

# **Appendix G**

## **Sharing Confidential Information**

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Understanding other systems is a necessary but not sufficient condition for collaboration. Collaboration requires communication, and knowledge and understanding create a framework within which formal structures for communication can be established, but by themselves do not assure that communication in fact occurs. One test of whether such communication structures exist is whether child welfare workers and alcohol or substance abuse treatment counselors regularly communicate about the status of both parents and children involved with the child welfare and alcohol and drug systems.

One task of the Steering Committee will be to establish uniform policies that allow workers from the child welfare, alcohol and drug, and court systems to share important information about families (information generally subject to Federal confidentiality rules) and information required to monitor families' progress. The Steering Committee is well-positioned to develop communication protocols that are effective and understood by staff because it provides a mechanism for senior officials in all three systems to communicate among themselves, arrive at consensus on what policies should be instituted, issue those policies to local jurisdictions and offices, and monitor how well the policies are working.

It is particularly critical that the Steering Committee establish policies and protocols that allow staff to share information they learn through screening and assessing families because these terms mean different things to staff from different systems. For example, alcohol and substance abuse treatment staff use screening and assessment to make decisions regarding the most appropriate form of treatment for parents. In contrast, child welfare staff conduct screenings for substance use disorders to make decisions regarding whether children are safe or can remain in their homes.

Developing administrative policies and protocols to enhance cross-system communication is particularly critical when the information to be shared is considered confidential by one or more of the systems. The next section of this guidebook describes roles and responsibilities that are inherent to working collaboratively, but in order for staff to carry out those roles and responsibilities, they have to be working within shared and clear protocols for sharing information with each other. Without standard policies and protocols, workers from each system are left on their own to decide they are permitted to share, and confidentiality concerns are often raised by alcohol and drug, child welfare, and court staff as a reason why they cannot communicate with each other.

In fact, confidentiality is a serious concern. All three systems operate within strict Federal, State, and jurisdictional guidelines regarding how information about families may be shared, and families have a legal and ethical right to trust that information about them will be kept confidential. At the same time, it is possible to develop policies that allow sharing of information in ways that do not violate legal or ethical standards.

The Steering Committee can take the lead in developing standards for sharing sensitive information that complies with all regulations and also gives staff and families both the certainty they need to allow appropriate information to be disclosed and to exchange information in writing and orally. Members of the Steering Committee and others should have basic knowledge of—

- The basic Federal confidentiality rules for treatment providers and the reasons for these rules;
- Additional State law restrictions governing confidentiality (State laws may be more restrictive than Federal requirements); and
- The basic Federal, State, and local laws governing confidentiality in the child welfare and court systems.

A consent form signed by the parent is probably the most common strategy for facilitating cross-system communication. Jurisdictions can develop a common consent form for use by all collaborating parties. Or, jurisdictions can use Federally approved consent forms. Typical consent forms include the following:

- Name or general description of programs making disclosure;
- Name or title of individual or organization that will receive disclosure;
- Name of the person who is the subject of disclosure;
- Purpose or need for disclosure;
- How much and what kind of information will be disclosed;
- Statement that the person giving consent may revoke (take back) consent at any time, except to the extent that the program has already acted on it;
- Date, event, or condition upon which consent will expire, if not previously revoked;
- Signature (and, in some States, that of his or her parent); and
- Date on which consent is signed.

It is important to note that when disclosure of information is made with the person's written consent, the system making the disclosure must include with the information conveyed a notice that "redisclosure" is prohibited without authorization. For example, if someone authorizes an alcohol or other drug treatment provider to share certain information with a child welfare worker, that worker is not allowed to share this information with someone else who is not identified on the consent form (i.e., the definition of "redisclosure").

The Center for Substance Abuse Treatment (CSAT) publication *Welfare Reform and Substance Abuse Treatment Confidentiality: General Guidance for Reconciling Need to Know and Privacy* provides additional guidance in how to address issues of confidentiality. Although the publication was created specifically for use with welfare recipients, the guidance offers practical strategies and Federally approved confidentiality forms for protecting family and individual rights, promoting interagency collaboration, and supporting case planning. (The report is free and can be ordered by calling 800-729-6686 and requesting TAP#24.)

The Privacy Rule included in the Federal Health Insurance Portability and Accountability Act (HIPAA) establishes other standards for safeguarding information. For more information on HIPAA and the Privacy Rule, as well as on confidentiality rules, please refer to the CSAT publication *The Confidentiality of Alcohol and Drug Abuse Patient Records Regulation and the HIPPA Privacy Rule: Implications for Alcohol and Substance Abuse Programs*. This document is available at [www.samhsa.gov](http://www.samhsa.gov) or by calling 800-729-6686. Agencies within the alcohol and drug system may or may not fall under this Privacy Rule and should consult with legal counsel regarding how and whether the HIPAA regulations apply to them. However, agencies within the alcohol and drug system that are already in compliance with 42 CFR Part 2 (Federal confidentiality regulations governing treatment agencies) should not find it difficult to comply with the HIPAA regulations.