

# DUTY TO WARN

## Direct Care and Treatment

Issue Date: December 4, 2018

Effective Date: January 8, 2019

DCT Policy Number: 215-1045

### **POLICY:**

When any client communicates a specific serious threat of harm against a clearly identified individual and is capable of and has the opportunity to carry out the threat, Direct Care and Treatment (DCT) staff must notify the potential victim.

Although the statute excludes clients committed as mentally ill and dangerous from the duty to warn provisions, the statute does provide for good faith optional disclosures to warn against or take precautions against a client's violent behavior. Whenever it is determined that a threat is foreseeable (capable of being carried out) and is made against a clearly identified or identifiable person, DCT staff will make a good faith disclosure regardless of the client's legal status.

### **AUTHORITY:**

42 C.F.R. § 2.13, (Confidentiality of Alcohol and Drug Abuse Client Record)

42 C.F.R. §§ 2.64 and 2.65, (Procedures and Criteria for Obtaining a Court Order Authorizing Disclosure.)

Minn. Stat. § 245A.04, subd. 14, (Policies and procedures for program administration required and enforceable)

Minn. Stat. § 13.46, (Welfare Data)

Minn. Stat. § 148.975, (Duty to Warn; Limitation on Liability; Violent Behavior of Patient)

Minn. Stat. § 148E.225, subd. 5, (Board of Social Work Reporting Requirements)

Minn. Stat. § 148F.13, subd. 2, (Duty to warn; limitation on liability)

Cairl v. State of Minnesota, 323 N.W. 2d 20, 25-26 (Minn. 1982).

N. W. v. Anderson, 478 N. W. 2d 542 (Minn. Ct. App. 1991) (rev. denied) (Minn. 10, 1992).

Culberson v Chapman, 496 N.W.2d 821 (Minn. Ct. App. 1993).

### **APPLICABILITY:**

DCT-wide

### **PURPOSE:**

To provide procedures for notifying an individual when a client has threatened to harm a specific, clearly identified, or identifiable individual and is capable of carrying out the threat.

### **DEFINITIONS:**

Another Person – an immediate family member or someone who personally knows the client and has reason to believe the client is capable of and will carry out the imminent, serious, specific threat of harm to a specific, clearly identified or identifiable victim.

Duty to Warn – the duty to predict, warn of, or take reasonable precautions to provide protection from violent behavior arises only when a client or other person has communicated to DCT staff an imminent, specific, serious threat of physical violence against a specific, clearly identified or identifiable potential victim, including staff or other clients.

Potential Victim – for purposes of this policy, a potential victim is any person against whom a client has communicated an imminent, specific, serious threat of harm.

Reasonable Effort – communicating the imminent, serious, specific threat to the potential victim and, if unable to make contact with the potential victim, communicating the imminent, serious, specific threat to the law enforcement agency closest to the potential victim or the client.

Secure Confidential File – a file which contains information that is confidential and is kept separate from the medical/treatment record. The file is not available for review by the client. The location of the secure confidential file can be determined internally at each program, but the file must be accessible to staff 24 hours a day. The file remains separate from the medical/treatment record, even upon the client's discharge or death. The secure confidential file itself or a copy of the file is transferred with the client's medical/treatment record when the client is transferred to another DCT facility.

## **PROCEDURES:**

### **A. Identification and Documentation of Threat**

1. When a client has communicated to staff an imminent, specific, serious threat of harm which could be carried out against a specific, clearly identified or identifiable person, or when another person has reported such a threat to staff:
  - a) Community Based Services (CBS), Mental Health and Substance Abuse Treatment Services (MHSATS), and Forensic Services (FS): Staff will immediately notify the program Medical Director or designee. The Medical Director or designee will determine whether a duty to warn exists, and if it is necessary to notify the potential victim.
  - b) Minnesota Sex Offender Program (MSOP): Staff will verbally notify the officer of the day (OD) immediately and write a Level I Incident Report.
    - (1) If the OD believes there is an immediate threat, he or she will immediately contact the facility director or designee and the facility clinical director or designee during business hours, or the administrator-on-call after hours who will notify the facility director or designee.
    - (2) The facility director or designee will determine whether a duty to warn exists, and if it is necessary to notify the potential victim.
2. If the occurrence of the threat or related behaviors would normally be documented in the client's medical/treatment record, such documentation should be completed. However, any information related to the duty to warn should not be included in the medical/treatment record.
3. The facility director/designee or Medical Director/designee (as applicable) must notify the potential victim immediately by telephone after determining that there is a duty to warn. If the potential victim cannot be located, the appropriate law enforcement agency must be notified.
4. The facility director/designee or Medical Director/designee will document the following information in the client's secure confidential file using the Duty to Warn Form (215-1045a).
  - a) a specific description of the threat, the seriousness of potential harm and the ability of the client to carry out the threat;
  - b) the facility's response;
  - c) identifying information regarding the person(s), or agencies notified;
  - d) name of the staff person making the disclosure; and

e) the date and time of the disclosure.

5. The staff person who originally reported the duty to warn incident must be notified of the action that the facility took on the initial report. The notification to the staff person must be documented on the Duty to Warn Form (215-1045a).

B. Community Addiction Recovery Enterprise (C.A.R.E.)

1. If the threat is serious and time allows, staff should contact the DHS General Counsel's Office or the Attorney General's Office to obtain a court order authorizing the disclosure.
2. If the threat is serious and imminent and it is not possible to obtain a court order, staff should promptly communicate the threat to the program Medical Director or designee and work with them to contact the potential victim or appropriate law enforcement agency.
3. Staff must refrain from identifying the person making the threat as a client within a chemical dependency treatment program and should simply identify themselves as an employee of DHS.

C. Notification to Law Enforcement

1. If the potential victim cannot be notified immediately, information regarding the threat must be communicated to the law enforcement agency closest either to the potential victim or the client, or both.
2. The calls must be documented in the client's secure confidential file.

D. Determination of No Duty to Warn

1. The facility director/designee or Medical Director/designee, upon determining that no duty to warn exists, must document the reasons for the determination in the secure confidential file using the Duty to Warn Form (215-1045a).
2. Factors to consider in making this determination may include consideration of whether the client is in a position to carry out the threat.
3. Ongoing assessment of the duty to warn may be necessary.

E. Termination of Duty to Warn

1. The duty to warn is discharged if reasonable efforts, are made to communicate the threat to the proposed victim or law enforcement.
2. A duty to warn may reoccur if there is a new threat against the same or other specific individual.

F. Treatment Considerations

1. Members of the client's treatment team will consider implications of a client's duty to warn history on the client's ongoing treatment and future reductions in custody.
2. If there are ongoing treatment implications, staff should consult with the Medical or Clinical Director.

G. Data Privacy - Consistent with applicable state and federal privacy laws, the facility director/designee or

Medical Director/designee cannot provide the potential victim with any information beyond what is necessary to notify that person that a client has made a specific threat.

**REVIEW:**

Annually

**REFERENCES:**

MSOP Policy 215-5260, "Victim Notification"

MSOP Policy 410-5200, "On-Call"

MSOP Policy 410-5300, "Incident Reports"

FS Policy 130-3010 "Victim Notification"

MHSATS Policy 130-4020 "Victim Notification"

**ATTACHMENTS:**

Duty to Warn Form (215-1045a)

**SUPERSESSSION:**

DCT Policy 215-1045, "Duty to Warn", October 4, 2016

All facility policies, memos, or other communications whether verbal, written, or transmitted by electronic means regarding this topic.

/s/

Marshall Smith

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Direct Care and Treatment

Department of Human Services