




Mandated Reporting


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Training Overview

- Introductions
- Why Privacy and Confidentiality Matter
- Mandated Reporting: Vulnerable Adults
- Mandated Reporting: Minors
- Questions





Privacy and Confidentiality





Privacy/Confidentiality

“Trust is gained in drops and lost in buckets.”
Alicia Aiken, The Confidentiality Institute

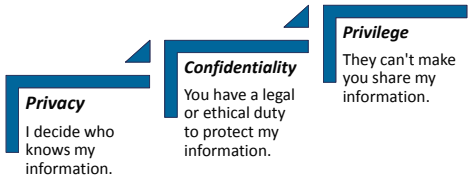


Privacy/Confidentiality

- Who wants access to victim/survivor information?
- Who decides whether to share information?



Privacy Concepts




Privacy
I decide who knows my information.

Confidentiality
You have a legal or ethical duty to protect my information.

Privilege
They can't make you share my information.

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Key Players

- Individuals**
Need privacy to exercise control over their lives.
- Professionals**
Provide confidentiality to build trust in working relationships.
- Governments**
Grant privilege to protect important social values.

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Privilege

- Minn. Stat. § 595.02 subd. 1(g)
- A registered nurse, psychologist, consulting psychologist, or licensed social worker engaged in a psychological or social assessment or treatment of an individual at the individual's request shall not, without the consent of the professional's client, be allowed to disclose any information or opinion based thereon which the professional has acquired in attending the client in a professional capacity, and which was necessary to enable the professional to act in that capacity. Nothing in this clause exempts licensed social workers from compliance with the provisions of sections [626.556](#) and [626.557](#).


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HIPAA


- Health Insurance Privacy and Portability Act
- Protects privacy of individually identifiable health information
- Sets standards for security of electronically stored health information
- Applies to covered entities
 - Health care provider
 - Health plan
 - Health care clearinghouse (holding data from other covered entities)

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Confidentiality



- Challenges
 - Disrupt victim's recovery
 - Chilling effect on seeking help
 - Damage one-to-one relationship between victim and provider
 - Damage public trust relationship when seeking medical care
 - Negative impact on reporting and public safety




Mandated Reporting: Vulnerable Adults



Mandated Reporting: Vulnerable Adults

- Who is a mandated reporter of maltreatment of vulnerable adults? (Minn. Stat. §626.5572 subd. 16)
 - A professional or professional's delegate engaged in:
 - Social services
 - Law enforcement
 - Education
 - The care of vulnerable adults
 - Occupations regulated under a health related licensing board
 - An employee of a rehabilitation facility
 - An employee of or a person providing services in a licensed facility
 - A person performing duties of the medical examiner or coroner



Mandated Reporting: Vulnerable Adults

- Who is a vulnerable adult? (Minn. Stat. §626.5572 subd. 21)
 - 18 years or older
 - Resident or inpatient of a facility
- Receives services from a facility (but not receiving outpatient services for chemical dependency or mental illness and not civilly committed sex offenders unless meets last requirement below)
- Receives services from a licensed home care provider or personal care assistant
- Regardless of receiving services, is impaired in ability to provide for own care without assistance AND has an impaired ability to protect self from maltreatment



Mandated Reporting: Vulnerable Adults

- What must be reported? Abuse, which includes:
 - Assault
 - Use of drugs to injure or facilitate crime
 - Solicitation/inducement/promotion of prostitution
 - Criminal sexual conduct (first through fifth degree)
 - Hitting, slapping, kicking, pinching, biting, corporal punishment
 - Repeated, malicious, harassing oral, written or gestured language
 - Use of unauthorized aversive or deprivation procedures
 - Sexual contact/penetration involving facility staff and a client/resident/patient
 - Forced/coerced performance of services against vulnerable adult's will for another's advantage



Mandated Reporting: Vulnerable Adults

- Conduct that is NOT abuse:
 - Consensual sexual contact between a vulnerable adult "not impaired in judgment or capacity by mental or emotional dysfunction or undue influence" AND a person (including a facility staff person) when the consensual personal relationship existed PRIOR to care giving, OR
 - A personal care attendant, regardless of when consensual personal relationship began



Mandated Reporting: Vulnerable Adults

- What must be reported? Neglect, which includes:
 - Failure or omission of caregiver to provide services or care which is not the result of an accident or therapeutic conduct
 - Absence or likely absence of care or services which a reasonable person would deem essential to obtain or maintain the vulnerable adult's health, safety or comfort



Mandated Reporting: Vulnerable Adults

- Conduct that is NOT neglect includes:
 - See conduct that is not abuse
 - Refusal for care based on health care decision making authority so long as consistent with vulnerable adult's expressed wishes
 - Error by caregiver that either does not result in harm or does result in harm but is immediately addressed and vulnerable adult is able to recover




Mandated Reporting: Vulnerable Adults

- What must be reported? Financial exploitation, which includes:
 - Breach of fiduciary obligation
 - Unauthorized expenditure of funds
 - Failure to use vulnerable adult's financial resources to provide necessities where failure is likely to result in detriment
- In the absence of legal authority:
 - Using, withholding or disposing of funds or property
 - Obtaining services to the vulnerable adult's detriment and the benefit of another
 - Acquiring possession, control or interest in funds or property through undue influence, harassment, fraud, deception or duress
 - Forced/coerced performance of services against vulnerable adult's will for the profit or advantage of another




Mandated Reporting: Vulnerable Adults

- What to report
- Where to report: What are Common Entry Points?
 - Statewide common entry point
- When and how to report
- Civil liability for failure to report
- Developing protocols for reporting




Mandated Reporting: Maltreatment of Minors



Mandated Reporting

- Brief background on mandated reporting with emphasis on child sexual abuse and neglect
- What has changed in the law over the past couple of years?
- Prostitution, Trafficking and Sexual Exploitation of Youth – where is the law going?




Resources

- Minnesota Department of Human Services (DHS) Child Protection
 - Online interactive training on mandated reporting
 - www.mn.dhs.state.mn.us
- Minnesota Coalition Against Sexual Assault Fact Sheets
 - www.mncasa.org




Minnesota Law

- State: Reporting Maltreatment of Minors
 - Minn. Stat. (MS) §626.556
 - Response to federal requirements
 - Explains mandated and voluntary reporting, defines abuse and neglect, sets forth procedures
 - “The legislature hereby declares that the public policy of this state is to protect children whose health or welfare may be jeopardized through physical abuse, neglect, or sexual abuse.”





Mandated Reporting of Child Abuse and Neglect

- Understanding the system
 - State oversight provided by Minnesota Department of Human Services
 - Legislation, policies, rules, data gathering
 - County and reservation roles
 - Each county and Leech Lake and White Earth Bands responsible for receiving and responding to reports
 - Different interpretation from jurisdiction to jurisdiction




Mandated Reporting of Child Abuse and Neglect

- Two responses to reports
 - Family Assessment
 - Moderate to low risk
 - Up to 5 days response time
 - Assess safety, risk, family needs and strengths
 - No maltreatment determination
 - Engage family and provide services
 - Investigation (i.e. sexual abuse)
 - Severe harm or safety concerns
 - Immediate response
 - Maltreatment determination
 - Tape recorded interviews
 - Law enforcement involved if criminal offense
 - Child safety and provision of services




Mandated Reporting of Child Abuse and Neglect

- Who must report?
 - Mental health service providers
 - Social services providers (sexual assault advocates)
 - Child care providers
 - Law enforcement, probation, corrections
 - Clergy
 - Healing arts practitioners
 - Education providers
 - Hospital administration
 - Psychiatrists, psychologists, therapists and counselors
 - ALSO voluntary reporters




Mandated Reporting of Child Abuse and Neglect

- What must be reported?
 - Physical abuse
 - Sexual abuse
 - Neglect
 - . . . when a reporter knows of an incident or has reason to believe a child has been abused or neglected within the preceding three years (or two or more unrelated children in past 10 years)
 - Report must be made immediately (orally within 24 hours, written report within 72 hours) by mandated reporter themselves.




Mandated Reporting of Child Abuse and Neglect

- Who receives report:
 - Maltreatment within family: report to local child welfare office or law enforcement (cross-report)
 - Maltreatment outside family (i.e. in school or day care): report to licensing agency if applicable or law enforcement
 - Emergency/Imminent danger to child: Law enforcement, can remove child without court order
 - Not sure? Call local child welfare agency




Mandated Reporting of Child Abuse and Neglect

- What to report:
 - Report in county where child lives
 - Name of offender if known
 - Name of victim
 - Nature and extent of maltreatment
 - Name and address of mandated reporter
 - Note that name of reporter will be confidential in cross-reporting
 - Name may show up in court file
 - Talking about report with victim
 - It's not your duty to investigate the facts, just report




Mandated Reporting of Child Abuse and Neglect

- After a report is made:
 - Child protection agency will notify mandated reporter within 10 days either orally or in writing about whether report was screened in and if yes, whether recommended for family assessment or investigation; maltreatment determination, referrals
 - A voluntary reporter gets a concise summary unless release of info would compromise best interests of the child



Mandated Reporting of Child Abuse and Neglect

- Failure to Report
 - Misdemeanor if mandated reporter knows or has reason to know neglect or abuse of a child occurred in preceding 3 years
 - Gross misdemeanor if mandated reporter knows or has reason to believe that two or more children not related to the perpetrator have been physically or sexually abused, by same perpetrator within preceding 10 years





Mandated Reporting of Child Abuse and Neglect

- Reporter protection
 - Name is confidential unless disclosed as part of court process
 - Immunity from civil or criminal liability if report made in good faith
 - No employer retaliation against employees required to make a report who do so in good faith




Mandated Reporting of Child Abuse and Neglect

- Sexual Abuse
 - When **certain persons** subject a child to an act of sexual contact or penetration or threaten the same
 - Certain persons are not necessarily adults
 - Persons responsible for a child's care
 - Position of authority
 - Significant relationship




Mandated Reporting of Child Abuse and Neglect

- Criminal Sexual Conduct
- Minn. Stat. §609.342 to 609.345 and 609.3451
- Sexual contact: touching or having someone else touch the child's intimate parts (genitals, groin, inner thigh, buttocks, breast) with sexual or aggressive intent; contact with semen or sperm
- Sexual penetration: sexual intercourse, cunnilingus, fellatio, anal intercourse or any intrusion however slight into genital or anal openings of the child by any body part or object by the actor
- Includes having the child commit these acts upon the actor





Mandated Reporting of Child Abuse and Neglect

- Person responsible for a child's care
- A person functioning within the family unit with responsibilities similar to a parent or guardian OR a person outside the family unit with duties of the child's care such as school employees and other short-term caregivers such as babysitters (paid or unpaid), day care providers, counselors or coaches





Mandated Reporting of Child Abuse and Neglect

- Position of Authority
- Parent or person acting in place of a person charged with any duty or responsibility for the health, welfare or supervision of a child, for no matter how brief of a time
- Includes psychotherapists




Mandated Reporting of Child Abuse and Neglect

- Significant Relationship
 - An immediate or extended family member or an adult residing in the same home
 - Relative by blood, marriage or adoption




Mandated Reporting of Child Abuse and Neglect

- Related reportable situations:
 - Violation of prostitution laws involving a minor
 - Involving a child in a sexual performance (live, photos, film)
 - Allowing unsupervised exposure to an untreated sex offender
 - Purposely exposing private parts to a child
 - Peeping on a child for sexual gratification or aggressive intent
 - Purposely walking in on a child when bathing or dressing




Mandated Reporting of Child Abuse and Neglect

- Related reportable situations:
 - Attempt to engage in sexual activity with a child by soliciting, asking, commanding, attempting to persuade by telephone, texting, email, or other means
 - Unexplained injuries to genital area that raise suspicions of sexual abuse
 - Purposeful exposure of child to sexual activity
 - Child with a sexually transmitted infection





Mandated Reporting of Child Abuse and Neglect

- Neglect includes (but not limited to) . . .
 - Failure to protect a child from conditions or actions that seriously endanger the child's physical or mental health
 - Leaving child with a person who should not have a responsibility for a child
 - Involving a child in a criminal act that seriously endangers the child
 - Ongoing abuse by a sibling and parent fails to protect
 - Dangerous living conditions



How is Your County Responding?

- Investigation only, not assessment?
- Allowing assessment in some cases?
- TPR petitions? What is the process?





Know Your County!

- There are distinctions in interpretations from county to county
- Talk with your county child protection and county attorney offices about their processes and interpretations




Different Interpretations

- Are prostituted/exploited youth subject to mandated reporting when the offender is not in a caregiver or position of authority role?




Parting Thoughts

- When in doubt:
 - Recognize obligation to confidentiality and when it must be breached according to the law
 - Talk with local child welfare agency about hypothetical situations
 - If you're not sure incident was already reported, report it – it's okay to have multiple reports

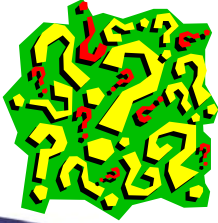


Parting Thoughts

- As a general rule, explain limits to confidentiality early in conversation with person you are serving
- Educate the people you serve about the law
- Review policy on reporting, remember it is up to the mandated reporter and not a supervisor to report
- Still provide services after a report is made – prepare patient for what will happen next
- Watch for potential changes in the law.



Questions?



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Thank You!

Lingering Questions?
Contact Me!

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