

SCAO Model Document

Documents: Team Member Confidentiality Agreement

Program Type: Problem-Solving Courts

This model document is provided by the State Court Administrative Office (SCAO) as a resource and is for informational purposes only. It is intended only to assist courts with operating a problem-solving court and to comply with the problem-solving court statutes, and federal and state confidentiality laws. This model document is not intended (and cannot be construed) as legal advice.

The “Team Member Confidentiality Agreement” and SCAO’s “Model Memorandum of Understanding Regarding Confidentiality” serve the same purpose. The Memorandum of Understanding (MOU) is an option to have the entire team sign one document, and the team member agreement is an individualized option. Team members only have to sign one of them, not both of them.

Customize the sections that are in bold and highlighted in yellow. Once customized, the court should remove the brackets, bold, and highlighting.

As a model document, this is generic in nature and should be modified to fit your program.

Before developing your confidentiality documents please review the University of New Hampshire’s School of Law/Institute for Health Policy & Practice’s “Substance Use Disorder Treatment Confidentiality Boot Camp” guide located at <https://chhs.unh.edu/sites/default/files/substance-use-disorder-privacy-part-2-idn-workbook-unh-1017.pdf>.

[Name of problem-solving court]
Team Member Confidentiality Agreement¹

I. Parties

This agreement facilitates the exchange of information, between the listed parties:

- a. **[Name of problem-solving court]**
- b. **[Name of county]** MDOC
- c. **[Name of district court]** probation department
- d. **[Name of county]** prosecutor's office
- e. **[Name of treatment agency]**
- f. **[Name of law enforcement agency]**
- g. **[Name of law firm/office, or name of defense attorney on team]**

in order to effectively coordinate services and provide oversight to participants involved in the criminal justice and treatment systems. It is made and entered into, as of the date set forth below, by the listed party and the representative(s) of the team member's associated agency/organization:

Name of problem-solving court
team member: _____

Name of team member's agency: _____

Name of person authorized to
sign as representative of agency: _____

II. Purpose

To foster trust and cooperation, by ensuring that each component of the problem-solving court is aware of how the other components will access, share, and use information.

To be used as a blueprint to explain how information will be distributed within the problem-solving court.

To improve cooperation, integration, and collaboration at the service delivery, administrative, and evaluative levels for the benefit of clients involved with both the criminal justice and treatment systems.

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Now, therefore, the parties agree that this document reflects their understanding and agreement as to the permitted and prohibited sharing and uses of confidential information.

III. Definitions

1. Code of Federal Regulations (CFR) is the general and permanent rules and regulations published by the executive departments and agencies of the federal government.
2. Confidential information means any information, whether oral or recorded in any form or medium, that:
 - a. Is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse; and relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual.
 - b. Would identify a patient as having or having had a substance use disorder either directly, by reference to publicly available information, or through verification of such identification by another person; and is drug abuse information obtained by a federally assisted drug abuse program after March 20, 1972 (part 2 program), or is alcohol abuse information obtained by a federally assisted alcohol abuse program after May 13, 1974 (part 2 program); or if obtained before the pertinent date, is maintained by a part 2 program after that date as part of an ongoing treatment episode which extends past that date; for the purpose of treating a substance use disorder, making a diagnosis for that treatment, or making a referral for that treatment.
 - c. Is in the record of mental health services of a recipient, and other information acquired in the course of providing mental health services to a recipient.
3. Disclose or disclosure means a communication of participant identifying information, the affirmative verification or denial of another person's communication of participant identifying information, or the communication of any information from the record of a participant who has been identified.

IV. All [Name of problem-solving court] Staff and Team Members Agree:

1. That clients involved with both the criminal justice and treatment systems shall be afforded appropriate levels of treatment, with the least burdensome delivery of services;
2. That improvements to the quality and effectiveness of services can be supported by the sharing of relevant and necessary information;
3. That the privacy and confidentiality of information regarding clients involved with the criminal justice and treatment systems is an important legal and ethical obligation;

4. That this agreement shall be interpreted in light of, and consistent with governing state and federal laws;
5. To promote a mutual understanding of the allowances and limitations outlined in 42 CFR Part 2, MCL 330.1748, 45 CFR Parts 160 and 164, and other applicable state and federal laws;
6. That information identifying the clients or any information regarding client treatment, including information shared at team meetings, should only be shared pursuant to 42 CFR part 2, MCL 330.1748, 45 CFR parts 160 and 164, and Section 290dd-2, and only to the degree it is necessary for the recipient of the information to perform his or her role;
7. To disclose confidential information to any party of the **[Name of problem-solving court]** who is designated on a validly executed "**[Name of problem-solving court program]** Consent for Release of Information" (or any other valid consent for Release of Information form) in accordance with the terms and limitations of the Consent for Release of Information form;
8. That they are bound by the redisclosure provisions of 42 CFR part 2, MCL 330.1748, 45 CFR parts 160 and 164, and Section 290dd-2, and any disclosure of a participant's confidential information is accompanied by one of the following written statements:
 - a. This record which has been disclosed to you is protected by federal confidentiality rules (42 CFR part 2). The federal rules prohibit you from making any further disclosure of this record unless further disclosure is expressly permitted by the written consent of the individual whose information is being disclosed in this record or, is otherwise permitted by 42 CFR part 2. A general authorization for the release of medical or other information is NOT sufficient for this purpose (see § 2.31). The federal rules restrict any use of the information to investigate or prosecute with regard to a crime any patient with a substance use disorder, except as provided at §§ 2.12(c)(5) and 2.65; or
 - b. 42 CFR, Part 2 prohibits unauthorized disclosure of these records.
9. To work together with agencies listed in Part I of this Memorandum of Understanding (MOU) to facilitate information sharing and to ensure that confidential information is disseminated only to the appropriate persons or agencies, as provided by law or otherwise pursuant to a lawfully obtained consent form.
10. To train relevant staff in procedures for interagency collaboration and information sharing;
11. To comply with relevant state and federal law, and other applicable local rules and ethical standards, which relate to records use, dissemination, and retention/destruction as specified in "**[Name of problem-solving court program policies and procedures regarding access to and use of confidential records]**";

12. To develop appropriate internal written policies to ensure that confidential information concerning clients is disseminated only to appropriate personnel;
13. To ensure that any statements made by an individual during evaluation and intake are protected, pursuant to the individual's privilege against self-incrimination and right to counsel under the Fifth and Sixth Amendments to the United States Constitution, and MCL 600.1064(4);
14. To ensure that information obtained pursuant to the problem solving court agreement and the program's consent for release of information will not be used to initiate or substantiate any criminal charges against a participant except as otherwise authorized by 42 CFR Part 2 Section 2.12(d)(1), with those exceptions including child neglect or abuse and crimes committed on program premises or against program personnel.
15. To acknowledge that members of the problem-solving court team may be subject to legal and ethical restrictions on disclosure, which in some situations must be observed notwithstanding either the participant's consent to release information or the likelihood that disclosure would benefit the court and the participant. It is not improper for members of the team to withhold information when they are required to do so **[specify any information that specific team members cannot share]**; and
16. That defense attorneys of the problem-solving court program shall make it clear to participants and other team members whether they will share participant communications with the team.²

V. Administration of the Confidentiality Compliance Agreement

1. **Term of Agreement:**
This agreement is effective for one year upon the date of the final signature and shall renew automatically for subsequent one-year terms unless otherwise modified. Any signatory to this agreement may terminate participation upon thirty days' notice to all other signatories to the agreement.
2. **Modification of Agreement:**
Modification of this Agreement shall be made by formal consent of all parties, pursuant to the issuance of a written amendment, signed and dated by the parties, prior to any changes.
3. **Other Interagency Contracts or Agreements:**
This agreement does not preclude or preempt each of the agencies from individually entering into an agreement with one or more parties listed in this agreement, nor does it supplant any existing agreement or contract between such parties.

² Requirement of certification

4. Signatures of Parties to this Agreement:³

In witness whereof, the parties hereto have entered into this agreement as evidenced by their signatures below. A signed copy of the agreement shall be provided to each signatory. The original agreement shall be filed with the Clerk of the **[Court number and type]** Court.

[Name of team member], [Team member title], [Name of team member agency if applicable]

Signature

Date

[Name of agency representative], [Representative's title], [Name of agency]

Signature

Date

Parts of this document were modified from Mark F Botts, L. B. (2015, April 7).

North Carolina Juvenile Justice – Behavioral Health Information Sharing Guide
<https://www.sog.unc.edu/publications/reports/north-carolina-juvenile-justice-%E2%80%93-behavioral-health-information-sharing-guide>

VI. Attachments

Attachment 1: **[Name of problem-solving court]** procedures and/or policies regarding confidentiality

Attachment 2: **[Name of problem-solving court]** consent to release information (form)

³ A confidentiality agreement must be signed by all team members and, if applicable, an authorizing agent for their agency.