

ELDER BENEFIT SPECIALIST CONFIDENTIALITY POLICY		
Policy #: 13-01;13-02	Date of Approval: 6-24-2016	Date Policy is Effective: 6-24-2016
Responsible Person: <i>Regional and Office Managers</i>		Author — <i>Becky Dahl, Regional Manager</i>
Reference: Chapter 9.11.6 of the <i>Manual of Policies and Procedures and Technical Assistance for Wisconsin Aging Network</i>		Approved By: ADRC of Eagle Country Governing Board
Cross Reference: Confidentiality Policy		

Policy:

9.11.6 Program Integrity: Confidentiality

9.11.6.1 Basis

The confidentiality standards for Wisconsin's EBS program derive from two primary sources: the Older Americans Act (OAA) and Wisconsin's (Supreme Court) Rules of Professional Conduct for Attorneys. The standards in the OAA are based on the belief that older persons may be hesitant to seek legal assistance if others would have access to their identifying information. This is clearly stated in the legislative history to the OAA:

"..., The Committee understands that some legal assistance providers may be reluctant to contract with area agencies without this assurance. Many older individuals might be hesitant to ask for the legal advice and counsel they need if they thought others would have access to their identifying information. This assurance of confidentiality makes it easier for older persons to seek the assistance they need to resolve their legal problems, and makes it easier for legal assistance providers to serve them in good faith."

(REP. No. 97, 100th Cong., 1st Sess. 122 (1987))

The standards set forth in the Wisconsin Supreme Court's rules are based both on the ethical duty to maintain client confidences and on the principle of "attorney-client privilege," which protects attorneys and clients from being compelled to testify about communication between the attorney and client. The underlying premise is that effective assistance and representation require clients to disclose financial, medical and personal information, and that without the guarantee of confidentiality they will be reluctant to fully do so.

9.11.6.2 General Standard of Confidentiality

An EBS or any person appointed to engage in EBS duties may not reveal to anyone information relating to representation of a client, unless the client consents after consultation. Waivers of confidentiality must be knowing and voluntary and limited in scope as the client prefers.

9.11.6.3 Exceptions to the Standard of Confidentiality

9.11.6.3.1 Communication with Supervising Attorney

The principle of attorney-client privilege applies to all communication between supervising attorneys and elderly benefit specialists relating to benefit specialist cases. This means that an EBS may share all client information with his or her supervising attorney without violating the confidentiality standards.

9.11.6.3.2 Disclosure to Persons Necessary to Provide Services to Clients

It is permissible to disclose client information to a person, such as aging unit support staff or ADRC support staff or volunteers, for the purpose of providing client services. For example, an EBS may have a support person assist with entering data in the reporting system, or have a volunteer assist with a screening for benefit eligibility. These individuals should only have access to client information to the extent it is necessary to perform their employment/volunteer functions. Any aging-unit employee whose services are used to support the EBS's representation of clients is subject to the same confidentiality standard as the EBS.

9.11.6.3.3 Disclosure Implicit in the Representation

There are situations in which, by the very nature of the services the EBS is providing, it will be implicit that the EBS is authorized to disclose client information. For example, if the client asks the EBS to negotiate the repayment of a past medical debt on his or her behalf, it is implicit that the EBS will be discussing the client's matters with the creditor. As another example, if the client requests the elderly benefit specialist's services in a social security disability appeal, it is implicit that the EBS will be disclosing information about the client's personal, educational, work and medical histories with Social Security Administration personnel.

9.11.6.3.4 Disclosures with Specific Permission from the Client

Whenever a client authorizes the EBS to communicate with someone about his or her case, the EBS may do so without violating confidentiality rules. The best course of action is to obtain a signed release from the client for each person or agency with which the EBS has permission to talk. If time does not permit the EBS to obtain a signed release, the EBS shall document in the client's file that the client has given permission to speak to specific persons or agencies.

9.11.6.3.5 Criminal Activity

It is permissible to disclose a client's intended criminal or fraudulent activity if said activity is likely to result in death, substantial bodily harm, or substantial injury to the financial interest or property of another. This should be discussed immediately with the elderly benefit specialist's supervising attorney before disclosure. However, if the EBS witnesses a crime or believes one is imminent, they shall contact the police by calling 911.

9.11.6.4 Standard of Confidentiality for EBS Program, Applicable to Aging Units or ADRC's

Aging unit or ADRC staff, including the director, is not excepted from the confidentiality standard except as one or more of the exceptions in Section 9.11.6.3 above apply. However, when the EBS makes a home visit they shall, if requested by the aging unit or ADRC director, leave written information regarding where they can be contacted (name, address, and phone number). This information is only for contacting the EBS in an emergency and may not be used for any other purpose. Clients' right to confidentiality is not waived by providing this information.

If questions or conflicts arise regarding the applicability of confidentiality standards to aging unit staff, the EBS shall notify the supervising attorney and the situation shall be discussed between the attorney and the aging unit director.

9.11.6.5 Standard of Confidentiality as Applied to Reporting of Elder Abuse

While changes in Wisconsin law have made attorneys and persons working under them direct supervisors or permissive reporters, an EBS may not report suspected elder abuse or neglect of their client if the client is competent and has not consented to the report, unless required by law or after obtaining the permission of the legal-assistance provider. However, the EBS can and should provide information to the client that may encourage the client to accept services or other intervention. If the EBS believes that the client's competence is questionable, the EBS shall contact the supervising attorney to discuss the situation.

9.11.6.6 Standard of Confidentiality as Applied to Clients Who Violate Benefit-Program Rules

Violation of benefit-program rules by a client is not an exception to the confidentiality standard. Elderly benefit specialists may not report such violations to the agency administering the benefit program. In such circumstances the EBS shall immediately contact the supervisory attorney for direction before doing additional work for the client on the issue. If the

violation is intentional, the EBS shall follow the policy specified in Section 9.11.9 (5) of this chapter.

References

1. EBS and DBS Program Guidelines

- EBS confidentiality policy is outlined in Chapter 9.11.6 of the *Manual of Policies and Procedures and Technical Assistance for Wisconsin Aging Network*:
<http://www.dhs.wisconsin.gov/publications/P2/p23203.pdf>

History:

Reviewed/Approved by
Annual Review Dates: