

Building Bridges, Building Walls: Creating Collaborations and Honoring Confidentiality

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Collaboration around DV/SA and People with Disabilities issues:

- What are particular issues related to collaboration?
- What information is shared? Expected to be shared? Where do the expectations for sharing information come from?
- What are obligations of professionals who work with victims to share/protect victim information?

Confidentiality Concerns

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G-Whiz or G-3

- Get
- Got
- Give

What are particular
challenges to
confidentiality for people
with disabilities?

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Ask yourself: does any
confidential information need
to be obtained by the
Collaboration? Shared by
the Collaboration?

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Get/Got/Give:
When is confidential/
identifying information
obtained? Shared?
Expected to be shared?

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Information is Power

- Her information : Her Choice
 - What she gives you/tells you
 - What she doesn't give you/tell you
- How does power shift when information is shared?
- What cultural considerations play into confidentiality issues?

Confidentiality: Personal Information

- Identity
- Location
- Privacy Concerns
 - Culture of entitlement to information
- Is there legal protection for confidential information?

Privilege: Communications with Particular Persons Under Law

- Legally Protected:
 - Statute, tribal code, regulations
 - Rule: court, ethics, policy
 - Case law

• Public policy reasons

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Limits of Privilege

- Waiver/Release
- Duty to warn (some professionals under some circumstances)
- Child abuse/neglect
- dependent adult abuse/neglect
- Crime to be committed
- Presence of others -- except "facilitators"
- Law enforcement based advocates
- Criminal cases (some professionals in some jurisdictions)
- After death/fatality reviews (in some jurisdictions)
- Publicly funded programs (subject to FOIA in some jurisdictions)

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What obligations do
different collaborative
partners have regarding
confidentiality?

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Recent Federal Law Change:

- VAWA Reauthorization
- Effective January 5, 2006
- Two new confidentiality provisions:
 - HMIS data prohibitions, 42 USC § 11383
 - VAWA/FVPSA funded programs confidentiality, 42 USC § 13925

HMIS Limits:

- Domestic violence programs exempt from HMIS
- If HUD wants non-identifying (aggregate) data from DV programs as part of HMIS, it must do new rule-making
- Any stronger state or federal law trumps
- DOES NOT apply to victims who obtain services from other homeless service providers

VAWA/FVPSA Funded Programs:

- cannot disclose personally identifying client information
- without the informed, written, reasonably time-limited consent of the person
- if release of information compelled by statute or court mandate, must notify victim of disclosure and protect privacy
- nonpersonally identifying aggregate data may be provided to comply with reporting,

© 2007 evaluation or data collection requirements.

VAWA Section 3 -- Personally Identifying Information

- "Personally identifying information" is defined in the statute and includes information that, by itself, may not be personally identifying, but that could become personally identifying of an individual client when connected with other information.
- The provision protects adult, youth, and child victims of domestic violence, dating violence, sexual assault, or stalking, and their families.
- Programs should be vigilant to avoid the inadvertent release of personally identifying information or individual client informatio

VAWA Section 3 -- Consent

- Consent for release of individual client information must be informed, written, and reasonably time-limited.
- The consent for release of individual client information must be given by the person, or the child and the non-abusive parent of an unemancipated minor, or a nonabusive guardian of a person with disabilities

VAWA Section 3 -- People with Disabilities

- The provision regarding consent of a non-abusive guardian for a person with disabilities suggests that the disability would be related to competence to consent to a release of client information.
- does not address the minor or person with disability's ability to receive services from the domestic violence or sexual assault program, only who must give consent for a release of individual client information.
 - unemancipated minor or person with disability may receive services from the program
 - BUT information about the services they received may not be released without the informed, written reasonably time-limited consent of the non-abusive parent and unemancipated minor or guardian of a person with disabilities.

When?

- When are releases needed?
 - Individual, confidential relationship with a professional who has confidentiality/privilege
 - Information sought to be shared outside of that relationship
 - *If a release is not signed, that individual professional can't share confidential information with the team. Can take in information from the team, but can't give out personal, confidential information without a release/waiver*

Challenges:

- Team strengths: Building bridges
 - Problem solving for difficult cases
 - Multiple perspectives and solutions
 - Increase law enforcement response, services to victims
- Team concerns:
 - Multiple perspectives can cause conflicts
 - More involvement of more people can mean more risk of confidential information being shared inappropriately
- Different professionals with different levels of confidentiality

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Confidentiality Challenge

- Building walls without tearing down the bridges
 - “Walls” may be needed to protect confidential information and preserve the integrity of the team
 - May need walls within the team to protect confidential information that a specified professional has
 - Need walls to protect confidentiality of team information from those outside the team

How?

- Need to evaluate how meetings are conducted
- Think: are we as a team, and as individual members of the team, doing everything that we can to protect confidentiality?
- Evaluate: what are we doing to protect confidentiality? What else can we do? How are we using technology to communicate? Does that present any confidentiality challenges/risks?

Releases:

- Release/waiver should be obtained by the professional who has the relationship with the individual
- Ideally, should be explained individually, and not just a standard form signed as part of an intake packet without explanation
 - Release/waiver must be *knowing* and *voluntary*
 - Consent to release information must be *informed*
 - *Think: what information would I want to have if it were my information that was being shared?*
 - E.g., who would have access to the information, for how long, how will the information be safeguarded from inadvertent disclosure?

Use releases/informed consent

- What information does she need to make a good decision?
- Why do I want her to sign this consent?
 - Now?
 - For this entity/agency/person?
- What is the benefit to her?
- What is the risk to her? To the agency?

What?

- What information is shared within the team? Outside of the team?
- What are the limits/extent of confidentiality for the team itself? For each team member?
 - Core members
 - Additional team members or related professionals
 - Need to recognize that individual professionals don't necessarily lose their confidentiality/privilege because they are participating in a collaborative team

Recommendations:

- Have all participants sign a confidentiality agreement/acknowledgement
- Identify a “confidentiality monitor” on the core team whose job is to review team operation and identify areas where confidentiality can be strengthened
 - May need “confidentiality monitors” for each committee if team is large and has multiple functions

"Confidentiality Monitors"

- Responsibilities may include:
 - Evaluate "information flow"
 - Evaluate participants' roles and the individual confidentiality requirements
 - Evaluate team obligations to maintain confidentiality
 - Ensure confidentiality releases, acknowledgements/ agreements are signed
 - Knowing what resources are available to figure out confidentiality questions -- e.,g. experts on