

# Client's Rights and ▶ Confidentiality

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# Introductions

- ▶ Lisa Anderson
  - ▶ Owner of L.K Anderson Consulting, LLC
  - ▶ A Healing Place, Complete Counseling Care
  - ▶ LPC, CSW
  - ▶ Work experience
  - ▶ Contact Information
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- ▶ Disclaimer: I not a lawyer and not providing legal advice, if unsure, seek legal advice regarding client's rights and confidentiality

# Introductions, Cont'd

What is your  
name?

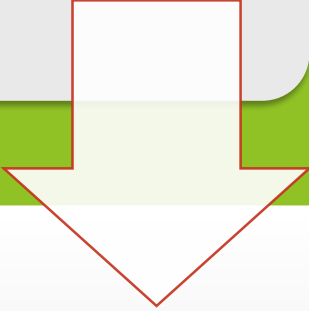
What is your  
job/role?

What do you  
hope to  
learn?



# Client's Rights

In Wisconsin Chapter 51 (51.61) and DHS 94 are the rights that apply to all clients



The client's rights ensure a provision of full range of treatment

- Apply the least restrictive
- Allow for personal liberty
- Provide continuity of care
- Provide a unified system of preventative care

- ▶ Substance abuse outpatient clinics/residential care
- ▶ Developmental Disability Day treatment/residential care
- ▶ Mental Health outpatient clinics/inpatient care/residential or day treatment care
  
- ▶ Exceptions:
  - ▶ A person is not protected by these rights at Emergency Departments or a single person provider business

Client's Rights  
that apply for  
every client  
receiving care  
anywhere in  
Wisconsin

# Treatment Rights

- ▶ Received prompt and adequate treatment
- ▶ Participate in their treatment planning.
- ▶ Be informed of their treatment and care
- ▶ Have the right to refuse all medication and treatment, except as ordered by the court or Emergency Department
- ▶ Be free from unnecessary or excessive medication at any time

- ▶ Staff must keep patient information confidential
- ▶ Records cannot be released without patient consent, some exceptions apply
  - ▶ Harm to self, harm to others, child abuse, subpoena by court, 3<sup>rd</sup> party payors
- ▶ Always see records of their medications and health treatments
- ▶ During treatment, access may be limited if the risks outweigh the benefits
  - ▶ This must be documented in record
- ▶ May challenge the accuracy, completeness, timeliness or relevance of the entries in their records.

# Record and Privacy Access

# Miscellaneous Rights

- ▶ Be treated with dignity and respect by all staff and the provider
- ▶ Be informed of rights
- ▶ Be informed of costs of care
  - ▶ In writing and consequences if can't pay
- ▶ Refuse electro-convulsive therapy (ECT)
- ▶ Refuse drastic treatment measures
- ▶ File complaints about violations of rights
- ▶ Be free from any retribution for filing complaints



- ▶ Have reasonable access to a telephone\*
  - ▶ See (or refuse to see) visitors daily\*
  - ▶ Send or receive mail (unopened)
  - ▶ Contact public officials, lawyers or patient advocates
- 
- ▶ Asterisk (\*) behind the rights may be limited or denied for certain reasons
  - ▶ Must be documented in record

Communication  
Rights  
In-patient  
care has more  
defined rights

# Personal Rights In-patient care

- ▶ Have the least restrictive environment, except in forensic patients
- ▶ Not be secluded or restrained except in an emergency when necessary
- ▶ Wear their own clothing and use their own possessions\*
- ▶ Have regular and frequent exercise opportunities
- ▶ Have regular and frequent access to the outdoors
- ▶ Have staff make reasonable (non-arbitrary) decisions about them
- ▶ Refuse to work-except in personal housekeeping tasks
- ▶ Be paid for work they agree to do that is of financial benefit to the facility

- ▶ Not be filmed or taped without consent
  - ▶ In some setting live monitors are approved
- ▶ Have privacy in toileting and bathing\*
- ▶ Have a reasonable amount of secure storage space for possessions\*

## Privacy Rights In Patient care

# Rights of Minors in Mental Health Outpatient Care

- ▶ Mental Health Care
  - ▶ Less than 14 years old:
    - ▶ A parent/guardian must agree in writing for the minor to receive outpatient mental health treatment
  - ▶ 14 years or 17 years old
    - ▶ Minor and parent must agree to receiving outpatient mental health treatment
      - ▶ If minor wants treatment but parent/guardian does not, minor or someone on minor's behalf can petition the county Mental Health Review Officer (MHRO) for a review
      - ▶ If minor does not want treatment, but parent/guardian does, the treatment director for the clinic where minor is receiving treatment must petition the MHRO for a review



- ▶ Must receive prompt and adequate treatment
- ▶ If 14 years or older can refuse treatment until a court orders it
- ▶ Must be told about treatment and care
- ▶ Have the right and are encouraged to participate in planning of treatment and care
- ▶ Parent/guardian must be informed of any costs they may have to pay for treatment

## Treatment Rights of Minors

# Personal Rights of Minors

- ▶ Must be informed of rights
- ▶ Reasonable decisions must be made about treatment and care
- ▶ Cannot discriminate against minor or family
- ▶ File complaints about violations of rights
- ▶ Be free from any retribution for filing complaints

- ▶ Staff must keep treatment information confidential, with exceptions
  - ▶ Harm to self, harm to others, child abuse, subpoenaed by court, 3<sup>rd</sup> party payors
- ▶ Can see any records on medications
- ▶ Staff may limit access to records
- ▶ If 14 or older, can consent to releasing own records to others

## Record Access and Privacy of Minors

# AODA Treatment of Minors

- ▶ At any age, a parent/guardian agrees to treatment, minor can participate in treatment of alcohol or drug abuse
- ▶ If less than 12 years old, may get limited treatment (like detox) without parent/guardian consent, only if they cannot be found or there isn't a parent/guardian
- ▶ If 12 years or older, can be provided limited treatment without parent/guardian consent or knowledge



# Confidentiality and Treatment Records

In Wisconsin confidentiality and records are under Chapter 51.30 and DHS 92

Laws apply to anyone receiving services for mental illness, developmental disability or substance abuse

This does not take into account differences between Wisconsin Law and the Health Insurance Portability and Accountability Act (HIPAA). You are advised to discuss any confidentiality issues with the HIPPA Privacy Officer serving your agency

# Confidentiality Rule

- ▶ The statute that sets the basis for rule of treatment information and records are confidential
- ▶ In general, can only be released to others with informed consent of the individual, parent or guardian.
- ▶ The rule covers both verbal information and treatment records
- ▶ There are exceptions to the rule, where certain, specific people or entities may access information and/or records for certain purposes without written consent

- ▶ The standard against which disclosures of confidential information are measured
- ▶ May only disclose information which the received needs to know in order to perform their duties
- ▶ Only exceptions are where the statute specifies information a particular source is entitled to or when the individual gives informed written consent for a particular disclosure

## Need to Know Standard

# Duty to Warn Exception

- ▶ Mental Health Professionals might be liable if they fail to take action that is reasonably necessary to prevent an individual from harm to self or to the public at large
- ▶ The professional must determine that the risk is reasonably foreseeable that a duty arises to violate confidentiality to protect potential (or actual) victims

- ▶ Individual access during treatment
  - ▶ Must have access at any time records of medication and health related treatments
  - ▶ During treatment, the Director may restrict access to other treatment records if it is determined that allowing access is disadvantages.
- ▶ Individual access after discharge
  - ▶ Has the right to the complete record of medications and medical treatments, copy of discharge summary and may request copy of all treatment records
    - ▶ Records can be modified to protect confidentiality of other clients or the names, though not the information.
    - ▶ Request must be processed within 5 working days
    - ▶ A reasonable and uniform charge may be assessed
    - ▶ Must be notified at time of discharge the post-discharge right to access records
    - ▶ Each time written information is released from the treatment record it should be noted in the record and specify the name of the person to whom information released, purpose of the release and date of release

## Access to Treatment Information/Records

# Access to Records Cont'd

- ▶ Release of records after death
  - ▶ Consent given by the executor, administrator or other court-appointed personal representative of the estate.
  - ▶ If no personal representative was appointed, spouse or domestic partner can consent
  - ▶ If no spouse or domestic partner, a responsible member of the deceased patient's family can consent to release of treatment records.

- ▶ Correction of information in treatment records
  - ▶ The individual or guardian can challenge factual information in records released to them.
  - ▶ In the case of a minor, their parent, guardian or person in the place of a parent can make the challenge
  - ▶ An attorney representing any of the above people can make a challenge also.
  - ▶ Factual information can be challenged based on accuracy, completeness, timeliness, or relevance. Statements which render a diagnosis are judgments , not statement of fact, an cannot be challenged.
  - ▶ The request for the correction must be in writing and must specify the information to be corrected and reason for correction.
  - ▶ The request must be granted or denied within 30 days by the director of the facility or the program director or secretary depending on who has custody of the record.
  - ▶ The request becomes part of the treatment record and any release of the challenged information must include a copy of the change request.
  - ▶ If request is granted, the treatment record must be corrected immediately and notice of correction sent to the person who filed the request. Incorrect information must be marked through and specified as incorrect
  - ▶ If the request is denied, it must be in writing explaining reasons for denial, must notify the requestor that they have a right to insert a statement in the record correcting or amending the disputed information.

# Access to Records Cont'd

# Access to Records Cont'd

- ▶ Informed Consent must be in writing and must be voluntarily given by an individual who is “substantially able to understand all the information specified on consent form”
- ▶ The form must contain
  - ▶ Name of the individual, agency or organization to which disclosure is to be made
  - ▶ The name of the person whose treatment record is being disclosed
  - ▶ The purpose of the disclosure
  - ▶ The specific type of information to be disclosed
  - ▶ The time period during which consent is effective
  - ▶ The date on which consent is signed
  - ▶ The signature of individual or persona legally authorized to give consent on behalf of the individual



- ▶ Minors consent for disclosure of information
  - ▶ Parent, guardian or person in place of minor can consent to release of confidential information in court and treatment records
  - ▶ Minors who are 14 years and older can consent to release of information without the consent of their parent, guardian or person in place of a parent, as long as they are capable of providing informed written consent.
- ▶ Minors treatment for drug and alcohol abuse
  - ▶ Can only be released with the consent of both minor and their parent, guardian or person in place of parent
  - ▶ Exception that the outpatient or detoxification services information can be disclosed with only the minor's consent as long as the minor is at least 12 years old.

## Access to Records Cont'd

# Access to Records Cont'd

- ▶ AODA Records have special federal rules that supersede state law and are often much more stringent.
- ▶ Apply to any program that specializes in alcohol and drug abuse, diagnosis, treatment or referral for treatment and which is federally assisted directly or indirectly
- ▶ Federal regulations allow disclosure without consent in very limited circumstances
  - ▶ Emergency medical emergency
  - ▶ Qualified research
  - ▶ Audit or program evaluation
- ▶ Federal regulations do not apply
  - ▶ Reporting under state laws of suspected child abuse
  - ▶ Danger of self and others
  - ▶ Communication within a program or between programs

- ▶ All of the below acts listed below may cause the individual to be fined up to \$25000 or imprisonment for up to 9 months or both.
  - ▶ Anyone who falsifies a treatment record, conceals or withholds a treatment record with intent to prevent release to the individual, guardian or persons with informed written consent with the intent to prevent or obstruct an investigation or prosecution
  - ▶ Requests or obtains confidential information under false pretense
  - ▶ Disclosed confidential information with knowledge that the disclosure is unlawful and not reasonably necessary to protect another from harm

## Access to Records Cont'd

# Large Group Exercise

What ways can you see  
confidentiality being  
breached accidentally?

# Resources

A list of MHRO by county

<http://www.dhs.Wisconsin.gov/clientrights/minors.htm>

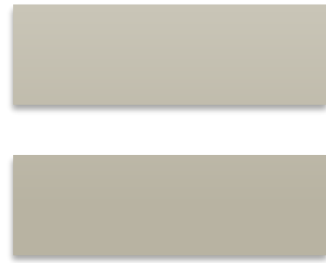
Client Rights Office

[www.dhs.Wisconsin.gov](http://www.dhs.Wisconsin.gov)

Questions?



**Thank  
you for  
your  
time**



**The End!**

