

## SECTION B: CONFIDENTIALITY, PRIVILEGED COMMUNICATION, AND PRIVACY

### INTRODUCTION

CRCs/CCRCs recognize that trust is the cornerstone of the counseling relationship. CRCs/CCRCs aspire to earn the trust of current and prospective clients by creating an ongoing partnership, establishing and upholding appropriate boundaries, and maintaining confidentiality. CRCs/CCRCs communicate the legal and ethical parameters of confidentiality to their clients in a culturally competent manner. CRCs/CCRCs inform clients about confidentiality and privacy rights regarding disclosure of client information to outside entities (including employers and third-party payers).

### B.1. RESPECTING CLIENT RIGHTS

**a. RESPECT FOR PRIVACY.** CRCs/CCRCs respect the privacy rights of clients. CRCs/CCRCs solicit private information from clients only when it is beneficial to the rehabilitation counseling process. CRCs/CCRCs make reasonable efforts to ensure that methods of sharing or transmitting information are secure.

**b. RESPECT FOR CONFIDENTIALITY.** CRCs/CCRCs do not share confidential information without informed consent from clients or without sound legal or ethical justification. CRCs/CCRCs do not release confidential records without a signed authorization to release information, except as required by law or required by court order.

**c. MULTICULTURAL AND DIVERSITY CONSIDERATIONS.** CRCs/CCRCs develop and maintain awareness and sensitivity of the client's cultural meanings of confidentiality and privacy. CRCs/CCRCs hold ongoing discussions with clients as to how, when, and with whom information is to be shared.

**d. PERMISSION TO RECORD.** CRCs/CCRCs clarify the rationale for recording a session in a manner that is understandable and accessible to the client and obtain permission from clients prior to recording sessions through electronic or other means. Such recordings are destroyed after the timeframe specified by jurisdictional requirements. Even with a guardian's written consent, CRCs/CCRCs carefully consider the clinical and legal implications of recording a session without the assent of the client.

**e. CONSENT TO OBSERVE.** CRCs/CCRCs obtain consent from clients prior to observing sessions, reviewing session transcripts, and/or listening to or viewing recordings of sessions with supervisors, faculty, interns, peers, or others within the training environment.

**f. DISCLOSURE TO EMPLOYERS.** CRCs/CCRCs obtain written consent from the client before disclosing relevant information to prospective and current employers. CRCs/CCRCs educate clients, employers, and others about confidentiality and privacy rights regarding disclosure. When engaged in job placement or retention services (e.g., coordinating accommodations, training staff, developing natural supports), CRCs/CCRCs respect clients' privacy rights by providing only necessary job-relevant information about the person with the disability to parties that have a need to know.

**g. EXPLANATION OF LIMITATIONS.** At initiation and as needed throughout the counseling process, CRCs/CCRCs inform clients of the limitations of confidentiality and seek to identify foreseeable situations in which confidentiality must be breached.

### B.2. EXCEPTIONS

**a. SERIOUS OR FORESEEABLE HARM AND LEGAL REQUIREMENTS.** The general requirement that CRCs/CCRCs keep information confidential does not apply when disclosure is required to protect clients or identified third parties from serious and foreseeable harm or when legal requirements demand that confidential information must be revealed. CRCs/CCRCs assess the risk of harm to the client or others (e.g., suicidal or homicidal ideation/intent/plan), prior to breaking confidentiality. CRCs/CCRCs must be

aware of and adhere to standards and laws that govern confidentiality. CRCs/CCRCs are bound by the principles of duty to warn and mandated reporting. CRCs/CCRCs utilize supervision, ethical decision-making models, and consultation with other professionals when in doubt as to the validity of an exception.

**b. COMMUNICABLE, LIFE-THREATENING DISEASES.** When clients disclose that they have been diagnosed with a communicable and potentially life-threatening disease, CRCs/CCRCs may be justified in disclosing information to an identifiable third party without consent if they are known to be at demonstrable and high risk of contracting the disease. Prior to making a disclosure, CRCs/CCRCs confirm the diagnosis and assess the intent of clients to inform the third parties about the disease or to engage in any behaviors that may be harmful to identifiable third parties. CRCs/CCRCs are expected to be aware of and adhere to standards and laws concerning disclosure about disease status and seek consultation as needed.

**c. COURT-ORDERED DISCLOSURE.** When subpoenaed by a judge or served a court-order to release confidential or privileged information, CRCs/CCRCs understand that subpoenas are part of the court's legal process and comply with the subpoena or court order. CRCs/CCRCs inform their clients of the subpoena or order and attempt to minimize potential negative impact from the release of information on the client-counselor relationship. If the subpoena is from someone other than a judge (e.g., attorney representative in a legal matter), CRCs/CCRCs inform clients and assess potential harm to clients or the counseling relationship before releasing the information. CRCs/CCRCs are responsible to ensure they have the appropriately signed client release forms and only share appropriately requested information. When in doubt to the appropriate response to a subpoena, CRCs/CCRCs consult with appropriate legal and ethical authorities. When release of raw assessment data is requested, refer to Standard H.2.b.

**d. MINIMAL DISCLOSURE.** When circumstances require the disclosure of confidential information, CRCs/CCRCs clarify the nature of information being requested and ensure only required information is disclosed. Following disclosure of confidential information, CRCs/CCRCs work to preserve the counseling relationship.

### **B.3. INFORMATION SHARED WITH OTHERS**

**a. WORK ENVIRONMENT.** CRCs/CCRCs avoid casual conversation about clients in the work environment to protect privacy and confidentiality of clients' information and records are maintained by employees, supervisees, students, clerical assistants, and volunteers.

**b. INTERDISCIPLINARY TEAMS.** When services provided by CRCs/CCRCs to clients involve the sharing of their information among team members, clients are advised of this fact during the professional disclosure process and are informed of the team's existence and composition.

**c. OTHER SERVICE PROVIDERS.** When CRCs/CCRCs learn that clients have an ongoing professional relationship with another CRC/CCRC-treating professional or community partners from another agency, they obtain a signed authorization prior to releasing confidential information. File review, second-opinion services and other indirect services are not considered an ongoing professional relationship.

**d. CLIENT ASSISTANTS.** Clients have the right to decide who can be present as client assistants (e.g., interpreter, personal care assistant, advocates). When clients choose to have assistants present, clients are informed that CRCs/CCRCs cannot guarantee that assistants will maintain confidentiality. CRCs/CCRCs impress upon assistants the importance that CRCs/CCRCs discuss the concern with the client. If the concern is not resolved, CRCs/CCRCs may consider termination and referral.

**e. CONFIDENTIAL SETTINGS.** CRCs/CCRCs ensure client privacy when discussing confidential information, consider limits to confidentiality, and only discuss confidential information in settings in which they can reasonably ensure client privacy.

**f. THIRD-PARTY PAYERS.** CRCs/CCRCs disclose information to third-party payers only when clients have authorized such disclosure, unless otherwise required by law.

**g. DECEASED CLIENTS.** CRCs/CCRCs protect the confidentiality of deceased clients as consistent with laws, organizational policies, and documented preferences of clients.

**h. TRANSMITTING CONFIDENTIAL INFORMATION.** CRCs/CCRCs take necessary precautions to ensure client confidentiality of information transmitted electronically when using a computer, e-mail, fax, telephone, text message, voicemail, answering machines, or any other virtual or electronic means. See Section K.3. for additional guidance.

**i. DISCLOSURE TO REFERRAL SOURCES.** CRCs/CCRCs adhere to appropriate disclosure of confidential information to referral sources and other professionals providing services on the same case. CRCs/CCRCs do not intentionally withhold or omit information that would cause the facts to be misinterpreted or distorted.

#### **B.4. GROUPS AND FAMILIES**

**a. GROUP WORK.** In group work, whether in-person or using electronic formats, CRCs/CCRCs assist members in developing individual goals and respect group members as equal partners in the group experience. CRCs/CCRCs state their expectation that all members maintain confidentiality for each individual and the group. CRCs/CCRCs also advise group members of the limitations of confidentiality and that confidentiality by other group members cannot be guaranteed.

**b. COUNSELING COUPLES AND FAMILY.** In couples and family counseling, CRCs/CCRCs clearly define who the clients are and discuss expectations and limitations of confidentiality. CRCs/CCRCs seek agreement concerning each individual's right to confidentiality and document in writing such agreements among all involved parties having the capacity to give consent. CRCs/CCRCs clearly define whether they share or do not share information with family members that is privately and/or individually communicated to CRCs/CCRCs. When engaging in couples and family counseling, CRCs/CCRCs practice only within the boundaries of their competence, as indicated in Standard E.1.a.

#### **B.5. RESPONSIBILITY TO CLIENTS LACKING CAPACITY TO CONSENT**

**a. RESPONSIBILITY TO CLIENTS.** When counseling minors or persons who are unable to give consent, voluntary assent is sought. CRCs/CCRCs protect the confidentiality of information received in the counseling relationship, in any format, as specified by law, written policies, and applicable ethical standards.

**b. RESPONSIBILITY TO LEGAL GUARDIANS AND PARENTS.** CRCs/CCRCs inform legal guardians, including parents who are legal guardians, about the role of CRCs/CCRCs and the confidential nature of the services provided, as consistent with current legal and custodial arrangements. CRCs/CCRCs are sensitive to the diversity of families and respect the inherent rights and responsibilities of parents/guardians regarding the welfare of their children/dependents according to the law. CRCs/CCRCs work to establish, as appropriate, collaborative relationships with legal guardians to best serve clients.

**c. RELEASE OF CONFIDENTIAL INFORMATION.** When working with minors or persons who lack the capacity to give voluntary informed consent to the release of confidential information, CRCs/CCRCs obtain written permission from legal guardians or legal power of attorney to disclose the information. In cases where there is no legal guardian or legal power of attorney, CRCs/CCRCs engage in an ethical decision-making process to determine appropriate action. In such instances, CRCs/CCRCs inform clients consistent with their level of understanding and take culturally appropriate measures to safeguard client confidentiality.

#### **B.6. RECORDS AND DOCUMENTATION**

**a. REQUIREMENT OF RECORDS AND DOCUMENTATION.** CRCs/CCRCs include sufficient and timely documentation in the records of their clients to facilitate the delivery and continuity of needed services. CRCs/CCRCs ensure that documentation in records accurately reflects progress and services provided to clients. If errors are made in records, CRCs/CCRCs take steps to properly note the correction of such errors according to organizational policies.

**b. CONFIDENTIALITY OF RECORDS AND DOCUMENTATION.** CRCs/CCRCs make reasonable efforts to ensure that records and documentation, in any format, are kept in a secure location and that only authorized persons have access to the records.

**c. CLIENT ACCESS.** CRCs/CCRCs provide reasonable access to copies of records, including billing records, when requested by clients or their legal representatives, unless prohibited by law. In situations involving multiple clients, CRCs/CCRCs provide individual clients with only those parts of records that relate directly to them and do not include confidential information related to any other client. When records may be sensitive, confusing, or detrimental to clients, CRCs/CCRCs have a responsibility to exercise judgment regarding the timing and manner in which the information is shared and to educate clients regarding such information. When CRCs/CCRCs are in possession of records from other sources, they refer clients back to the original sources to obtain copies of those records.

**d. DISCLOSURE OR TRANSFER.** Unless exceptions to confidentiality exist, CRCs/CCRCs obtain written permission from clients to disclose or transfer records to legitimate third parties who have an identified role in the case. CRCs/CCRCs make reasonable efforts to ensure that recipients of records are sensitive to their confidential nature.

**e. STORAGE AND DISPOSAL AFTER TERMINATION.** CRCs/CCRCs store records of their clients following termination of services to ensure reasonable future access. CRCs/CCRCs maintain records in accordance with organizational policies and laws, including licensure laws and policies governing records. CRCs/CCRCs dispose of records and other sensitive materials in a manner that protects client confidentiality. CRCs/CCRCs apply careful discretion and deliberation before destroying records that may be needed by a court of law (e.g., notes on child abuse, suicide, sexual harassment, violence).

**f. REASONABLE PRECAUTIONS.** CRCs/CCRCs take reasonable precautions to protect the confidentiality of clients in the event of disaster or termination of practice, incapacity, or death of the CRC/CCRC. CRCs/CCRCs appoint a records custodian when appropriate.

## **B.7. CASE CONSULTATION**

**a. DISCLOSURE OF CONFIDENTIAL INFORMATION.** When consulting with colleagues outside the rehabilitation team, CRCs/CCRCs do not disclose confidential information that reasonably could lead to the identification of clients or other persons or organizations with whom they have a confidential relationship, unless they have obtained the prior written consent of the persons or organizations or when the disclosure cannot be avoided. They disclose information only to the extent necessary to achieve the purpose of the consultation.

**b. RESPECT FOR PRIVACY.** CRCs/CCRCs share information in a consulting relationship for professional purposes only with persons directly involved with the case. Written and oral reports presented by CRCs/CCRCs contain only data germane to the purpose of the consultation, and every effort is made to protect the identity of clients and to avoid undue invasion of privacy.

**c. CONFIDENTIALITY IN CONSULTATION.** CRCs/CCRCs seeking and/or providing consultation obtain agreement among the parties involved concerning each individual's right to confidentiality, the obligation of each individual to preserve confidential information, and the limits of confidentiality of information shared by others.