

Welcome to the NNADV Advocate Certificate Course

Confidentiality and Privilege



Course Overview

Section 1: Confidentiality

Section 2: Privilege

Section 3: Procedures for Maintaining Confidentiality

Section 4: Releases of Information

Section 5: Breaches

Course Objectives

Upon completion of this course, you will be able to:

- Identify meanings of important confidentiality terms;
- Differentiate absolute from qualified privilege;
- List who is covered by and who holds privilege;
- Identify when privilege ends;
- Identify procedures for maintaining confidentiality of client data;
- List the necessary components in a release;
- List the steps to take when a breach occurs; and
- Describe situations when an Executive Director may direct a breach.

Confidentiality Terms

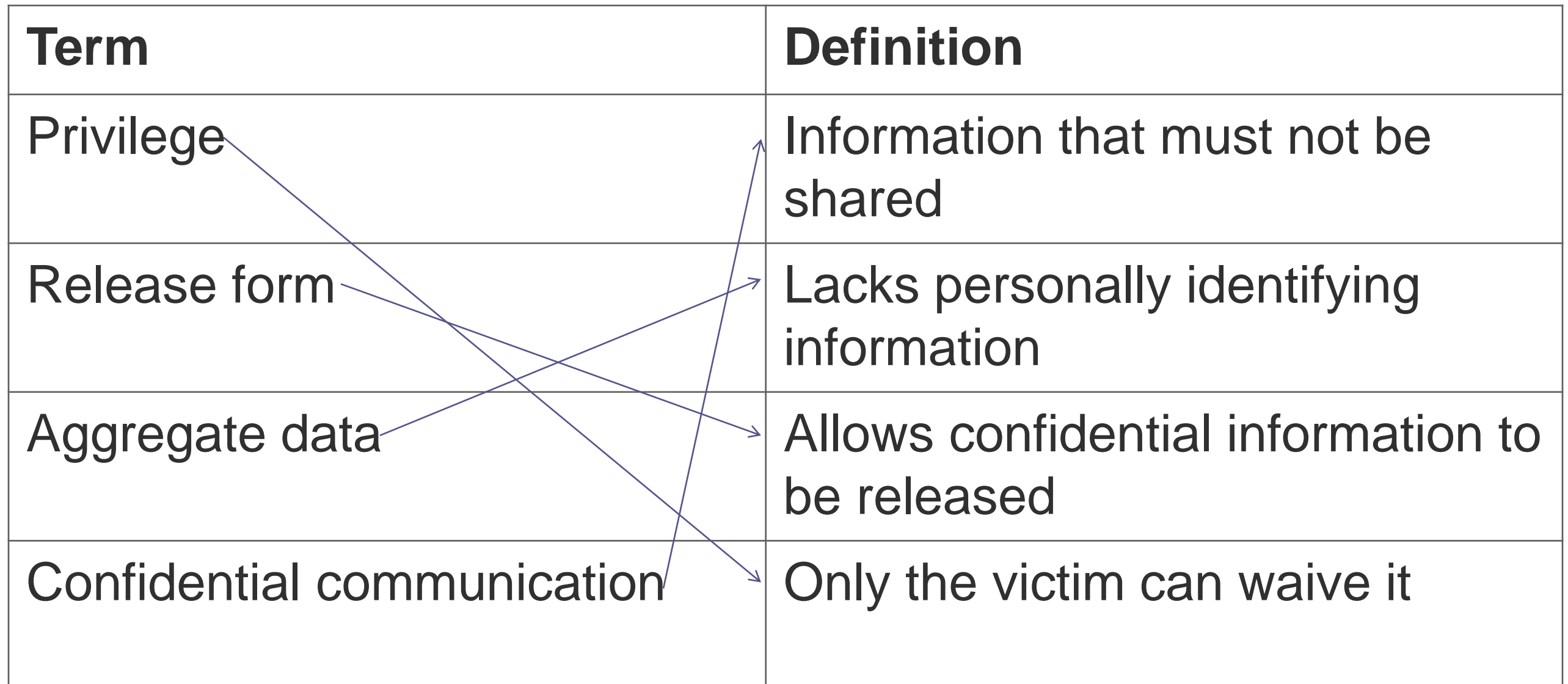
Before we begin, let's see what you know about confidentiality. Match the terms on the left with the correct definitions on the right.

Term	Definition
Privilege	Information that must not be shared
Release form	Lacks personally identifying information
Aggregate data	Allows confidential information to be released
Confidential communication	Only the victim can waive it

Confidentiality Terms

Before we begin, let's see what you know about confidentiality. Match the terms on the left with the correct definitions on the right.

Term	Definition
Privilege	Information that must not be shared
Release form	Lacks personally identifying information
Aggregate data	Allows confidential information to be released
Confidential communication	Only the victim can waive it



Why is confidentiality so important?

- Requests for victim information are increasing.
- New information technologies make accessing and sharing information easier.
- Maintaining confidentiality is critical for promoting victim safety.
- You are legally obligated to comply with confidentiality and privilege laws.



1. Confidentiality

Objectives

After completing this section of the course, you will be able to identify the meanings of the following key terms:

- Confidential communication;
- Victim's advocate;
- Domestic violence program;
- Victim; and
- Breach.



Confidentiality Definitions

Confidential communication
Victim's advocate
Domestic violence program
Victim
Breach

Confidential communication

- A communication between a victim and a victim's advocate that is not intended to be disclosed to third persons.
- Communication includes, without limitation, all records concerning the victim and the services provided to the victim which are within the possession of the victim's advocate or the nonprofit program for whom the victim's advocate works.

(See Resource 1: *Nevada Revised Statutes* § 49.2546, in the Resources Folder)

Confidentiality Definitions

Confidential communication
Victim's advocate
Domestic violence program
Victim
Breach

Victim's advocate

- Works for a nonprofit program that provides assistance to victims with or without compensation.
- Has received at least 20 hours of relevant training.

(See Resource 1: *Nevada Revised Statutes* §49.2545, in the Resources Folder)

Confidentiality Definitions

Confidential communication
Victim's advocate
Domestic violence program
Victim
Breach

Domestic violence program

- A nonprofit program that provides assistance to victims.

(See Resource 1: *Nevada Revised Statutes* §49.2545, in the Resources Folder)

Confidentiality Definitions

Confidential Communication
Victim's advocate
Domestic violence program
Victim
Breach

Victim

- A person who alleges that an act of domestic violence or sexual assault has been committed.
- Seeks advice, counseling, or assistance from a victim's advocate.

(See Resource 1: *Nevada Revised Statutes* §§ 49.2544, 49.2547 in the Resources Folder)

Confidentiality Definitions

Confidential Communication
Victim's advocate
Domestic violence program
Victim
Breach

Breach

- The term used when confidentiality is broken.
- When confidential information is disclosed to a third party without the prior permission of the victim.

Test Your Knowledge

Question

Do you think observations about a victim by a domestic violence advocate are included in the definition of confidential communication?

- No, observations are not protected.
- Yes, observations are protected.

Test Your Knowledge

Answer

Do you think observations about a victim by a domestic violence advocate are included in the definition of confidential communication?

- No, observations are not protected.
- Yes, observations are protected.

If an advocate observes that a victim is crying, slurring speech, etc. those observations are part of confidential communication and cannot be shared with third parties without breaching the victim's confidentiality. (See Resource 1: *Nevada Revised Statutes* § 49.2546, in the Resources Folder)

Test Your Knowledge

Question

What about advocate communications with victims through linguistic interpreters?

- No, communications through linguistic interpreters are not protected.
- Yes, communications through linguistic interpreters are protected.

Test Your Knowledge

Answer

What about advocate communications with victims through linguistic interpreters?

- No, communications through linguistic interpreters are not protected.
- Yes, communications through linguistic interpreters are protected.

Confidential communication includes communication made to a person who is necessary for the transmission of the communication between the victim and the advocate. (See Resource 1: *Nevada Revised Statutes* § 49.2546, in the Resources Folder)

Test Your Knowledge

Question

What happens to confidentiality in the presence of a third person who is not the victim or victim's advocate?

- Confidentiality is probably breached.
- There is no problem with someone else being in the room.

Test Your Knowledge

Answer

What happens to confidentiality in the presence of a third person who is not the victim or victim's advocate?

- Confidentiality is probably breached.
- There is no problem with someone else being in the room.

It depends on why the third person is there, but confidentiality is probably breached, unless the third person is present to further the interest of the victim or is participating in the advice, counseling, or assistance of the victim. (See Resource 1: *Nevada Revised Statutes* § 49.2546, in the Resources Folder) Breaches will be covered in a later section of this course.

2. Privilege

Objectives

After completing this section of the course, you will be able to:

- Understand the difference between confidentiality and privilege;
- Differentiate absolute from qualified privilege;
- List who is covered by and who holds privilege; and
- Identify when privilege ends.



2. Privilege

Privilege vs. Confidentiality

- Confidentiality is the duty to protect information from being disclosed to others. It can be established by law or policy.
- Privilege is the right to protect confidential information from being disclosed in legal proceedings. It is established by law.
- If confidential information is not privileged, it may have to be disclosed in legal proceedings.

2. Privilege

Types of Privilege

Absolute	Qualified
The advocate cannot testify or disclose any information.	The court decides what pieces of information will be released by weighing the importance of protecting confidentiality compared to the importance of the information that is requested.

2. Privilege

Types of Privilege

In Nevada, the domestic violence privilege is absolute, but once there has been a breach of confidentiality, the court can decide what pieces of information should be released, based on the nature and extent of the breach.

2. Privilege

Who is covered by privilege?

- Staff , Volunteers, Interns
 - with 20-hour training
- Interpreters
 - not required to have 20-hour training

(See Resource 1: *Nevada Revised Statutes* § 49.2545, in the Resources Folder)

✓ Check in with your supervisor to learn if your program requires additional training.



2. Privilege

Board Member

- Is a person who is elected or appointed to the governance Board of a nonprofit domestic violence program.
- Is responsible for the development, management, and control of the affairs, property, and funds of that program.

2. Privilege

Question

Can a Board Member assert privilege for confidential victim information?

- No, privilege cannot be asserted by Board Members.
- Yes, privilege can be asserted by Board Members.

2. Privilege

Answer

Can a Board Member assert privilege for confidential victim information?

- No, privilege cannot be asserted by Board Members.
- Yes, privilege can be asserted by Board Members.

Unless the Board Member has had 20 hours of domestic violence training, the Board member cannot assert privilege and may not view any files or information belonging to any victim receiving services.

2. Privilege

Who holds the privilege?

- A victim of domestic violence;
- Guardian or conservator of the victim;
- Personal representative of a deceased victim; or
- Victim's advocate on behalf of the victim.

(See Resource 1: *Nevada Revised Statutes* § 49.2548 in the Resources Folder)



2. Privilege

Legal Exceptions to Confidentiality

- Victim's purpose in seeking services is to enable a crime or fraud;
- Victim's communication concerns abuse or neglect of a child, older person, or vulnerable person; or
- Victim's communication is relevant to an issue of breach of duty by the victim's advocate to the victim or the victim to the victim's advocate.

(See Resource 1: *Nevada Revised Statutes* § 49.2549 in the Resources Folder)

2. Privilege

When does privilege end?

- Even after you leave your job at a domestic violence program, the privilege still exists and you are bound by it.
- Death of the service recipient does not necessarily end privilege. The service recipient's personal representative may assert the privilege after the service recipient's death.

When Does Confidentiality End?

Question

Does confidentiality end when you stop working or volunteering at a domestic violence program?

- No, even after you stop working or volunteering, you are still bound by confidentiality.
- Yes, confidentiality ends when you stop working or volunteering at a domestic violence program because you are no longer an advocate.

When Does Confidentiality End?

Answer

Does confidentiality end when you stop working or volunteering at a domestic violence program?

- No, even after you stop working or volunteering, you are still bound by confidentiality.
- Yes, confidentiality ends when you stop working or volunteering at a domestic violence program because you are no longer an advocate.

When Does Confidentiality End?

Question

Does confidentiality end at the death of a service recipient?

No

Yes

When Does Confidentiality End?

Answer

Does confidentiality end at the death of a service recipient?

No

Yes

According to state law, the victim's personal representative holds the privilege after the victim dies. (See Resource 1: *Nevada Revised Statutes* § 49.2548, in the Resources Folder). If the representative does not sign a written release of information, you cannot release the victim's information. Releases will be covered in a later section of this course.

When Does Confidentiality End?

Scenario 1

A service recipient is killed in a domestic violence incident in your community. Local media want to talk to program staff about the deceased victim and whether they worked with her.

When Does Confidentiality End?

Question

Does the law require the program to protect the confidentiality of a deceased victim?

No

Yes

When Does Confidentiality End?

Answer

Does the law require the program to protect the confidentiality of a deceased victim?

No

Yes

Nevada law says that the victim's confidentiality rights do not end at death. The victim's personal representative holds the privilege on behalf of the victim.

When Does Confidentiality End?

Question

What are the best practices for the Executive Director and staff to follow?
Select all that are appropriate.

- The program can share information with the media about domestic violence, local fatality statistics, and where victims can go for services.
- The Executive Director should not provide information about the victim or the services she received.
- The program should protect the confidentiality of deceased service recipients.

When Does Confidentiality End?

Answer

What are the best practices for the Executive Director and staff to follow?
Select all that are appropriate.

- The program can share information with the media about the problem of domestic violence, local fatality statistics, and where victims can go for services.
- The Executive Director should not provide information about the victim or the services she received.
- The program should protect the confidentiality of deceased service recipients.

When Does Confidentiality End?

Check in with Your Supervisor

- Before you say anything to the media, ask your supervisor for a copy of your program's policies and procedures for talking to the media.

When Does Confidentiality End?

Scenario 2

Your program is providing services to a victim of domestic violence. The client's abuser also requests services from your program, claiming to be a victim of domestic violence. The

Executive Director decides that both people
cannot be served.

When Does Confidentiality End?

Question

Who has confidentiality?

- Neither has confidentiality.
- Only the “real” victim has confidentiality.
- Both have confidentiality because they both allege an act of domestic violence occurred and are seeking assistance from your program.

When Does Confidentiality End?

Answer

Who has confidentiality?

- Neither has confidentiality.
- Only the “real” victim has confidentiality.
- Both have confidentiality because they both allege an act of domestic violence occurred and are seeking assistance from your program.

The correct answer is that both have confidentiality. (See Resource 1: *Nevada Revised Statutes* §§ 49.2544, 49.2547, in the Resources Folder)

When Does Confidentiality End?

Question

What can the Executive Director tell the second person?

When Does Confidentiality End?

Answer

“We are not currently able to provide you with services. Here are some other options and referrals for you.”

When Does Confidentiality End?

Question

What can or should the client be told?

When Does Confidentiality End?

Answer

Nothing. Information about the second person (the client's alleged abuser) is confidential.

3. Procedures for Maintaining Confidentiality

Objectives

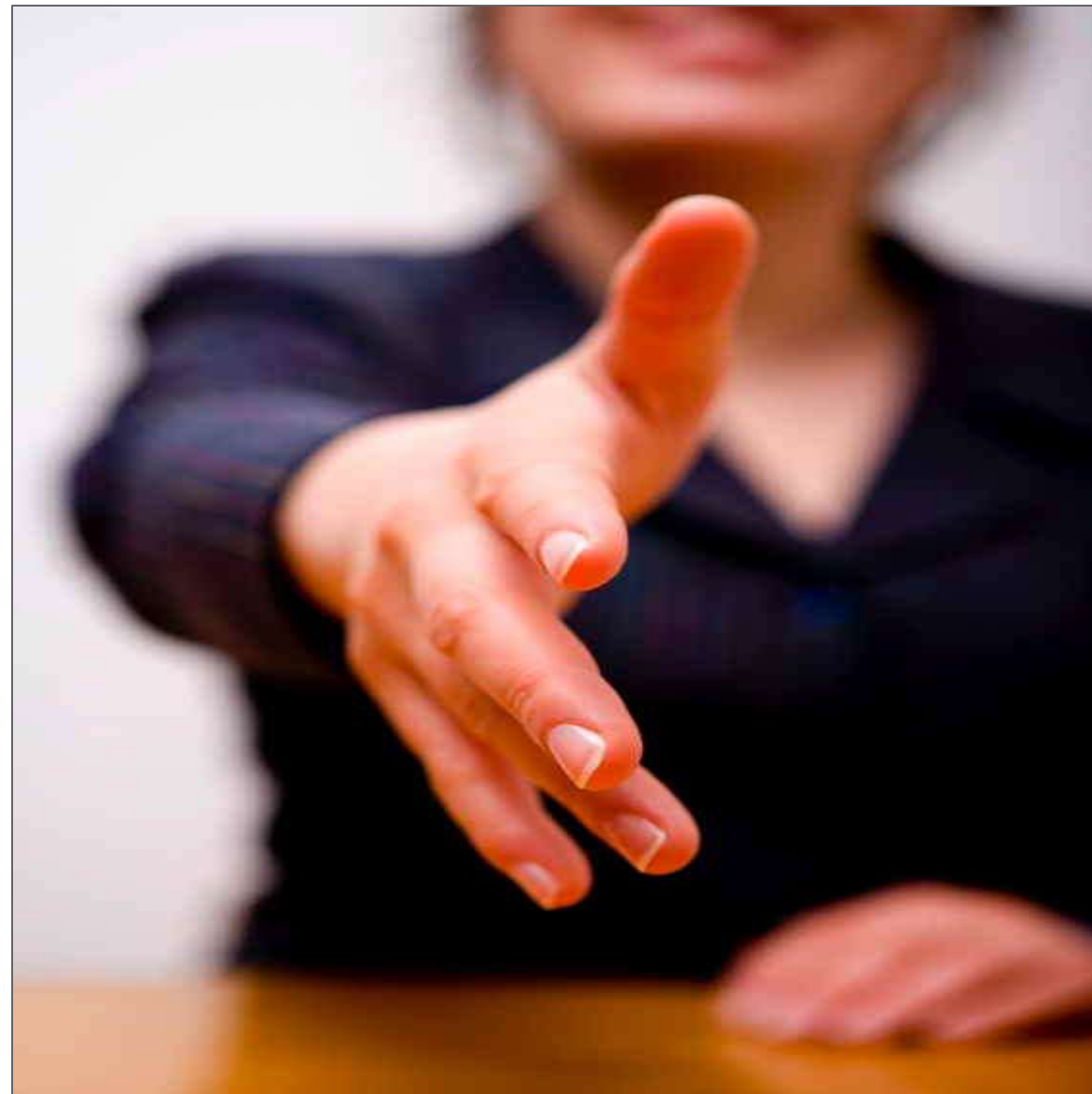
After completing this section, you will be able to:

- Obtain a written confidentiality agreement;
- List program policies necessary to protect client files;
- Identify what information can be released to funders;
- Define and provide an example of “aggregate data;” and
- Understand how federal law protects victim confidentiality.



3. Procedures for Maintaining Confidentiality

Confidentiality Begins When the Client First Requests Services.



3. Procedures for Maintaining Confidentiality

Inform the Person Seeking Services

- Make sure to inform victims about the nature and extent of confidentiality,
 - as well as its limitations.
 - Inform them that it covers communication made by phone, email, or in person.
-
- ✓ Review Resource 2: *Model Client Notice of Rights*, in the Resources Folder.
 - ✓ Check in with your supervisor to learn about your program's procedures for notifying victims about their confidentiality rights.

3. Procedures for Maintaining Confidentiality

Obtain Written Agreements to Protect Confidentiality

Should be signed by:

- Service recipients
- Staff
- Volunteers
- Linguistic interpreters
- Funders or auditors



- ✓ Review Resource 3: *Model Confidentiality Agreement*, in the Resources Folder.
- ✓ Check in with your supervisor to learn about your program's procedures for obtaining a signed confidentiality agreement.

3. Procedures for Maintaining Confidentiality

Follow Your Program's Policies and Procedures

- Review Resource 4: *Model Confidentiality Policy*, in the Resources Folder.
- Ask your supervisor for a copy of your program's confidentiality policies and procedures.

3. Procedures for Maintaining Confidentiality

Follow Your Program's Policies and Procedures

- A violation of your program's confidentiality policy may be grounds for termination.
- The Executive Director has discretion to terminate or maintain your employment after a violation of the policy.



3. Procedures for Maintaining Confidentiality

Follow your Program's Policies and Procedures

What about revealing the location of the shelter if it is confidential?

- A breach of confidentiality of shelter location should not automatically be sufficient to ask a service recipient to leave.
- However, the Executive Director has the discretion to terminate services to a service recipient or terminate an employee for revealing the shelter location.

3. Procedures for Maintaining Confidentiality

Protect Client Files

Programs should have policies for:

- Location of files and backup files
- Electronic files
 - not a computer connected to the Internet
- Information contained in a file
- Access to files
 - no access for funders, board members, or anyone who hasn't completed the 20-hour training



3. Procedures for Maintaining Confidentiality

Release Aggregate Data to Funders or Auditors

- No identifying information about a victim.
- Funders should sign a confidentiality agreement when doing an audit.
- Only aggregate data should be released for reporting.
- If funders ask to review client files, all personally identifying information should be redacted.

3. Procedures for Maintaining Confidentiality

Aggregate Data

- Does not contain specific information that would lead to the identification of a service recipient.

Examples

- Number of female victims between 20-30 years old
- Number of shelter bednights



3. Procedures for Maintaining Confidentiality

Federal Law also Protects Victim Information

Violence Against Women Act (VAWA) and Family Violence Prevention & Services Act (FVPSA)

- Reinforce Nevada law.
- Restrict release of personally identifying information
 - Nondisclosure applies to any government or agency that receives federal funding.
 - The entity cannot disclose any personally identifying information it has in connection with providing or denying services.
 - Information can only be disclosed if there is consent by the person the information is about.

4. Releases of Information

Objective

After completing this section, you will be able to:

- Identify the necessary components in a victim's consent to release information.



4. Releases of Information

Release Form Requirements

Voluntary	Informed	Prior
Written	Specific	Time-Limited

- ✓ Review Resource 5: *Model Release of Information*, in the Resources Folder.
- ✓ Review Resource 6: *Frequently Asked Questions on Survivor Confidentiality Releases*, in the Resources Folder.
- ✓ Check in with your supervisor to learn about your program's procedures for obtaining consent to release.

4. Releases of Information

Requirements for Consent to Release—Adults

Adults may not be able to give consent due to:

- Age
- Health
- Disability

Their consent may not be knowing and informed. Under these circumstances, a guardian or conservator must authorize the release of information.

4. Releases of Information

Requirements for Consent to Release—Minors

Consent cannot be given by:

- Abuser of a minor child
- A parent of a minor child who abuses the other parent

Best Practices

Signed release
Less is best
Limited time and scope
Paper only
Don't ask other programs

Signed release

If you are asked to release a service recipient's information, have the recipient sign your program's release form.

Best Practices

Signed release
Less is best
Limited time and scope
Paper only
Don't ask other programs

Less is best

Once the release is signed, provide only the minimum amount of information requested.

Best Practices

Signed release
Less is best
Limited time and scope
Paper only
Don't ask other programs

Limited time and scope

Service recipient should sign a release form that has been filled out completely and is limited in time and scope.

Best Practices

Signed release
Less is best
Limited time and scope
Paper only
Don't ask other programs

Paper only

In an emergency, a faxed or emailed release might be fine, but it must be followed up with a paper copy in the mail or signed in person.

Be very careful about the abuser attempting to impersonate the victim.

Best Practices

Signed release
Less is best
Limited time and scope
Paper only
Don't ask other programs

Don't ask other programs

Don't ask for a release to discuss a service recipient with another domestic violence program that previously provided services.

5. Breaches

Objectives

After completing this section, you will be able to:

- Define the term “breach;” and
- List the steps that should be taken if there is a breach of confidentiality.



5. Breaches

Breach of Confidentiality

- Review Resource *7: Responding to Rare or Emergency Situations*, in the Resources Folder.
- Review your program's policies and procedures.

5. Breaches

Breach of Confidentiality

- The Executive Director is the only person who can decide if confidentiality should be breached.
- A breach should occur only if there are no other options.
- After a breach, you must take steps to protect other information belonging to the client and other clients of the program.



5. Breaches

Steps to Take When Confidentiality is Breached

- Notify your immediate supervisor.
- Notify the service recipient.
 - Review and revise the service recipient's safety plan.
- Notify other service recipients who may be impacted.
- Take steps to separate information in the program's possession from information that may be gathered in the future.
 - Open a new file for the service recipient and children.

Breaches Scenarios

Scenario 1

An advocate is meeting with a service recipient. The service recipient is upset and frustrated. She states that she is going to kill her abuser. She repeats this several times, but eventually calms down and works on a new safety plan.

Breaches Scenarios

Question

Should the advocate report the threats to her supervisor?

No

Yes

Breaches Scenarios

Answer

Should the advocate report the threats to her supervisor?

No

Yes

An advocate should always discuss this type of information with a supervisor. The supervisor should decide if the Executive Director needs to be made aware of the survivor's statements and what, if any, actions should be taken.

Breaches Scenarios

Question

Should they call the police?

No

Yes

Breaches Scenarios

Facts to Consider

Some facts to consider are:

- The service recipient is upset and frustrated.
- She says she is going to kill the abuser.
- She repeats the threat several times.

Breaches Scenarios

Answer

Should they call the police?

No

Yes

Calling the police in this scenario is probably unnecessary. She doesn't give any specific details to support her threat. She calmed down and refocused on her safety plan.

Breaches Scenarios

Question

Does your answer change if the service recipient makes the threat, saying that she would carry it out on Monday evening at the 7:00 pm custody exchange in the McDonald's parking lot and that she would use the gun and ammunition that are currently stored in a box in the closet?

No

Yes

Breaches Scenarios

Facts to Consider

- The service recipient is upset and frustrated.
- She says she is going to kill the abuser.
- She has a specific plan to harm the abuser.
- She has immediate access to a gun and ammunition.
- Custody exchanges can be dangerous and volatile situations.

Breaches Scenarios

Answer

- In Nevada law it is an open question whether there is a legal duty to warn anyone about the threat.
- In a situation where a survivor makes a clear and specific threat to harm someone and has the means to carry out that threat, an advocate should talk to a supervisor immediately.
- The advocate and the supervisor should follow program policy about contacting the Executive Director and the police.

Breaches Scenarios

Question

If you decide to call the police, what happens to the survivor's confidentiality?

- She loses confidentiality.
- Nothing happens to it.
- She still has confidentiality, but it has been breached.

Breaches Scenarios

Answer

If you decide to call the police, what happens to the survivor's confidentiality?

- She loses confidentiality.
- Nothing happens to it.
- She still has confidentiality, but it has been breached.

The survivor continues to share a confidential relationship with the advocate. By calling the police, the agency has breached confidentiality and must take further action.

Breaches Scenarios

Question

What further steps should be taken?

Breaches Scenarios

Answer

The Executive Director should notify key staff that the police may arrive or call and work with the staff to:

- Inform the survivor that the police were called;
- Take precautions to protect the confidentiality of other service recipients;
- Follow the program's policies regarding providing only the minimum information necessary to the police;

Breaches Scenarios

Answer (continued)

- Give the survivor the contact information for the Public Defender's office;
- Close the survivor's current file and open a new one as of the date of the breach; and
- Open new files for the survivor's children you may be serving.

✓ Do not encourage the survivor to flee.

Breaches Scenarios

Scenario 2

A service recipient experiences a life-threatening health emergency, such as a heart attack or drug overdose, and is unable to communicate.

Breaches Scenarios

Question

Should the advocate call 911?

No

Yes

Breaches Scenarios

Answer

Should the advocate call 911?

No

Yes

The advocate should not hesitate to call for an ambulance to provide emergency medical attention.

Breaches Scenarios

Question

If emergency personnel are called to respond, what does that do to the service recipient's confidentiality?

Breaches Scenarios

Answer

The survivor continues to share a confidential relationship with the advocate. By calling 911, the program has breached confidentiality and must take further action.

Breaches Scenarios

Question

What steps should be taken once a decision is made to call 911?

Breaches Scenarios

Answer

The Executive Director should notify key staff that emergency responders may arrive and work with the staff to:

- Inform the survivor that 911 has been called;
- Notify the person listed on the service recipient's emergency contact form;
- Take precautions to protect the confidentiality of other service recipients;
- Follow the program's policies regarding providing only the minimum information necessary to the police and emergency responders;

Breaches Scenarios

Answer (continued)

- Close the survivor's current file and open a new one as of the date of the breach; and
 - Open new files for the survivor's children you may be serving.
-
- ✓ Do not disturb any potential evidence located at the scene including medication, weapons, or property of the survivor.
 - ✓ Unless you have specific consent from the survivor, do not share her HIV/AIDS status with first responders.

Breaches Scenarios

Scenario 3

An advocate is facilitating an evening group session with some of the shelter residents. Another shelter resident comes into the room holding a knife and makes several menacing remarks and gestures causing them to fear for their physical safety.

Breaches Scenarios

Question

Should the advocate call 911?

Yes

No

Breaches Scenarios

Answer

Should the advocate call 911?

Yes

No

The advocate should take steps to protect the safety of the shelter residents and staff by immediately calling 911.

Breaches Scenarios

Question

How is the confidentiality of the attacker affected?

Breaches Scenarios

Answer

The attacker, as a service recipient, continues to share a confidential relationship with the advocate. By calling 911, the program has breached confidentiality and must take further action.

Breaches Scenarios

Question

What steps should be taken with regard to the attacker's confidentiality?

Breaches Scenarios

Answer

The Executive Director should notify key staff that the police may arrive or call and work with staff to:

- Inform the attacker that the police were called;
- Take precautions to protect the safety and confidentiality of other shelter residents;
- Follow the program's policies regarding providing only the minimum information necessary to the police;

Breaches Scenarios

Answer (continued)

- Close the attacker's current file and open a new one as of the date of the breach; and
 - Open new files for the attacker's children you may be serving.
- ✓ Do not disturb any potential evidence located at the scene including furniture, medication, weapons, or the property of the attacker.

Breaches Scenarios

Question

What is the effect of calling 911 on the confidentiality of the other shelter residents?

Breaches Scenarios

Answer

There is no direct impact on the confidentiality of other shelter residents just by calling 911. However, program staff should take every precaution to protect the confidentiality of the other shelter residents once the first responders arrive at the shelter.

Breaches Scenarios

Question

What steps should they take to protect the confidentiality of the other shelter residents?

Breaches Scenarios

Answer

The Executive Director should inform key staff that the police may arrive or call and work with staff to:

- Inform the other shelter residents that 911 has been called;
 - Take precautions to protect the confidentiality of the other shelter residents; and
 - Follow the program's policies regarding providing only the minimum information necessary to the police.
- ✓ Do not disclose the identities of any of the individuals who may have been witness to the attack without their prior, written, and informed consent.

Course Review

You are now able to:

- Identify meanings of important confidentiality terms;
- Differentiate absolute from qualified privilege;
- List who is covered by and who controls privilege;
- Identify when privilege ends;
- Identify procedures for maintaining confidentiality of client data;
- List the necessary components in a release;
- List the steps to take when a breach occurs; and
- Describe situations when an Executive Director may direct a breach.

Conclusion

This concludes the content of this course. After reviewing the accompanying resource materials, please proceed to the learning assessment.

You must receive a 90% or higher on this assessment to receive credit for the course.

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