***DRAFT***

***Protocol for DV Program Response Regarding COVID 19 Testing & Subsequent Response***

***May 2020***

Delaware’s domestic violence (DV) service community is committed to ensuring the health and safety of program participants and the community at large. DV service programs adhere to a variety of state and federal requirements for service including the legal obligation to protect personally identifying information of survivors. Although program participants don’t have the same legal obligation as program staff, participants are made aware of their rights to privacy and informed of their choices related to their health and safety and that of others in program. The following protocol is an effort to present best practices to adhere to federal confidentiality requirements while addressing the need for community health and safety.

Confidentiality during COVID-19

#### Legal obligations

* + The Federal Violence Against Women’s Act, Victims of Crime Act, and Family Violence Prevention and Services Act prohibit disclosure of personally identifying information ([34 U.S.C. § 12291](https://www.law.cornell.edu/uscode/text/34/12291)(b)(2)(B),(C) and [28 C.F.R. § 90.4](https://www.law.cornell.edu/cfr/text/28/90.4) ; [42 U.S.C.A. § 10406](https://www.law.cornell.edu/uscode/text/42/10406)(c)(5); [28 C.F.R. § 94.115](https://www.law.cornell.edu/cfr/text/28/94.115) ) unless there is:
    1. written, informed consent by the survivor;
    2. a statutory mandate to disclose such information; or
    3. a court order signed by a judge requiring such disclosure.

Thus, a VAWA, FVPSA, or VOCA-funded DV agency or shelter may not disclose personally identifying information about a service recipient in connection with reporting a case of COVID-19 unless one of these exceptions applies.

* + As a general rule, Delaware regulations that require certain professionals to affirmatively report communicable diseasesdo not include DV agencies or program staff ( [Title 16 Administrative Code 4202](https://regulations.delaware.gov/AdminCode/title16/Department%20of%20Health%20and%20Social%20Services/Division%20of%20Public%20Health/Health%20Promotion%20and%20Disease%20Prevention/4202.shtml) ). Therefore, at this time agencies and DV programs may not affirmatively disclose personally identifying survivor information related to communicable disease investigation or containment efforts led by public health departments.
    - Under DE state law, when a public health emergency has been declared additional powers are granted to the State Public Health Director. Those powers include investigating the potential for outbreaks, and implementing procedures to contain an outbreak.
    - [DE Code Title 21 Subsection 3147](https://delcode.delaware.gov/title20/c031/sc05/index.shtml) recognizes that during a state of emergency the federal mandates remain in effect.

#### Written releases of information

* + Per VAWA, VOCA, and FVPSA [requirements,](https://www.techsafety.org/faq-federal-laws) all releases allowing an advocate to share a survivor’s personally identifiable information must be written, informed, and time-limited.
  + While digital signatures and digital releases are not typically best practice to comply with these confidentiality requirements, there are ways to meet these requirements while working remotely with a survivor.
    - If using text message, email, or other digital communication to get “written” consent, DV program staff need to ensure that the release is “informed” and minimize the risk that the abuser is interfering/intervening. The National Network to End Domestic Violence and the Confidentiality Institute recommend DV program staff consider the following:

1. Has there been an actual discussion (voice, written, or via the internet) where information was clearly shared with the survivor and the survivor was supported in making an informed decision?
2. Are the survivor’s instructions documented so that they can be referenced by both the DV program staff and the survivor?
3. Can you confirm that it is the survivor giving you these instructions, not someone impersonating the survivor?

* Additional information on [DV Programs use of electronic consents to release](https://dcadv.org/file_download/inline/e873b90f-f70e-488f-92a6-38b3734ef007) can be found on DCADV’s website.
* See this 15 minute video from NNEDV on [Confidentiality & COVID-19 FAQs](https://www.youtube.com/watch?v=WxNkvg_eEzk&feature=youtu.be) designed for advocates in direct service programs, to address 4 frequently asked questions about Confidentiality during the COVID-19 pandemic.

Response to Exposed/Suspected/Confirmed Case of COVID 19

* Program Participants and their children
* DV program staff should include health related information into safety planning with program participants. This includes information shared by the Division of Public Health on the transmission and spread of COVID-19, strategies to minimize exposure, and what can be done if you become sick or believe you may have been exposed. A complete and up to date reference can be found on the [DE COVID 19 webpage](https://coronavirus.delaware.gov/what-delawareans-can-do/).
* Per NNEDV recommendations, if a DV program has reason to believe that a participant has been exposed to COVID-19 and may have exposed others to the virus, the program could make an announcement informing other program participants about the possible exposure without disclosing any identifying information about the individual (that includes gender, age, whether staff or participant), the steps the program is taking to address the exposure, and to remind participants of the possible symptoms and available health resources.
* If a survivor has a suspected case of COVID-19, they should be encouraged to contact their primary care physician. If they do not have a primary care physician, they can learn more about available health care resources at the [DE COVID 19 website](https://coronavirus.delaware.gov/frequently-asked-questions/#testing-and-symptoms) and follow the guidance provided by medical experts.
* DE is expanding access to free testing sites with the goal of making testing available to anyone who wants one. DV program staff should be familiar with local health and testing resources to be able to connect survivors to and offer these resources to survivors and their families, but not force them to seek these services. To learn more about testing sites, go to [DE COVID Testing page.](https://coronavirus.delaware.gov/testing/)
* DV programs having direct contact with participants should follow instructions from the Division of Public Health on how to prevent and minimize the spread of the virus. Guidance and resources can be found on the [DE COVID Business Resource page.](https://coronavirus.delaware.gov/resources-for-businesses/)
* COVID-19 Testing and Contact Tracing Safety Planning
  + DE has plans to launch contact tracing as a way to control the spread of the virus. This process involves notifying everyone who has come into contact with the confirmed COVID-19 infected person during a certain window of time that they have been exposed. Contact tracers are currently being recruited by the state and will be trained on a protocol that does not disclose the identity of the person who has tested positive. But it may be possible for a contact to figure out who the confirmed person is based on the timeline the tracer sets for quarantine.
  + DV programs should provide safety planning around contact tracing should a survivor decide to get tested for or become symptomatic/sick from COVID-19.
    - Inform the survivor that if they get a COVID-19 test and test positive, public health officials may conduct contact tracing.
    - Explain that contact tracing is intended to support patients and notify contacts of exposure to stop chains of transmission. When a person tests positive for COVID-19, contact tracing identifies who that individual may have been in contact with in the past 14 days so those people can take precautions to avoid infecting others.
    - If the survivor has been in the physical presence of their abuser within a couple of days of their symptoms starting or when they test positive, contact tracers will likely attempt to notify the abuser to let them know they’ve been in contact with someone who has tested positive for COVID-19, and request that they self-quarantine.
    - The period of self-quarantine that will be requested will depend on when the person was last in contact with the person confirmed to have COVID-19.
    - If the contact lives with the person who has tested positive for COVID-19, they will be asked to isolate within the home. Assuming they do not get sick, they will be asked to self-quarantine while the person is sick, plus at least an additional two weeks. This may have safety implications for survivors, whether the survivor is the one who tests positive, or their abuser is.
    - Talk with survivors about what **safety risks might come from testing**, isolation/quarantine, and contact tracing, as well as what services and benefits they might be eligible for if they test positive (e.g. paid sick leave under the Families First Coronavirus Response Act). The following is a link to [DE's form to Request Paid Leave Related to COVID 19](https://dhr.delaware.gov/policies/documents/covid19-fpsl-form.pdf) application.
    - Survivors may be **asked for their address** when getting COVID-19 tests. If your shelter has a confidential location, talk with survivors about maintaining the confidentiality of the location when they get the test, and ways to protect the confidentiality of other program participants. Program participants could:
      * Provide the agency’s administration address
      * Tell the health/public health worker they were “at” a shelter or program, without including that they were there to “receive service”. This will minimize disclosure.
      * Provide the name of the advocate they worked with or the name of the director at the program. DV Program staff can receive the contact and then initiate notification that someone who has had contact with staff, participants, and their children that someone (not naming the person) who has been on site tested positive for the virus. This is similar to what doctor’s offices do in similar situations – simultaneously protecting privacy and health.
    - Contact tracers may attempt to visit the physical addresses they receive for contact tracing purposes if they cannot reach identified people by phone or other contact. Shelters should be prepared for how to respond to contact tracers who show up at shelters.
    - If **contact tracers communicate with or visit DV programs**, particularly those funded through federal FVPSA, VAWA and VOCA grants, staff should be prepared to explain that federal confidentiality mandates prohibit them from disclosing the identify of program participants without written consent or court order.
    - DV program staff should **follow established procedures regarding external contacts** and requests for information. For example, “We can neither confirm nor deny if anyone by that name is here. But what I can offer is to take your name and contact information, share notice with the people here that someone who said they were here has tested positive for COVID-19, and offer you as a person they can reach out to with questions/concerns.”
* If a **staff member tests positive** for COVID-19, they should not share the names of anyone at the program or shelter, but rather follow the same procedure outlined above. Not share names, and provide notice to the program so that they can notify those who may have been exposed.
* Remember, **health information is the survivor’s information**. It is the DV program that has legal obligations to protect personally identifying information of survivors. Survivors aren’t under that same obligation, and even if they are encouraged not to share the names of others, they may do so out of fear, or if they are trying to be helpful during this crisis. Programs should pro-actively talk about this with survivors so that they can be prepared to handle such a situation in a way that both protects privacy and the health of the community.