

ETHICAL DOCUMENTATION OUTLINE

I. ETHICAL DOCUMENTATION: PURPOSE AND IMPORTANCE

- Understand the purpose and importance of ethically based documentation of service to clients.
- Increase awareness of ethical standards and principles that professionals must take into consideration regarding documentation.
- Heighten awareness of the nature of ethical issues related to documentation.

II. CODE OF ETHICS/CODE OF CONDUCT STANDARDS & PRINCIPLES: GUIDELINES FOR PRACTICE

- Know and understand the underlying principles upon which the professional Code of Conduct and the Code of Ethics related to documentation issues are based.
- Learn how to use these ethical principles to guide decision making regarding documentation.
- Apply NASW Code of Ethics and Ohio Counselor, Social Worker and Marriage and Family Therapist Board Code of Ethical Practice and Professional Conduct standards and principles in the documentation process.
- Learn to establish a framework for documentation based upon the aforementioned Codes of Ethics and Conduct. Learn to document within that ethical framework.
- Learn to integrate ethical standards into the process of social work practice documentation

A) SECURITY/CONFIDENTIALITY OF TRANSFERRED/ DISPOSED RECORDS

Social workers should make every effort to ensure confidentiality of client records from the commencement of service, during the process of transfer, and following termination of service. Case records should be stored in a secure location at all times allowing access only to those who authorized.

NASW CODE OF ETHICS, PRIVACY AND CONFIDENTIALITY: STANDARD 1.07(n): "SOCIAL WORKERS SHOULD TRANSFER OR DISPOSE OF CLIENTS' RECORDS IN A MANNER THAT PROTECTS CLIENTS' CONFIDENTIALITY AND IS CONSISTENT WITH STATE STATUTES GOVERNING RECORDS AND SOCIAL WORK LICENSURE."

CSWMFT RULE 4757-5-09 A: RECORD KEEPING REQUIREMENTS: "FOR EACH CLIENT/CONSUMER OF SERVICES, A LICENSEE OR REGISTRANT SHALL KEEP RECORDS OF THE DATES OF COUNSELING, SOCIAL WORK, OR MARRIAGE AND FAMILY THERAPY SERVICES, TERMINATION, AND BILLING INFORMATION. RECORDS HELD OR OWNED BY GOVERNMENT AGENCIES OR EDUCATIONAL INSTITUTIONS ARE NOT SUBJECT TO THIS REQUIREMENT. LICENSEES SHALL KEEP ALL RECORDS IN A SECURE LOCATION AND SHALL ALLOW ONLY AUTHORIZED PERSONS ACCESS TO RECORDS."

CSWMFT RULE 4757 5-09 I: "When counselors, social workers, or marriage and family therapists leave a practice, they shall follow a prepared plan for transfer of clients and files. Counselors, social workers or marriage and family therapists shall prepare and disseminate to an identified colleague or "records custodian" a plan for

the transfer of clients and files in the case of their incapacitation, death, or termination of practice .Each licensee responsible for client files outside of an agency shall report to the board on the biennial registration(renewal) form the name, address, and telephone number or a licensee or other appropriate person knowledgeable about transfer and custody of records and responsibility for records in the event of the licensee's absence, incapacitation or death. Licensees at agencies that close can reference division (A14) of section 5122.31 of the Revised Code for the proper transfer of records."

B) CLIENT ACCESS TO RECORDS

Social workers are obligated to provide clients with reasonable access to their records. Social workers should explore with the client the reasons and rationale for seeking access to the record and document those reasons and rationale in the client record. Social workers should determine if there is risk of serious harm or misunderstanding for the client in accessing records and provide assistance with interpretation of the records in such circumstances. The federal Freedom of Information Act (1996) and similar laws in all states provide for client access to records maintained by the government, including public social work records.

If a case record contains information regarding individuals other than the client, social workers must maintain the confidentiality of those individuals. Those individuals must give their consent to disclose information if the client is given access to the case record.

NASW CODE OF ETHICS, ACCESS TO RECORDS: STANDARD 1.08(a)"SOCIAL WORKERS SHOULD PROVIDE CLIENTS WITH REASONABLE ACCESS TO RECORDS CONCERNING THE CLIENTS.SOCIAL WORKERS WHO ARE CONCERNED THAT CLIENTS' ACCESS TO THEIR RECORDS COULD CAUSE SERIOUS MISUNDERSTANDING OR HARM TO THE CLIENT SHOULD PROVIDE ASSISTANCE IN INTERPRETING THE RECORDS AND CONSULTATION WITH THE CLIENT REGARDING RECORDS. SOCIAL WORKERS SHOULD LIMIT CLIENT'S ACCESS TO THEIR RECORDS, OR PORTIONS OF THEIR RECORDS, ONLY IN EXCEPTIONAL CIRCUMSTANCES WHEN THERE IS COMPELLING EVIDENCE THAT SUCH ACCESS WOULD CAUSE SERIOUS HARM TO THE CLIENT. BOTH CLIENTS' REQUESTS AND THE RATIONALE FOR WITHHOLDING SOME OR ALL OF THE RECORD SHOULD BE DOCUMENTED IN THE CLIENTS' FILES."

NASW CODE OF ETHICS, ACCESS TO RECORDS: STANDARD 1.08 (b) "WHEN PROVIDING CLIENTS WITH ACCESS TO THEIR RECORDS, SOCIAL WORKERS SHOULD TAKE STEPS TO PROTECT THE CONFIDENTIALITY OF OTHER INDIVIDUALS IDENTIFIED OR DISCUSSED IN SUCH RECORDS."

CSMFT RULE 4757-5-09 F: "Counselors, social workers and marriage and family therapists shall provide clients with reasonable access to records concerning the client. Counselors, social workers and marriage and family therapists who are concerned that client access to their records could cause serious misunderstanding or harm to the client shall provide assistance in interpreting the records and consultation with the client regarding the records. Licensees should limit clients' access to their records, or portions of their records, only in exceptional circumstances when there is compelling evidence that such access to their records would cause serious harm to the client. Both the clients' requests and the rationale for withholding some or all of the records shall take steps to protect the confidentiality of other individuals identified or discussed in such records."

CSMFT RULE 4757 5-09 H: "Counselors, social workers or marriage and family therapists shall be aware of and adhere to divisions (H)(1)and (H)(2) of section 3109.051 of the Revised Code. That section in part states: ' a parent of a child who is not

the residential parent of the child is entitled to access , under the same terms and conditions under which access is provided to the residential parent, to any record that is related to the child and to which the residential parent of the child is legally provided access...unless the court determines that it would not be in the best interest of the child for the parent who is not the residential parent to have access to the records under those same terms and conditions...any keeper of a record who knowingly fails to comply with the order or division(H) of this section is in contempt of court.’ A complete reading and understanding of this section is mandatory for any counselor, social worker, or marriage and family therapist providing services for children.”

C) ACCURACY

It is important to document the purpose, goals, plans, services, interventions, and referrals, offered and provided to clients. Assessments, evaluations, recommendations and circumstances of termination should also be documented in the case record. Consultations with supervisors and other professionals and rationale for case related decisions should be documented as well. Case records should include informed consent and release of information documents. All information relevant to client contact should be stated in clear, accurate terms.

False, inaccurate or misleading information in a client record is unethical and may be potentially harmful to the client and pose a liability risk to the social worker. It is unethical to alter case notes after the fact. If necessary, add a new note with the current date indicating that in review the past entry was not documented accurately and the then accurate information should then be clearly stated.

NASW CODE OF ETHICS, CLIENT RECORDS: STANDARD 3.04 (a) *“SOCIAL WORKERS SHOULD TAKE REASONABLE STEPS TO ENSURE THAT DOCUMENTATION IN RECORDS IS ACCURATE AND REFLECTS SERVICES PROVIDED.”*

CSWMFT RULE 4757 5-09 B: *“Counselors, social workers and marriage and family therapists shall take reasonable steps to ensure that documentation in records is accurate and reflects the services provided. Dates reflected in case notes shall be accurate with respect to dates of service and the dates the case notes were written. Clinical records shall include, but not be limited to appropriate diagnosis, if any; individual service plans; intake assessments; informed consent documents; and releases of information documents.”*

CSWMFT RULE 4757 5-09 G: *“A counselor, social worker, or marriage family therapists shall not condone, partake, or assist in billing irregularities or fraud with respect to insurance companies or direct billing”*

D) SUFFICIENT AND TIMELY

In an effort to ensure continuity of service, it is imperative that client contact be documented in a timely, thorough and accurate manner. Service delivery that is provided within an agency when clients are transferred from one staff member to another or when clients are referred out of the agency to collaborating agencies, timely thorough and accurate documentation is required for optimal service delivery. In addition, accurate and timely records are required by insurers, funding agencies,

audit review staff, and courts. Documentation of significant aspects of client contact is also critical to protecting the social worker in the event of a law suit or ethics complaint.

Client contact documentation should include: social history, assessment, treatment plans, intervention strategies, dates and times of contacts, methods of evaluation of progress, reasons for termination, documentation of informed consent and release of information signatures, contacts with all third parties, consultation with collaborating professionals, explanation of social worker's reasoning regarding decisions, recommendations, interventions and referrals and documentation of any critical incidents.

Documentation should be completed as soon as possible after contact so as to ensure accuracy and to maintain up to date information in the record in the event of an emergency or the social workers' absence or incapacitation that would require another professional to intervene. As mentioned previously, altering case records after the fact is unethical.

NASW CODE OF ETHICS, CLIENT RECORDS: STANDARD 3.04 (b) "SOCIAL WORKERS SHOULD INCLUDE SUFFICIENT AND TIMELY DOCUMENTATION IN RECORDS TO FACILITATE THE DELIVERY OF SERVICES AND TO ENSURE CONTINUITY OF SERVICES TO PROVIDE TO CLIENTS IN THE FUTURE."

CSWMFT RULE 4757-5-09C STANDARDS OF ETHICAL PRACTICE AND PROFESSIONAL

CONDUCT:RECORD KEEPING: Counselors, social workers, and marriage and family therapists shall include sufficient and timely documentation in records to facilitate the delivery of services and to ensure continuity of services provided to clients in the future.

E) PRIVACY

In an effort to protect client privacy, social workers should be aware that information in the case record may eventually be reviewed by the client or other parties, including other social workers who may be required to intervene in the event of the assigned social worker's absence or unexpected lack of availability. In the event of court involvement, lawyers, law enforcement, judges, and jurors may have access to case records. In addition, other professional service providers, insurers or audit review staff may also review case records.

Social workers should only include relevant information that is directly related to the client's issues for the purpose of service provided. Case records should not include subjective or speculative observation, or any extraneous and irrelevant information. In the event that a case involves providing services to more than one individual, it may be in the best interest of all clients involved to create separate files for each of the individuals receiving service to assure privacy of all clients.

NASW CODE OF ETHICS, CLIENT RECORDS: STANDARD 3.04 (c) "SOCIAL WORKERS' DOCUMENTATION SHOULD PROTECT CLIENTS' PRIVACY TO THE EXTENT POSSIBLE AND APPROPRIATE AND SHOULD INCLUDE ONLY INFORMATION THAT IS DIRECTLY RELEVANT TO THE DELIVERY OF SERVICES."

CSWMFT RULE 4757-5-09 D: "Counselors, social workers and marriage and family therapists' documentation shall protect clients' privacy to the extent that it is possible and appropriate and shall include only information that is directly relevant to the delivery of services."

F) TERMINATION

Client records must be retained after termination, per state licensing regulations, to ensure that clients will have access to their records for a reasonable period of time for continuity of service in the future and in the event of future court proceedings in which the client may be involved. Insurance providers may also require records for review purposes.

Social workers should provide secure storage of records in the event that they may be unable to continue to provide service or the termination of their practice.

Reasonable efforts should be made to make records available to clients and future service providers for continuity of service.

NASW CODE OF ETHICS, CLIENT RECORDS: STANDARD 3.04 (d) "SOCIAL WORKERS SHOULD STORE RECORDS FOLLOWING TERMINATION OF SERVICES TO ENSURE REASONABLE FUTURE ACCESS. RECORDS SHOULD BE MAINTAINED FOR THE NUMBER OF YEARS REQUIRED BY STATE STATUTES OR RELEVANT CONTRACTS."

CSWMFT RULE 4757-5-09 E: "Counselors, social workers and marriage and family therapists shall store records following termination of services to ensure reasonable future access. Records should be maintained as required by this rule unless a longer retention period is required by statute or relevant contracts."

III. DOCUMENTATION PITFALLS

- **Take into consideration the potential harm to the client when documentation is inaccurate/incomplete/biased.**
 - **Quality of service may be compromised.**
 - **Continuity of service may be disrupted.**
 - **Collaborating service providers' understanding of the client may be misinterpreted.**
 - **Court interpretation of facts related to the client may be misinterpreted in the event of judicial proceedings.**
 - **Client may be at risk of liability if case information is inaccurate and, therefore, misinterpreted.**
 - **Client may be at risk of self harm if inaccurate information is represented in the record.**
 - **Client's relationships with other individuals related to the case may be imperiled.**
 - **Client confidentiality may be breached.**
 - **Client privacy may be violated.**
 - **Client's confidence in the integrity of the professional may be impacted.**
- **Be aware of the potential risk of professional liability related to documentation that is inaccurate/incomplete/biased.**
 - **Social worker may be at risk of liability due to allegations of malpractice, negligence, breach of confidentiality.**
 - **The social worker's employing agency or private practice may be at risk of liability.**
 - **Collaborating professionals, supervisors and consultants related to the client may be potentially liable.**
- **Document in a manner that is a clear, accurate and unbiased representation of the facts and will, if necessary, be "defensible" in court.**
 - **Document informed consent and release of information.**
 - **Document supervision, consultation and collaboration.**
 - **Document all decisions.**
 - **Document in a factual, accurate manner free of value judgments and subjective comments.**
- **Maintain an awareness of the potential risk of ethical violations that may result as in the event of inaccurate/incomplete/biased documentation. Social workers may be the subject of ethics violations allegations in the event of noncompliance with record/documentation standards related to:**
 - **Record Keeping Accuracy/Sufficiency/Timeliness**
 - **Privacy and Confidentiality**
 - **Client Access to Records**

IV. DISCERNMENT

- Social workers should heighten awareness as to how one's personal values may impact one's professional values/decisions related documentation. Social workers should make every effort to document client contact in accurate, complete and unbiased terms. Value judgments, reference to political or religious views, and derogatory language should not be included in documentation.
- Become familiar with the core social work professional virtue of discernment, "The ability to make judgments and make decisions without being unduly influenced by extraneous considerations, fears, personal attachments", and how it impacts the ethical decision making related to documentation. (*Social Work Values and Ethics, Third Edition*, Frederic Reamer, Columbia University Press, New York, 2006)

RESOURCES:

- *Ethical Standards in Social Work: A Review of the NASW Code of Ethics, 2nd Edition*, Frederic G. Reamer, NASW Press, Washington, D.C., 2006
- *The Social Work Ethics Casebook, Cases and Commentary*, Frederic G. Reamer, NASW Press, Washington, D. C. 2009
- *Social Work Values and Ethics, 3rd Edition*, Frederic G. Reamer, Columbia University Press, New York, 2006
- *Controversies in Social Work Ethics: Case Examples Current*, NASW Press, Washington, D.C.
- *Ohio Counselor, Social Worker, Marriage and Family Therapist Board, Rule 4757-5-09,10-18-09*
- *Ohio Revised Code 5122.31, Confidentiality*

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March 3, 2011