

CONFIDENTIALITY
AND
YOU

42 CFR

HIPAA

NEVADA STATE LAW

Multiple Layers of Confidentiality

- 42 U.S.C. 290 dd-2
(42 CFR Part 2)
- HIPAA
- State law
- Recent modifications



CONFIDENTIAL

What does this mean?

- Can't talk with other clients or anyone else about a client without a release or exception
- Protect Health Information (PHI)



Protected Health Information

Individually identifiable
health information
transmitted or
maintained by a
covered entity



What does 42 CFR cover?

- ANY Federal funding or regulation makes federal law applicable
- Applies to any patient records or communication about treatment
- Only disclose per regulations & exceptions

Furthermore...

42 CFR states that treatment information cannot be used to initiate or substantiate criminal charges or to conduct an investigation.

What does HIPAA cover?

- Expanded to Health Care providers
- Entities same as 42CFR, but also any electronic transmitter of information
- Introduces two new concepts:
 - Minimum Necessary Standard
 - Security Standards

Minimum Necessary Standard

- When using/disclosing, only the minimum necessary information should be shared.
- Only cover the authorized information.
- Access only to those who Need To Know.
- All information goes to client.

Security Standards

- Security against non-approved access
- Electronic creation, transmission and storage of information Must be secure
- Requirements for logging on, automatic log offs, encryption of information sent via internet.

Notice of Prohibition Against Redisclosure

All faxes and letterheads which
contain documentary treatment
information should be accompanied
with notice of confidentiality

Nevada Law

- NRS 432B.280 makes reports confidential.
- Any person, law enforcement agency or public agency, institution or facility who willfully releases data or information concerning such reports, except for criminal prosecution, authorization under 432B.290 or 432B.513 is guilty of a misdemeanor

Nevada Juvenile Law

- NRS 432B relates to any information regarding the child or family
- NRS 432B.280 makes any reports made, as well as any record of an investigation, confidential
- Violation of the confidentiality rule is a misdemeanor.

NEVADA EXCEPTIONS

- Criminal prosecution of the parent or person responsible for the child
- Authorized agencies or persons that may have access
- Reports to the court that may be given to parent, guardian or their attorney.

Nevada Mandatory Reporting

- Child Abuse and Neglect
- Older or Vulnerable Person

Exceptions to general prohibition against disclosure

- Internal treatment program communications
- Information that does not identify the client
- Medical emergency
- A properly authorized court order
- Information relating to a crime performed on the program premises or against program personnel

More Exceptions

- Suspicion of child abuse or neglect
- Qualified agency agreements
- Research and audit
- Veteran's Administration or Armed Forces records

What can happen for violations?

- Under Federal law, can be prosecuted in Federal court and fined \$500.00 for the first offense and up to \$5,000.00 for each subsequent offense
- 10/250 Rule for serial violators
- Under State law, violators may be subject to lose license as a treatment provider

Violation Reporting

- 42 CFR violations reported to U.S. Attorney General
- HIPAA = Complaint with Health and Human Services (HHS) Office for Civil Rights
- Internal Procedure
- State Board of Examiners/ Investigating Authorities

“Please release me, let me go”

Release, Release, Release

Specific Written Consent
of the Client

Elements of a Release

- Name of person making the disclosure, i.e. treatment provider
- Name/title of who the disclosure is made to, i.e. drug court team members
- Client's name
- Purpose of disclosure
- How much and what kind of information to be disclosed

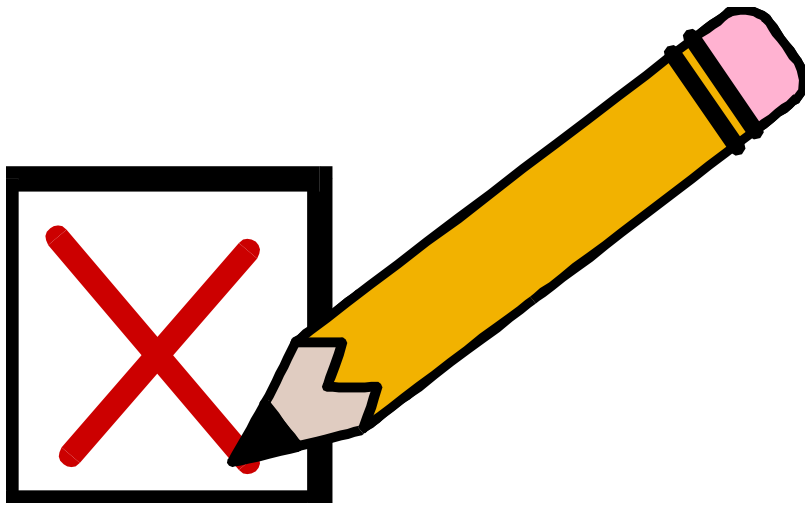
More Elements

- Signature of the client
- Date on which consent is signed
- Specific timeframe for cessation of consent, i.e. 180 days after discharge from the program
- Consent is subject to revocation at any time. However, if there is a criminal case involving probation or deferred sentencing, consent cannot be revoked

What does Release not waive?

- Attorney/Client privilege
- Re-disclosure

When is Release signed?



- Issue Explored at Intake.
- Best practice may include release being re-signed to ensure release was not signed while under the influence

Subpoena with Court Order

- What' s a Subpoena?
- Court Order—Making the Judge Mad.
- Limited Disclosure
- What to do-----

How do I know when to Disclose

- Does the Client Consent? Get it in Writing!
- If no Consent, is there an exception?

In agency

De-identified

Billing or Administration

Pursuant to MOU

Medical Emergency

Parent or Gaurdian

Law Enforcement

Subpoena and Court Order