




Standard 9: Confidentiality

See section 5 of binder

What is Confidentiality All About?

The right of the person's privacy versus the public's right to know.

Learning Objectives

As a result of this session, you should be able to:

- Understand and apply the law
- Appreciate and maintain appropriate levels of privacy
- Appreciate the different types of confidentiality based on roles of treatment court team members

Law Pertaining to Treatment Courts

- Wis. Stat. Ch. 51.30
- HIPAA-health insurance portability and accountability act
- 42 U.S. Code 290dd, 42 CFR Part 2- confidentiality of alcohol and drug abuse records

Confidentiality

- Treatment information and records are confidential.
- In general, they can only be released to others with the informed written consent of the individual, if competent, or the guardian.
- The rule covers both verbal information and treatment records.
- There are many exceptions

Confidentiality

- All records that are created in the course of providing services to individuals for mental illness, developmental disabilities, alcoholism or drug dependence are confidential.
- Treatment records do not include staff's notes or records maintained for their personal use that will not be shared with others

Chapter 51.30

- Wisconsin Statute 51.30 – laws apply to anyone receiving services for mental health, developmental disabilities, or substance abuse
- Applicability to treatment courts is unclear

Federal Law

- 2 major laws apply to participants in treatment courts:
- 1) HIPAA – Health Ins. Portability and Accountability Act
 - regulates the health care industry

Federal Law

2 laws apply to participants in treatment courts (cont.):

- 2) 42 U.S. Code 290dd 42 C.F.R. Part 2
 - Confidentiality of Alcohol and Drug Abuse Patient Records – regulates drug and alcohol programs
 - 42 U.S.C. § 290dd-2(a) provides that records of the identity, diagnosis, prognosis, or treatment of any patient shall be confidential and disclosed only for certain authorized purposes, and 42 CFR § 2.12(a) applies these restrictions to substance abuse treatment.

Obtain all necessary waivers and consents from participants at their orientation to court

Sample consent form in binder

Team Communication

How do you effectively communicate with your team?

Sample: Team Progress Report “Cheat Sheet”

EAU CLAIRE COUNTY DRUG COURT CIRCUIT COURT, BRANCH 2 MICHAEL A. SCHWABER, JUDGE				Name: <input type="text"/>
				DOB: <input type="text"/>
Probation <input type="checkbox"/>	ATR <input type="checkbox"/>	ES <input type="checkbox"/>		
File # <input type="text"/>	Offense <input type="text"/>	Sentence <input type="text"/>	Exp. Date <input type="text"/>	
Start Date <input type="text"/>	Phase <input type="text"/>	Phase Date <input type="text"/>	Drug Court Case # <input type="text"/>	
Address <input type="text"/>		Phone # <input type="text"/>	Ethnicity <input type="text"/>	
Significant Other <input type="text"/>		# Children & Ages <input type="text"/>		
COMPAS ASSESSMENT & CASE PLAN				
Date: <input type="text"/>		Criminogenic Needs: <input type="text"/>		
Overall Risks				
Violence <input type="checkbox"/>	General <input type="checkbox"/>	Pre-Trial <input type="checkbox"/>		
Primary Criminogenic Needs <input type="text"/>		Score <input type="text"/>	Case Plan Goals/Tasks <input type="text"/>	
TREATMENT INFORMATION				
Sober Date <input type="text"/>	Compliance Date <input type="text"/>	Drug(s) of Choice <input type="text"/>	Primary TX Location <input type="text"/>	
Start Date <input type="text"/>	End Date <input type="text"/>	Therapist Name <input type="text"/>		
Mental Health Diagnosis <input type="text"/>	Clinic/Physician <input type="text"/>	Medications <input type="text"/>		
Other Programming <input type="text"/>	Start Date(s) <input type="text"/>			
Clinical Notes: <input type="text"/>				
EMPLOYMENT/TESTING				
Employment Location/Hrs Date <input type="text"/>		Positive UA's/Prior Sanction: <input type="text"/>		
Out Date Huber/EM <input type="text"/>				
Sanctions from previous week <input type="text"/>				
Education <input type="text"/>				
Drug Court Fees <input type="text"/>				
Completed By: <input type="text"/>		Date: <input type="text"/>		
Case Management Notes: <input type="text"/>				
Suggested Court Topics: <input type="text"/>				

Special Concerns

- Therapist/ treatment providers: privilege, signed releases of information
 - Do these cover staffings?
- Hospitals: HIPAA, release of information
- Health and human services: releases, etc.
- What are the potential consequences for a violation of confidentiality?

Designated Privacy Official

- Code of Ethics
- HIPAA
- Email usage
- Waiver and consent forms
- CORE
- CFR 42
- FOIA-Freedom of Information Act
- Waiver of ex-parte communications
- Consent forms
- Open Records request

Safeguards

- Use locked storage cabinets
- Use locked shredder bins
- Establish procedures to redact and segregate treatment court files into what is open to public and what is confidential
- Train team members and staff on federal and state confidentiality requirements
- Document privacy policies and procedures
- Regularly review waiver and consent forms

Consent Documents

- To be legally valid an informed consent document must specify what data may be shared, with whom, and for what authorized period of time
 - See NADCP best practice standard VIII, commentary

Making the Record

- What's on the record and what's not
- Open to the public:
 - Court proceedings
 - Clerk should be taking minutes (limited)
 - Recorded by reporter
 - Judge should treat confidential info with care
- Closed to public:
 - Treatment Court team meetings or staffings
 - Non team member sign confidentiality log

The Press

- As a general matter, the press has a right to be in open court
- The judge, however, has the right to control the use of cameras and other recording devices
- In the instance a local news agency wants to do a full story, how will the judge handle?

References

- HIPAA
- 42 U.S. Code 290dd, 42 C.F.R. Part 2
- NADCP presentation on confidentiality (Steve Hanson and Valerie Raine)
- Wisconsin Treatment Courts: Best Practices for Record Keeping, Confidentiality and Ex Parte Information
<http://www.wicourts.gov/courts/programs/docs/treatmentbestpractices.pdf>

Links are available in binder