good?

It could be a signal that something needs to change.

Question 9

Adults with significant developmental and intellectual disabilities should be addressed as a child.

True or False?

Question 9 – Answer

Adults with significant developmental and intellectual disabilities should be addressed as a child.

False. They are adults and should be treated like adults.

Question 10

Try to avoid common expressions that seem to related to a person's disability, such as "I have to run" or "See you later."

True or False.

Question 10 – Answer

Try to avoid common expressions that seem to related to a person's disability, such as "I have to run" or "See you later."

False. People with disabilities are used to these expressions and often use them themselves.

Your Policies and Laws

- ❖ **Does your organization have written policies to ensure that confidential information isn't released without the consent of the client?**
- ❖ **Do you know your state's reporting laws?**
- ❖ **Are you a mandatory reporter in your state?**

State Laws on Confidentiality and Reporting

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

Adult Protective Services

- ❖ **APS laws are designed to protect “vulnerable” or “endangered” adults, which usually includes individuals who lack the physical or mental capacity to provide for themselves.**
- ❖ **APS programs receive and investigate reports of suspected abuse of vulnerable adults.**
- ❖ **If an investigation substantiates a report, then the APS program also provides or arranges for protective services to the abused individual.**

Differences in Definitions of “Vulnerable Adult”

**Indiana (Code IC 12-10-3-2) definition of
“endangered adult”:**

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...”

Differences in Definitions of “Vulnerable Adult”

**North Dakota (Code 50-25.2-03) definition
of “vulnerable adult”:**

**“Any person older than age 18, or
emancipated by marriage that has a
substantial mental or functional
impairment.”**

States Vary in Covering Categories of Abuse

- Physical abuse
- Neglect
- Financial exploitation
- Self-neglect
- Abandonment
- Emotional abuse
- Sexual abuse



Mandatory Reporting

❖ Reporting is voluntary in:

- Colorado
- New Jersey
- New York
- North Dakota
- South Dakota

❖ Reporting is mandatory in:

- 45 states and the District of Columbia
- Guam, Puerto Rico, Virgin Islands

Categories of Mandatory Reporters

Depending on the state, a mandatory reporter may be:

- ❖ “Any person” or “any adult.”
- ❖ Designated groups of professionals (e.g., law enforcement, health care).
- ❖ Professionals with certain types of licenses or job responsibilities, such as licensed social workers or counselors.

State Requirements on Confidentiality

- ❖ **Organization policies on confidentiality do not override state law.**
- ❖ **Many states require that information be kept confidential; this would supersede any organizational policies allowing the release of information.**

State Requirements on Confidentiality

- ❖ **Other states authorize interagency 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.**

System Conflicts Between Reporting and Confidentiality

Conflicts can occur:

- ❖ **Between state mandatory reporting provisions and its confidentiality requirements.**
- ❖ **Between system and community-based reporting requirements.**
- ❖ **Between state laws and funding sources.**

Maintaining Confidentiality

- ❖ **Your need to maintain confidentiality may affect your ability to work with another agency.**
- ❖ **But you can still provide important information to one another, even if confidentiality issues are involved.**
- ❖ **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 APS to report abuse, but required by a funding source to maintain the individual's confidentiality?
- ❖ The individual says he or she will deny the abuse if you report?
- ❖ The individual keeps changing his or her version of what happened?
- ❖ You suspect an individual who has complex communication needs has been abused, although family and caregivers say otherwise?

Activity

Reporting and Maintaining Confidentiality Worksheet 8.1

- ❖ **Read the case study about Marcy and Raymond.**
- ❖ **Identify Marcy's ethical dilemmas.**
- ❖ **Discuss ways to resolve these dilemmas.**

What Should Marcy Do?

- ❖ Discuss safety planning with Raymond.
- ❖ Contact Karen for more information.
- ❖ Make sure Raymond understands his options.
- ❖ Find some way to get Raymond the support he needs.
- ❖ Try to preserve her relationship with Raymond.
- ❖ Provide follow-up and continue her visits.

What If...

- ❖ **Raymond has complex communication needs? How should Marcy gain permission from him to contact and share information with Karen?**
- ❖ **Raymond has a legal guardian or conservator? How should Marcy work with that person?**
- ❖ **Wyatt was Raymond's legal guardian?**

What Should Marcy Do if the Abuse Escalates?

- ❖ **Decide if she is mandated to report it.**
 - **If yes, report it immediately – legal duty supersedes confidentiality requirements.**
 - **If it is not clear, Raymond’s best interests should be used as a guideline – but who decides what his best interests are?**
- ❖ **Understand that she is protected from liability.**

Failure To Report

- ❖ **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**

Retaliation for Reporting

- ❖ **Some state APS laws prohibit retaliation against an individual who makes a report of abuse.**
- ❖ **These laws usually provide for civil liability or criminal penalties for retaliation.**

Immunity From Liability

- ❖ **Most states provide immunity from liability for reporting suspected abuse as long as the reports were made in good faith or in accord under another standard in the statute.**
- ❖ **Many of the statutes also say that the immunity won't apply if the reporter is found to have committed the abuse that he or she reported.**

Confidentiality vs. Reporting

- ❖ **You may be 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.**

Resource for APS Laws

“Mandatory Reporting to Adult Protective Services,” ABA Commission on Law and Aging Elder Abuse Web site:

www.abanet.org/aging/about/elderabuse.shtml

Review of Learning Objectives

- ❖ **Explain general reporting requirements under APS laws.**
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End of Module 8

- ❖ **Questions?**
- ❖ **Comments?**