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NCBLPC Professional Brief

Content Area: Clients in Facilities

Brief Overview/Description:
Though the usual definition of inpatient includes anyone who spends one or more nights in a healthcare facility, for the purposes of this paper inpatients should be considered as those persons who reside in facilities. These facilities include hospitals, mental health institutions, assisted care centers, rehabilitation centers, halfway houses, detoxification centers, extended care facilities, nursing homes, personal or adult care facilities, eldercare facilities, or any other healthcare facility where people live for the purpose of receiving care or treatment or because they are physically or mentally ill, disabled, mentally disabled, chronically ill, handicapped, in need of supervision, neglected, or placed in state custody. Similarly to inpatients, inmates are persons who are being detained in or are sentenced to jails, prisons, correctional facilities, pretrial detention centers, juvenile detention centers, and all other penal institutions that may also be considered facilities.

Persons who are inpatients because of needs or incarcerated because of behavior have the same civil rights as anyone else, rights that are protected by the U.S. Constitution and sometimes additionally by state laws. Constitutional rights are more basic and more general than those on state "Prisoners' Rights" lists, but a few of the rights they guarantee are freedom from mental and physical abuse, freedom from inhuman conditions and sexual crimes, freedom from discrimination, and freedom to complain about prison conditions and treatment. NC§148-22 requires the Department of Corrections to provide for "humane treatment of prisoners" and other NC laws refer to a responsibility to provide “safe custody, safety, health or welfare of inmates.”

Many states, including North Carolina, have "Patients' Rights" laws; in North Carolina, these specifically cover inpatients in state operated mental health facilities, nursing homes, and adult care facilities but are implied in other laws. "Patients’ Rights" laws are sometimes more comprehensive than federal laws. Rights mentioned include being treated with consideration, respect, and recognition of personal dignity and individuality, receiving care, treatment and services which are adequate and appropriate, and being free of mental and physical abuse, neglect, and exploitation. The rights of inpatients are further protected by "Patient's Rights Under Medicare Conditions of Participation" and The Accreditation Commission for Health Care; these are not laws but do have economic clout.

Privacy rights and client confidentiality in institutions come from state laws and precedents set in federal courts. As a general principle, counseling standards of care in facilities should be the same as in all communities. LPCs' responsibilities in regard to informed consent, record-keeping, trust, confidentiality, dual relationships, etc., are the same as with the general public. The Code of Ethics and laws that apply to counseling inpatients and inmates are the same ethics and laws that apply in all work settings. Accordingly, the same situations that require a counselor to break confidentiality in any work setting or counseling relationship would apply in facilities, with some differences for prison environments.

With inpatient populations, there may be more situations that require disclosure than in an outpatient setting because some clients will be more vulnerable and less able to report abuse or neglect for themselves. With inmate populations, the definition of "risk of harm to self or others" is expanded to include a duty to protect these clients: dangerous situations may exist when there is a possibility of escape or where rules violations threaten the security of the prison, present a danger to others, or create disorder that could lead to danger. Medical record confidentiality in prison settings would also be different

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as records of inmates moving between facilities or in and out of medical settings would require sharing of information. In all facilities, disclosures would sometimes be required of staff behavior rather than client behavior, and involve reporting neglect, physical or sexual abuse by staff members, or danger of serious harm at the hands of staff.

ACA Code of Ethics expect LPCs to advocate for clients in key therapeutic ways (A.6.a., A. 6. b), but these ethical expectations have been codified into law in NC for vulnerable populations in institutions.

With both inpatient and inmate populations, LPCs should have Professional Disclosure Statements (PDS) that address limits of confidentiality specific to the facility work setting. These limits should be discussed and the PDS explained and signed before the counseling relationship begins. It should be discussed as often as it needs to be to keep the client aware of the LPC's responsibilities in regard to confidentiality.

Resources:
8th and 14th Amendments to the Constitution
42 U.S.C. § 1997 : US Code - Section 1997: Subchapter A-1 Institutionalized persons
10A NCAC, Chapter 11, Subchapter H; 10A NCAC Chapter 13, Subchapters A-O; 10A NCAC Chapter 14, Subchapters C, F, and J; 10A NCAC, Chapter 26 C and Chapter 27. Human Rights for Clients in State Facilities
10A NC Administrative Code 28A, 28B, 28C, 28D
§ 58-67-180. Confidentiality of medical information; peer review committees.
§ 131D-21. Adult Care Home Residents' Bill of Rights.
§ 131E-97. Confidentiality of patient information.
§ 131E-98. Inmate medical records (provide the Department of Correction with the medical records of inmates who receive medical treatment at the hospital.)
§ 131E-117. Declaration of patient's rights (nursing homes)
§ 131E-144.7. Confidentiality of home care clients' medical records
§ 131E-154.8. Confidentiality during inspections.
§ 148-19. Health services for prisoners
§ 143B-139.6. Confidentiality of records in Department of Health and Human Services
§ 148-22 Treatment programs and humane treatment
Emil R. Pinta, MD. OSU Department of Psychiatry, "Decisions to Breach Confidentiality When Prisoners Report Violations of Institutional Rules"

Key Legal Factors:
Mental health professionals from all disciplines who work in prisons are operating without specific ethical guidelines or laws about confidentiality in prisons - except in unambiguous life threatening emergencies. The APA Task Force report on treatment in jails and prisons says confidentiality can be broken when withholding information could result in the creation of disorder within the institution, but that is not NC law or part of the ACA Code of Ethics. Though there are no clear standards and there are frequent problematic situations in prisons, counselors must protect client confidentiality whenever possible and disclose when the law requires disclosure. Strategies to avert the need for disclosure would be the same strategies useful outside institutions - getting written client consent to disclose, having clear conversations about limits to confidentiality prior to initiating the counseling relationship, and when possible, letting inmates know when confidentiality must be broken.

Real Issues to Consider:
Counseling inpatients in facilities, especially state-run institutions, will have ethical, legal, and emotional challenges. Internal political dynamics, staff and funding constraints that compromise patient care, and corruption are encountered in large institutions. There will be opportunities to be a squeaky wheel and opportunities to be a whistle-blower. Knowing applicable laws and ethics will help LPCs differentiate between problems and needs that legally must be reported and those that need attention but do not require reporting.

In prisons, without written standards that specifically apply to inmates and confidentiality, counselors must rely on existing laws, the ACA Code of Ethics, and Professional Disclosure Statements that cover as many problematic scenarios as can be

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foreseen. Even with effective strategies that might avert the need for disclosure, a counselor in a prison is someday going to have to break confidentiality and risk damage to institutional trust. Balancing the needs of one person (therapeutic needs) against the needs of the many (safety needs of the institution) is difficult in any setting and maintaining balance with inmate clients is very difficult. Some counselors lean too far toward therapeutic needs and risk becoming allied with inmates against correctional officials. Others place so much value on security and safety that they are more like correctional officers than therapists.

Counselors also need to be aware that clients in facilities are in close communication. If disclosure is necessary in a community setting, the number of people who become aware of the disclosure is limited by how many people know the client and the situation. In a facility, many people are in communication and rumors abound. Extra consideration and deliberation needs to precede all decisions and behaviors that could impact inpatients' or inmates' trust in a counselor.

Catch 22:
The dilemma is the same as in all counseling relationships: disclosure of confidential information may be legally and ethically required but the client may lose trust in the counselor for disclosing. In that event, much of the therapeutic potential of the relationship could be lost. If a counselor chooses to act unethically, however, and fails to disclose as required by law, the integrity of the counselor is compromised and the counselor may experience significant distress as a result, ultimately affecting the counseling relationship as well.

Summary:
Working within institutions as a counselor can present significant challenges if counselors are not mindful of the laws that govern that work. Counselors must consider confidentiality concerns within the relationship with clients and how to serve the goals of the client and the goals of the institution and how to ethically and legally navigate those goals. If those goals appear to be in conflict, the counselor must determine the best course of action that allows them to operate ethically and legally. Some areas of specific focus for counseling within institutions and the legal considerations therein are as follows: client rights, confidentiality, institutional or correctional facility policies regarding provision of counseling services, disclosure requirements when working with prisoners, and duty to report guidelines. Seeking supervision both within and without institutions can be helpful, as can consultation with persons familiar with laws governing the provision of services within institutions.

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