

Principles of Caregiving: Fundamentals

Section 2: Legal and Ethical Issues

A. Legal Terms—Definitions

1. **Abandonment** is when a family or agency leaves an individual without care or support.
2. **Assault** takes place when an individual intentionally attempts or threatens to touch another individual in a harmful or offensive manner without their consent.
3. **Battery** takes place when an individual harmfully or offensively touches another individual without their consent.
4. **False imprisonment** takes place when you intentionally restrict an individual's freedom to leave a space.
5. **Invasion of privacy** is revealing personal or private information without an individual's consent.
6. **Liability** refers to the degree to which you or your employer will be held financially responsible for damages resulting from your negligence.
7. **Malpractice** is a failure to use reasonable judgement when applying your professional knowledge.
8. **Negligence** is when a personal injury or property damage is caused by your act or failure to act when you have a duty to act.

B. Distinction between Law and Ethics

Law: rules written by the legislature or a government agency

Ethics: a system of moral values; a set of principles of conscientious conduct

Some laws are also ethical (e.g., abuse laws); some are not (e.g., speeding); but not all ethical principles are laws (e.g., being honest)

C. Avoiding Legal Action

1. **Keep personal information confidential:** Do not discuss confidential information with others except your supervisor or other colleagues who are directly involved with the consumer's care. Confidential information may include medical, financial, or family issues.

2. **Only perform work assigned.** If you perform a task that was not assigned by your supervisor, you become liable for those actions. A plan is developed for each consumer that describes exactly what services should be provided. This is called a care plan or support plan. It lists the tasks you should do for this individual.
3. **Do not do less than assigned:** When you fail or forget to do all the tasks assigned, you may put your consumer at risk. As a result, pf your failure to act, you might be found negligent. Again, it is important that you understand that care or support plan for the consumer. You must do all the tasks assigned to you as described in the plan – not more and not less.
4. **Avoid doing careless or low – quality work:** Performing tasks carelessly might make you liable for the damages or injuries that result.
5. **Report** abuse and make sure your actions are not considered abusive.

D. Ethical Principles

1. **Honesty:** Do not be afraid to politely say “no” to a task you are not assigned to do. Also, do not be afraid to admit that you do not know an answer to a question pr how to do a task. Never steal, take a consumer’s possessions, or falsify documents or reports.
2. **Respect:** An individual’s religious or personal beliefs and values may differ from yours. You should respect those differences.
3. **Reliability:** Arrive for assignments on time. Always finish your shift, even if a consumer is being difficult or the workload is too difficult. You can address those problems with the supervisor after you have finished your shift.
4. You should not take gifts or tips.
5. Follow the consumer’s care plan unless you consult with your supervisor.
6. Take pride in doing your job well.

E. Consumer Rights

Consumers have the right to:

1. Considerate and respectful treatment and care.
2. Not be abused emotionally. Sexually, financially, or physically.
3. Design their treatment or care plan, decide how their services will be provided, and who will deliver those services (including requesting a change of caregiver).
4. Receipts or statements for their fee-based service.
5. Refuse treatment.

6. Privacy.
7. File a complaint with the agency.
8. Confidential handling of their personal information.

F. Direct Care Worker Rights

DCW'S have the right to:

1. File a complaint without the fear of retaliation.
2. Not be abused emotionally, sexually, financially, or physically.
3. Work in a safe environment.
4. Provide input for changes to a consumer's care plan.
5. Be informed when a consumer files a complaint against him or her.
6. A confidential investigation, a fair hearing, and be told the outcome when addressing complaints against him or her.
7. Receive timely payment for services including salary and mileage, where appropriate.

G. Confidentiality: HIPAA

What Is HIPAA?

HIPAA, the health Insurance Portability and Accountability Act of 1996, is a law that keeps the identifiable health information about our consumers confidential. It includes what must be done to maintain this privacy and punishments for anyone caught violating consumer privacy. The office Of Civil Rights of the U.S Department of Health and Human Services is the agency authorized to enforce HIPAA'S privacy regulations.

What Is confidential?

All information about our consumer's is considered private or "confidential", whether written on paper, saved on a computer, or spoken aloud. This includes the reason the consumer is sick, the treatments and medications he/she receives, caregiver information, any information about past health conditions, future health plans, and why the consumer is open to services.

Spoken communication runs the gamut from conducting consumer interviews, paging consumers, whispering in corridors, to talking on the telephones. Written communication includes the hard copy of the medical record, letters, form or any paper exchange of information. Electronic communication includes computerized medical records, electronic billing and email.

If you reveal any of this information to someone who does not “need to know” it, you have violated a consumer’s confidentiality, and you have broken the law.

What are the consequences of breaking the law?

The consequences will vary, based on the severity of the violation, whether the violation was intentional or unintentional, or whether the violation indicated a pattern or practice of improper use or disclosure of identifiable information. Depending on the violation agencies may be fined by the government if they are found to be in non-compliance with HIPAA regulations. Agencies and their employees can receive criminal penalties up to a \$250,000 fine and/or 10 years in prison for using information for commercial or personal gain or malicious harm.

Why is privacy and confidentiality important?

Our consumers need to trust us before they will feel comfortable enough to share any personal information with us. In order for us to provide quality care, we must have this information. They must know that whatever they tell us will be kept private and limited to those who need the information for treatment, payment, and health care operations.

What is the “Need to know” rule?

This rule is common sense, if you need to see consumer information to perform your job, are allowed to do so. But you may not need to see all the information about every consumer. You should only have access to what you need in order to perform your job. There may also be occasions when you will have access to confidential information that you don’t need for your work. For example, you may see information on whiteboards or sign-in sheets. You must keep this information confidential. There’s no doubt that you will overhear private health information as you do your day-to-day work. As long as you keep it to yourself, you have nothing to worry about. In the course of doing your job, you may also find that consumers speak to you about their condition. Although there’s nothing wrong with this, you must remember that they trust you to keep what they tell you confidential. Do not pass it on unless it involves information the professional staff needs to know to do their jobs. Tell the consumer that you will be sharing it with the professional staff or encourage them to tell the information themselves.

What are the consumers HIPAA rights?

Each consumer has certain rights under the HIPAA regulations. Unless the information is needed for treatment, payment, and health care operations, we cannot release any information without a written authorization from the consumer. The consumer must also give you verbal/ written permission to discuss information with family members. This permission should be documented in the consumer’s chart. The consumer also has the following rights:

- To inspect and copy his/her medical records
- To amend the medical records if he/she feels it is correct

- To an accounting of all disclosures that were made, and to whom, except those necessary for treatment, payment, or health care operations
- To restrict or limit use or access to medical information by others
- To confidential communications in the manner, he/she requests
- To receive a copy of the agency's Notice of Privacy Practices

A felony conviction does limit the type of jobs an individual has in the future.

What are ways to protect confidentiality?

A. Spoken Communications:

- **Watch what you say, where you say it, and to whom.**
- Speak in a quiet voice when sharing information.
- Close doors when discussing private information.
- Do not talk about health information matters in front of others.
- If someone asks you a question involving personal information, ask sure that person has a "need to know" before answering.

B. Telephone Communications:

- Never leave personal health information on an answering machine regarding a consumer's conditions/test results etc.
- If you are leaving a message on an answering machine/voicemail, only leave the name of the person calling and the agency's telephone number with your contact phone number and request a call back.
- Do not leave messages with anyone other than the computer or a responsible party.

C. Medical Records:

- Make sure medical records are viewed only by those who need to see them.
- Store them in an area not easily accessible to non-essential staff/ others.
- Do not leave medical records lying around unattended or in an area where others can see them. Don't leave files on car seats; lock them in the trunk.
- Return the medical record to its appropriate location when finished viewing it.

D. Trash:

- **Shred all papers containing personal health information:**

- Put trash cans and shredders as close as possible to fax machines and desks where personal health information is used.
- If you see an unshredded paper discarded in a trash can, remove it and bring it your supervisor.

E. Fax transmissions:

- Fax machines should be in a secure area.
- Do not leave papers containing private health information on the fax machine unattended.
- Preprogram frequently faxed numbers into the fax machine to reduce dialing errors.
- Periodically check on the preprogramed numbers to make sure they are still correct.
- If possible, notify the receiver when you are sending a fax.
- Have a fax cover sheet with a statement that the fax contains protected health information, re-disclosure is prohibited, and what to do if the wrong person gets it.

F. Computers:

- Develop a personal password which is not a guessable name and change it as instructed.
- Never share your password or write down your password except with your supervisor.
- Position your monitor so it is not facing where someone could view identifiable health information.
- Never leave a computer unattended without logging off.
- All emails sent, which contain identifiable health information, should be encrypted and the sender/receiver should be authorized.
- Double check the address before sending any email.
- Never remove/discard computer equipment, disk, or software without your supervisor's permission.

G. Adult and child Abuse

1. Definition

Adult and child abuse refers to any form of maltreatment of a person by a caregiver, family member, spouse, or friend.

Categories of abuse include:

A. Abuse:

Intentional infliction of physical harm or unreasonable confinement.

B. Sexual abuse or sexual assault:

Sexual contact with any person incapable of giving consent or through force or coercion, which means by force or threatening.

C. Neglect:

Failing to provide a person food, water, clothing, medication, medical services, shelter, cooling/heating other services necessary to maintain minimum physical or mental health. Shelter refers to housing but also the environment. Leaving a person in an unsafe or hazardous environment can be neglect. For children this also applies to parents leaving a child with no one to care for he/she or leaving a child with a caretaker and not returning or making other arrangements for his/her care.

D. Financial Exploitation:

The improper or unauthorized use of a person's funds, property, or assets. This includes forgery, stealing money or possessions, or tricking a person into signing documents that transfer funds, property, or assets. For children, this also includes using a child for material gain, including forcing a child to panhandle, steal or perform other illegal or involuntary activities.

E. Emotional abuse:

Psychological abuse such as name calling, insults, threats, and intimidation.

2. Risk factors:

A. Adult abuse

- Previous incidents of domestic violence by spouse.
- Financial dependency on the adult by the abuser.
- Mental illness of abuser.
- Adult children living with older parent.
- Abuser isolates adult to prevent the abuse from being discovered.

B. Child abuse:

- Child living in area with the high poverty, unemployment, or crime rates.
- Child has physical and/or mental disability.
- Abuser has history of physical or sexual abuse as a child.

- Abuser has low self-esteem, abuses drugs or alcohol, or suffers from depression or mental illness.

3. Signs:

A. Adult abuse

- Physical: bruises, broken bones, cuts or other untreated injuries in various stages of healing.
- Sexual: bruises around breast or genital area; signs of sexually transmitted diseases (STDs), pregnancy.
- Emotional: eating disorders; speech disorders; development delay; cruel behavior; behavioral extremes.
- Neglect: poor hygiene; absenteeism; hunger; tiredness; begging for or collecting leftovers; assuming adult responsibilities; reporting no caretaker at home.

4. Prevention

- Community awareness
- Public and professional education
- Caregiver support groups
- Stress management training
- Respite care or in-home services
- The parent Assistance program is a service designed to help parents or guardians. This program, operating through the administrative office of the Courts, provides a 24-hour toll free hotline to assist parents with their questions and concerns about Child Protective Services (CSP). Through the hotline, parents may obtain information about legal assistance, the juvenile court system and their legal rights and responsibilities. Trained hotline staff may also provide crisis counselling and referrals to appropriate agencies or individuals.

5. Reporting requirements

- All persons responsible for the care of an incapacity or vulnerable adult or child **have a duty to report** suspected abuse and neglect. This is called mandatory reporting.
- Reports must be made immediately (by phone or in person) to Adult Protective Services or Child Protective Services (depending on the person's age) or to the police. **Failure to report is a misdemeanor.**
 - If the individual is in immediate danger, call 911.

- If the abuse is not life-threatening, report it to your supervisor who will assist you in making the report to either of the 24-hour day statewide reporting lines:
 - **Adult Protective Services**
 - **Child Protective Services**

6. Legal Penalties

Any person who has been employed to provide care to an incapacitated or vulnerable adult or child and who causes or permits the person's life to be endangered or his/her health to be injured or endangered by neglect can be found guilty of a felony.

7. Reporting Activity

- **Read the following scenarios and discuss what you would do in these situations**
- A. You are assigned to provide personal care services for Mabel including a shower. Mabel is living in a poorly maintained home. She has a son who pays her bills and stops by a few times a week. When you arrive at Mabel's home, Mabel is complaining of being cold. The thermostat for the heater registers 60 degrees. You talk to Mabel's son who tells you that the furnace is broken but, "it's okay because I have just given mom some blankets. She doesn't need it any warmer."

What would you do?

- B. You are assigned to provide respite care for Jimmy who is a 10-year-old boy with autism. When you arrive at Jimmy's home, Jimmy is outside wandering in the street, no one is at home but Jimmy's 10-year-old brother who is watching tv.

What would you do?

Displaying of the Orange Form

- It is important to **remember that the orange form only covers cardiac and respiratory arrest**. If the consumer has another type of medical emergency, the DCW should provide first aide measures, including calling 911 as indicated.

**Now that you've read through the
February In-Service review, please
return to the previous page, and
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