

NAPSA Annual Conference 2017

Confidentiality: Path to better outcomes or detour
along the road to elder justice?

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Our journey today

- Roots of confidentiality
- Legal, ethical, and organizational basis for confidentiality
- What does breaking confidentiality look like?
- Tools for decision making

The road to elder justice



Why talk about confidentiality?

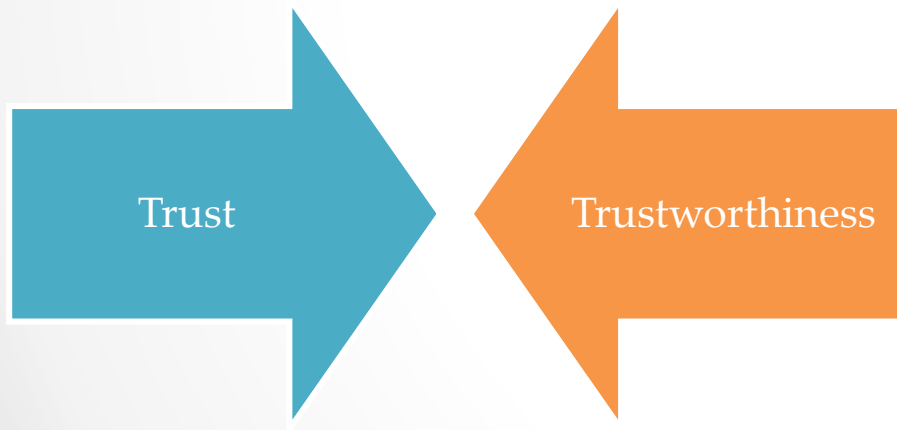


Trust, APS, and confidentiality



Building trust is complicated, especially if you have been vulnerable

- For more on trust, an interesting person to follow is Brene Brown.
- Use the BRAVING tool in staff trainings



B.R.A.V.I.N.G: The *Rising Strong* Guide to Cultivating Trust by Brené Brown

Boundaries
Reliability
Accountability
Vault
Integrity
Non-judgement
Generosity

www.becomingwhoyouare.net

<http://www.becomingwhoyouare.net/how-to-cultivate-self-trust-advice-from-rising-strong-by-brene-brown/>

Trustworthiness accountability

- Legal
- Ethical
- Organizational

Intersecting obligations



Legal – NJ APS

- From the Adult Protective Services Act (APS Law)
- **Confidentiality of records, communications**
- All records and communications pertaining to any report, evaluation, or service provided pursuant to this act are confidential.
- All third party information, together with the identities of the reporters, witnesses and the adults allegedly in need of protective services are confidential, except disclosures which may be necessary for the commissioner or the county adult protective services provider to perform his duties and to support any findings that may result from the evaluation of a report.
- L. 1993, c. 249, § 15.

Legal – NJ APS

- 5:72-2.8 Confidentiality
- All Division staff, aides, volunteers and students shall maintain confidentiality in all matters pertaining to the Adult Protective Services program. Information may be released only when:
 - The disclosure of information is necessary for the Division or the adult protective services provider to perform its responsibilities as set forth in this chapter; or
 - A court of competent jurisdiction directs disclosure.

Ethical – social work

- Dignity and Worth of the Person – We want to support the right to self-determination.
- Importance of Human Relationship – Breaching a client's confidentiality may impact their trust moving forward.
- Integrity – We must behave in a trustworthy manner, not only with our clients, but with their families and the communities we serve.

Ethical – social work

- (c) Social workers should protect the confidentiality of all information obtained in the course of professional service, except for compelling professional reasons.
- The general expectation that social workers will keep information confidential does not apply when disclosure is necessary to prevent serious, foreseeable, and imminent **harm** to a client or other identifiable person.

- (b) Social workers may disclose confidential information when appropriate with valid consent from a client or a person legally authorized to consent on behalf of a client.
- (i) Social workers should not discuss confidential information in any setting unless privacy can be ensured.

Ethical – social work continued

- **In all instances, social workers should disclose the least amount of confidential information necessary to achieve the desired purpose; only information that is directly relevant to the purpose for which the disclosure is made should be revealed.**

What team members have professional ethics that must be considered?

- Medical and health professionals
- Law enforcement, judicial or legal professionals
- Mental and behavioral health professionals
- Financial professionals



Who are the team members who *might* need to know some of this confidential information?

Professionals including:

- Educational
- Financial
- Law enforcement, judicial, or legal
- Medical or health
- Mental and behavioral health
- Social services
- Other (landlords, housing authorities, clergy, etc)

Who are the other team members who might need to be considered?

- Substitute decision maker
- In-home caregiver
- Nursing home staff
- Residential care community staff
- Hospital staff
- Relative
- Neighbor, friend, other nonrelative,
other nonprofessional

Ethical - NAPSA

NAPSA (or APS) Code of Ethics

Dedicated to the memory of Rosalie Wolf

Adult Protective Services programs and staff promote safety, independence, and quality-of-life for older persons and persons with disabilities who are being mistreated or in danger of being mistreated, and who are unable to protect themselves.

Guiding Value

Every action taken by Adult Protective Services must balance the duty to protect the safety of the vulnerable adult with the adult's right to self-determination.

Secondary Value

Older persons and persons with disabilities who are victims of mistreatment should be treated with honesty, caring, and respect.

Principles

- Adults have the right to be safe.
- Adults retain all their civil and constitutional rights, i.e., the right to live their lives as they wish, manage their own finances, enter into contracts, marry, etc. unless a court adjudicates otherwise.
- Adults have the right to make decisions that do not conform with societal norms as long as these decisions do not harm others.
- Adults have the right to accept or refuse services.

Ethical - NAPSA

- **A person making a good-faith report of suspected abuse or neglect can be assured he/she has:**
- A right to confidentiality of his/her identity, with a disclosure of identity only with the reporter's written consent or by the order of a court
- Protection from civil and criminal liability, as well as professional disciplinary action
- Protection for providing information, records or services related to a report of suspected mistreatment
- Protection against retaliation by an employer

Ethical - NAPSA

- **All information APS comes in contact with is kept confidential in accordance with the law. When APS workers meet with seniors or adults with disabilities, the APS worker will describe:**
- How personal information will be handled and stored
- How long the information will be kept
- Who is allowed access to the information
- Whether confidential information is permitted to be shared with others

Organizational – NJ APS

- Operational Protocol #6: Release of Information/ Confidentiality states in part: “APS providers may only release information that they determine to be in the best interest of the client.
- Typically, county agencies will share information about a client if it is helpful and needed to provide services for that client.
- Family members, friends, or neighbors will only be given information that is necessary to aid APS in carrying out the care plan for the client.”

What are some other examples?

- **Nebraska**

- With the exception of those instances described below, all information regarding vulnerable adults served by the APS Program is confidential. This section assures their rights of privacy are respected. Any time there is confusion about releasing information or when a subpoena is received by a local office requesting access to APS records, the CFS Specialist will contact the CFS Supervisor and/or Legal Services staff for direction.
- The CFS Specialist **will not release data that would be harmful or detrimental to the vulnerable adult or that would identify or locate a person who, in good faith, made a report or cooperated in a subsequent investigation unless ordered to do so by a court of competent jurisdiction.**

Examples from other states

- Nebraska cont'd
- Information Sharing within the Department: The Division of Children and Family Services may share confidential information with other DHHS Divisions when necessary
- Summary of Findings and Actions: Upon request, a physician or the person in charge of an institution, facility, or agency making a legally mandated report, must receive a written summary of the findings of and actions taken by the Department in response to such report.

Examples from other states

- Nebraska cont'd
- Prohibited information- The following is a list of prohibited or confidential information: 1. Information not produced by DHHS such as: a) Medical records. Information is not released regarding the content of medical records. The CFS Specialist may inform the vulnerable adult where to obtain the medical records; b) Copies of law enforcement reports; 2. Information that would be detrimental or harmful to the client; 3. Information from conversations between the CFS Specialist or Supervisor and the Legal Department; and 4. The identity of the reporting party.

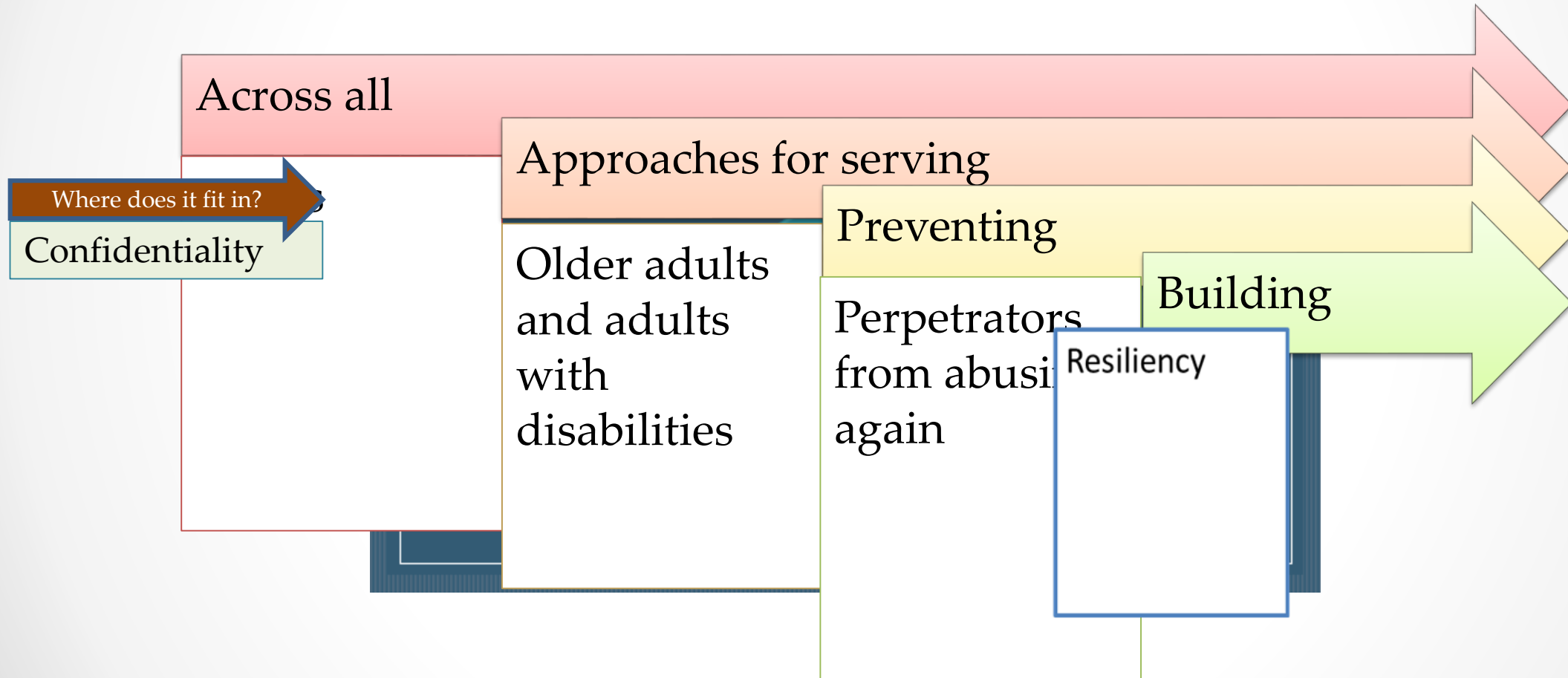
Examples from other states

- **Texas**
- (f) The department or investigating state agency may establish procedures to **exchange with another state agency or governmental entity** information that is *necessary* for the department, state agency, or entity **to properly execute** its respective duties and responsibilities to provide services to elderly persons or persons with disabilities under this chapter or other law. ..

Examples from other states

- Texas cont'd
- (g) The department may establish procedures **to exchange with a community service** provider or local governmental entity confidential information relating to a report made under Section [48.051](#) (a) **that is necessary for the department, provider, or entity to provide protective services, health care services, housing services, or social services** to the person who is the subject of the report.
- An exchange of information under this subsection does not affect whether the information is subject to disclosure under Chapter [552](#), Government Code.

ACL envisions interdisciplinary cooperation and coordination



Coming at you fast

Demands

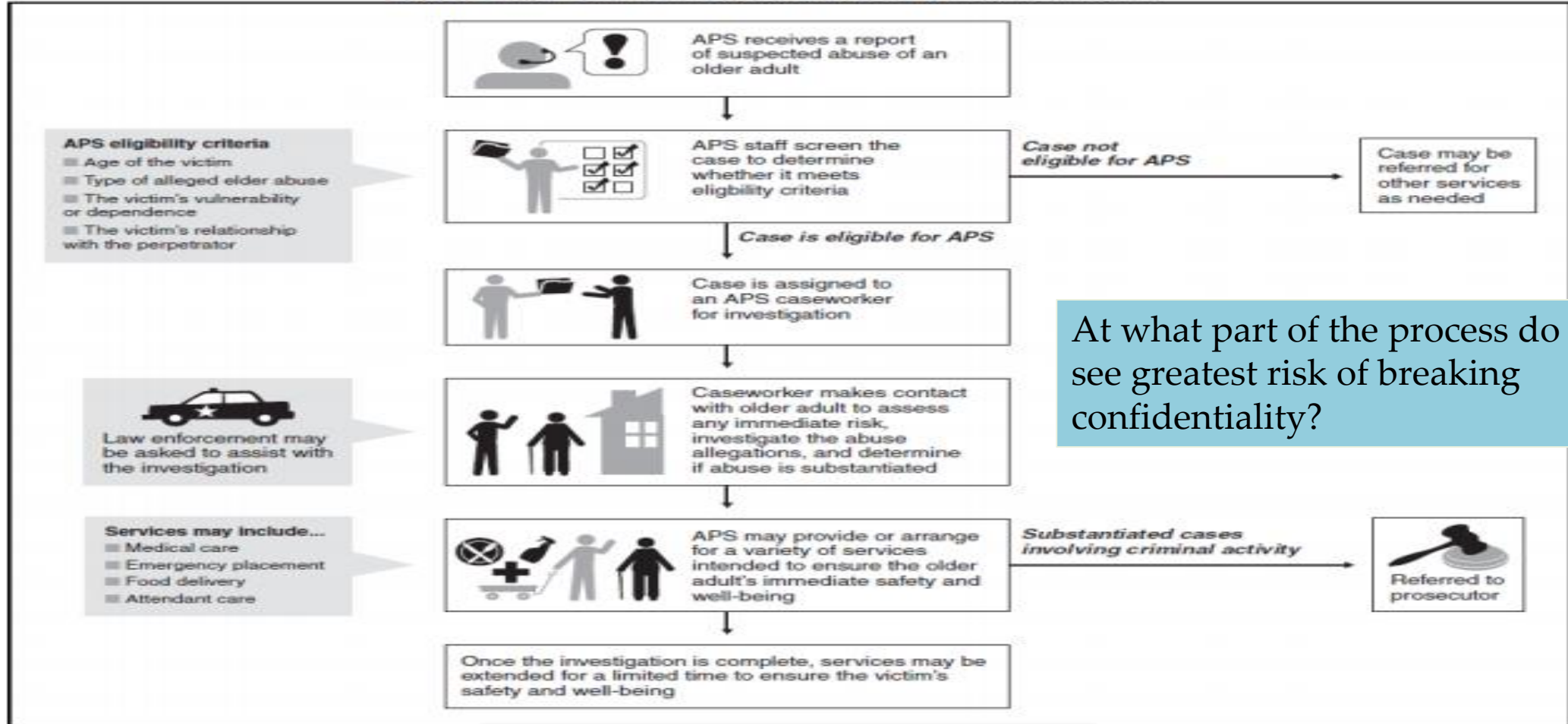


Restrictions

Opportunities

ACL Breaks it Down

Figure 1. APS Process for Addressing Alleged Abuse³³



Breakdown of communication

- The slip and slide
- The hit and run
- The block and tackle
- The weeder

Confidentiality – where do you stop to reinforce its importance?

- Training
- Supervision
- Case by case
- What are the consequences for breaching confidentiality?

What tools do you have in place?

Formal or informal?

How can I tell if this information is useful and trustworthy?

**CRAAP
TEST IT!**

Currency

When was it created?

Relevance

Is it on my topic?

Authority

Is the creator an expert?

Appropriate

Can I comprehend the words?

Purpose

Why was it created?

WRAAP it up

- Will the client be in danger or unable to get a necessary service if information is not shared?
- Relevant – is this information relevant to the goals for the client?
- Authority – do I have the authority to share this information?
- Appropriate – is it appropriate to share with the person asking?
- Pause – Stop, examine the purpose of your communication before speaking

Where do we go from here?

- Confidentiality and trustworthiness are vital to the integrity of APS investigations and in reducing harm to vulnerable adults
- What do we need to put in place to do our jobs?
 - Immediately?
 - Long term goals?

