NATIONAL CENTER ON
DOMESTIC VIOLENCE, TRAUMA, AND MENTAL HEALTH

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Confidentiality for Survivors Across Services

Concerns about privacy and confidentiality prevent survivors of domestic violence from engaging with mental health or substance use services. Maintaining confidentiality is integral to trauma-informed, domestic violence- and intimate partner violence-informed care. Survivors of domestic violence are at risk when seeking services, as an abusive partner or others may actively attempt to obtain confidential information about survivors to cause further harm.

Examples of the potential for harm include:

- Stalking, harassment, retaliation, or further abuse if the survivor's location is disclosed.
- Survivors may be prevented from continuing services or experience mental health and/or substance use coercion to disrupt treatment.
- Using information to negatively affect a survivor's legal concerns, including unnecessary involvement by child protective services affecting child custody, the ability to obtain a protective order, or other legal proceedings.

Communicate About Confidentiality

Provide survivors with detailed information about how their information is protected as well as any limits of confidentiality and mandated reporting requirements—including mandated reporting of domestic violence or of children witnessing abuse—before asking about domestic violence or child abuse.

Survivors may have concerns that mandated reporting could lead to child removal from their home by child protective services or to law enforcement involvement, either of which may cause retaliation by the abusive partner. Survivors may also be concerned that personal health information including mental health or substance use will be used against them in child custody, divorce, or other legal proceedings.

- Search for your state statutes for mandatory reporting on child abuse and neglect at the Child Welfare Information Gateway.
- Learn more about mandated reporting requirements for child abuse, domestic violence, or elder abuse in your state.
- Review the Guttmacher Institute's overview of state policies regarding Substance Use During Pregnancy.

Translation or Interpretation Services

To protect confidentiality, utilize professional translation services for survivors. Avoid using friends or family members as informal translators or interpreters.

Additional concerns for translation or interpretation include:

- An informal translator or interpreter may censor information due to cultural norms or relay inaccurate information.
- If the translator or interpreter is connected to the abusive partner, they may share confidential information that puts the survivor at risk of further harm.
- Learn more with this tip sheet for Language Justice for Survivors Across Services and this Resource Guide for Advocates & Attorneys on Interpretation Services for Domestic Violence Victims, 2016.

Documentation

Protecting confidential information isn't enough: organizations need to follow best practices for safety in documentation and recordkeeping.

Discuss privacy concerns related to documentation and electronic health records (EHRs), clarify the ways that survivors' health records can be accessed and by whom, and discuss what steps and safety measures can be taken to protect sensitive information.

- Update policies to incorporate the best practices outlined on Protecting Survivor Confidentiality: Best Practices in Documentation.
- Find more information about protecting EHRs in Coercion Related to Mental Health and Substance Use in the Context of Intimate Partner Violence.
- Learn more about documentation and protecting client information in Recordkeeping when Therapy is Provided at Domestic Violence Programs.
- Review the Safety Net Project's FAQs on Record Retention and Deletion.

It's not uncommon for abusive partners to attempt to subpoena survivors' records as a way to threaten, harm, or undermine child custody. Organizations should develop a policy for responding to subpoenas in a way that protects survivor confidentiality as much as possible. Developing a policy is best done in collaboration with general counsel.

- Learn more about how mental health providers can respond to demands for client information or records in the Subpoena Response Toolkit.
- Review online guides: Subpoenas and How to Handle Them: Guidelines for Psychotherapists and Counselors and How to Respond to a Subpoena.
- For organizations covered by HIPAA, review the U.S. Department of Health and Human Services' information on Court Orders and Subpoenas.
- For organizations covered by 42 CFR Part 2, review Civil Court Orders Authorizing Disclosure of SUD Treatment Records Protected by 42 CFR Part 2.

Sharing Non-Confidential Information

Collaboration and information-sharing across the fields of domestic violence, mental health, and substance use can increase service access for survivors. Providers and advocates can always share general information about the services they offer, eligibility requirements to receive services, whether they are accepting new clients, and opportunities for referrals.

When to Share Confidential Information

Informed consent to release information should always eenter the survivor's perspective and opinion, not the opinion of providers. Given the risks that survivors face if their information becomes accessible, first consider if releasing or exchanging information is necessary. If there is a situation where it may be necessary, discuss the potential risks and benefits with the survivor, and obtain consent to share only required information on an as-needed basis. Sharing information should provide a clear benefit to the survivor.

Examples of potential benefits to survivors include:

- A survivor in shelter services may need mental health information shared to support storage of and access to medications.
- A survivor may experience challenges with personal phone privacy and would like their substance use counselor to be called if a bed opens up in a shelter.

How to Share Confidential Information

Privacy and confidentiality regulations fall under both federal and state laws. Advocates and providers should be familiar with their state and federal laws and requirements and understand that confidentiality regulations are always evolving. When state laws differ from federal regulations, follow the stronger confidentiality practice.

Consultation and collaboration are recommended for advocates and providers across the fields of domestic violence, substance use, and mental health to understand each field's confidentiality practices and the limits of confidentiality.

Overview of Federal Confidentiality Regulations

Domestic violence organizations must follow confidentiality provisions in the Violence Against Women Act (VAWA), the Family Violence Prevention and Services Act (FVPSA), and the Victims of Crime Act (VOCA) for survivors of domestic violence, dating violence, sexual assault, and stalking. These regulations are in place to support safety for survivors.

- These regulations require informed, written, time-limited consent to share any personally identifying information or individual information.
- Survivors may request information sharing with written, time-limited, informed consent.

Mental health organizations follow the guidelines of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), which aims to protect the privacy of personal health information, with some exceptions.

Substance use treatment organizations also comply with HIPAA's privacy rule.

- Visit HIPAA for Professionals for a comprehensive overview of HIPAA regulations.
- Read more about HIPAA and Information Related to Mental and Behavioral Health, including Opioid Overdose.
- Read more about when a mental health provider may release a survivor's personal health information at HIPAA Helps Caregiving Connections.
- Mental health providers should discuss with survivors whom their personal health information may be released to in the event of a crisis, so as to support survivors' self-determination.
- If an organization receives funds from VAWA, FVPSA, or VOCA, staff must follow stricter privacy standards required by the funding source.

Substance use treatment organizations that meet specific criteria are subject to confidentiality regulations as described in SAMHSA 42 CFR Part 2. This regulation protects all information that would identify a person as having a substance use disorder, unless the individual has signed a written consent to release information.

- A written informed consent that meets specific requirements must be completed before sharing personal information.
- To learn more about 42 CFR Part 2, visit SAMHSA's Substance Abuse Confidentiality Regulations.

Consultation and Collaboration

Representatives from advocacy organizations, mental health, and substance use treatment programs should meet and discuss the questions below. During discussion, record areas of strength, areas of concern, and suggestions for policy or procedure changes to improve confidentiality that could be brought to and enacted by leadership.

- What happens in your organization if a survivor discloses abuse?
- Who are mandated reporters in your organization?
- What types of situations require mandated reporting?
- What happens after a report is made?
- What are your confidentiality policies?
- When and how would confidential information be shared without a survivor's consent?
- What are your requirements for a release of information?
- In what types of situations would sharing information be beneficial for a survivor in accessing services?
- When does sharing information place survivors at risk?
- How does your office environment support privacy and confidentiality?
- How do support staff in your organization protect privacy and confidentiality?
- What kinds of training are offered to staff within your organization about confidentiality?
- How do survivors access translation services within your organization?
- What are the confidentiality concerns related to specific cultural groups in your community?
- How does your organization respond to subpoenas requesting confidential information?

Related Resources

- Information and resources on practicing confidentiality: The Confidentiality Institute
- The Safety Net Project's Confidentiality Toolkit
- FUTURES Without Violence: Mandatory Reporting of Domestic Violence to Law Enforcement by Health Care Providers: A Guide for Advocates Working to Respond to or Amend Reporting Laws Related to Domestic Violence
- Collection of resources for Understanding Substance Use Coercion
- Collection of resources for Responding to Trauma, Mental Health, and Substance Use in the Domestic Violence Field, including Locating Mental Health Support Resources and Collaborating with Mental Health Resources
- Toolkit: Family-Centered Toolkit for Domestic Violence Programs
- Toolkit: Committed to Safety for ALL Survivors: Guidance for Domestic Violence Programs on Supporting Survivors Who Use Substances
- Toolkit and resources: Tools for Transformation: Becoming Accessible, Culturally Responsive, and Trauma-Informed Organizations — An Organizational Reflection Toolkit
- Tip sheet: Asking About and Responding to Survivors' Experiences of Abuse Related to Mental Health
- Tip sheet: Protecting Survivor Confidentiality: Best Practices in Documentation
- American Psychiatric Association's resource document: Telehealth Services in the Context of Intimate Partner Violence (IPV) Addressing Potential Risks to Safety and Security
- Policy guidance: Telehealth Recommendations to Support Survivors of Domestic Violence