

## *Confidentiality for Employees and Volunteers*

### **Purpose**

Confidentiality and privilege are keys to keeping survivors of domestic violence safe and represent the cornerstones of all successful domestic violence organizations. The Initiative works to ensure safe and confidential communications with clients and therefore adopted a policy regarding confidentiality.

- **Legal mandate** - The Initiative must abide by legal requirements to uphold the client's right to confidential communications unless a mandated reporting situation arises<sup>1</sup>. Anti-Domestic Violence Advocacy organizations must abide by the federal laws of the Violence Against Women Act (VAWA) and the Family Violence Prevention and Services Act (FVPSA), and they must abide by Colorado statute §13-90-107. Those receiving DVP and/or Victims of Crime Act (VOCA) monies must abide by those rules as well.
  - VAWA Section 3, 42 USC §13925(b)(2)(2008)6 became effective in 2006, and has a universal grant condition that requires VAWA grantees to maintain the confidentiality of personally identifying victim information.
  - U.S. federal FVPSA confidentiality obligations (42 USC §10402) specifically parallel those of VAWA 2005. FVPSA prohibits their grantees from disclosing, revealing or releasing any victim's confidential or private information without the victim's informed, written and reasonably time-limited consent. All disclosures are prohibited unless compelled by statutory or court mandate.
  - Colorado Revised Statute §13-90-107 (k) (l) states that "A victim's advocate shall not be examined as to any communication made to such victim's advocate by a victim of domestic violence ... in person or through the media of written records or reports without the consent of the victim."
  - VOCA rules (§94. 115) parallel the confidentiality obligations of FVPSA and VAWA 2005.
  - DVP Rule 12.201.2, effective 10/1/18, require programs to adhere to CRS 13-90-107(k)(l), maintain confidential communications, and develop written confidentiality policies.

### **Policy -**

People surviving domestic violence who contact community-based advocacy organizations have the right to have their communications with The Initiative protected as confidential. THE INITIATIVE employees and volunteers shall abide by Federal and State laws regarding confidential and privileged communication with survivors of domestic violence seeking and/or receiving services. Colorado advocates are required by law to report any known or suspected child maltreatment of a child. This is the only exception to a client's right to confidential communications. See The Initiative's Child Maltreatment Reporting policy for more information.

### **Specific Provisions -**

The Initiative shall ensure all communication between the client and The Initiative will be confidential.

#### **Who must maintain confidentiality**

Per DVP Rule 12.201.2.A, The Initiative requires all staff, volunteers and governing body members who work with clients, or have access to their files, to complete an initial 15-hour organization training at minimum prior to working with clients. All The Initiative staff, volunteers, and board employees and volunteers shall

abide by the provisions set forth in CRS 13-90-107, and must sign a copy of The Initiative confidentiality agreement to be kept in the personnel / volunteer files.

Interpreters have the same confidentiality privilege when working with the advocate to help the client.

### **Information to be kept confidential**

Per DVP Rule 12.201.2.B, all communications between clients and employees and volunteers, information regarding clients, and proprietary records of The Initiative are to be kept confidential. Any person who receives any level of service / information from The Initiative is considered a client, and is therefore subject to victim-advocate confidential privilege.

Interpreters have the same confidentiality privilege when working with the advocate to help the client.

This confidentiality lives on after the client's death (based on interpretation of attorney-client case law). However, the personal representative of the decedent may provide a release of information to waive confidentiality.

### **Safeguarding files from improper access**

In order to maintain confidential communications and records, per DVP Rule 12.201.2 B. all paper client files will be kept in locked file cabinets, behind a locked door, in a locked building. Files needing to be transported will be kept in a locked box or in the direct care of an The Initiative employee or volunteer at all times. Students doing educational placements at The Initiative are not authorized to maintain separate records.

All electronic client files will be kept in a password protected database on a password protected device.

### **Information kept in clients' files**

Per DVP Rule 12.201.2. B., client files will be maintained only for all clients of the The Initiative. Statements of clients will not be written verbatim, nor should statements of evaluation or opinion ever be included in a client's file. The following information can be included in these files, either in paper or via electronic means:

- Intake form with demographics
- Signed notice of client rights
- Needs / Risk Assessments
- Releases of Information
- Services provided
- Documentation that safety planning was offered

See the The Initiative Data Collection Policy and Protocol for more information.

### **Client releases of information**

Per DVP Rule 12.201.2 E., only a client has the right to determine who has access to their information kept by THE INITIATIVE. Releases of information must be obtained by a client before the information is disclosed to any outside agency or individual. Best practice dictates that a written release be on The Initiative Release of Information Form that is signed by a client, indicating what information may be disclosed to which agency/individual, for what purpose, that is time-limited and may be revoked at any time. Under circumstances determined by the client, a verbal release of information may be granted to a staff person, who is responsible for documenting the specifics of the verbal release. Release of information forms from other agencies or individuals will not be accepted for the purposes of sharing THE INITIATIVE held information. All releases of information should be kept in the client file.

See the THE INITIATIVE Release of Information Form for further detail.

## Retention, storage and destruction of files

Per DVP Rule 12.201.2 B., all paper records generated by The Initiative with client information (including messages and notes) will be kept in a secure location while needed and destroyed (preferably by cross-cut shredding) when no longer necessary.

- Service Records – The Initiative maintains service for statistical purposes (i.e.—provide data to funding sources, research purposes, etc.). This could include, but is not limited to, crisis call logs, group sign-in sheets, activity sheets, etc. Services records will be kept in a secure location for three years.
- Staff Communication Logs— The Initiative office locations have the option to maintain logs to facilitate communication between employees and volunteers. Logs will be kept in a secure location, and be destroyed after 30 days.
- Client Files— The Initiative will retain client files for a period of 3 years, in accordance with funding requirements, after which they will be destroyed.

Electronic Files will be retained for a period of 3 years, in accordance with funding requirements, after which they will be destroyed per system capabilities.

## Access to Client Files

Per DVP Rule 12.202.3 B.7, clients have the right to access their files. They may request to review or obtain a copy of their file verbally or by written request.

When sharing the stories of The Initiative clients in education and outreach events, care should be taken to remove all identifying information (i.e.—name, address, age, etc.) of individuals involved. A release of information is not necessary in this case.

Per DVP Rule, 12.201.2 A., all The Initiative employee and volunteers who have completed our 15-hour The Initiative training may have access to client records as needed.

## Responding to subpoenas

Per DVP Rule 12.201.2 C., The Initiative will have a written procedures for responding to subpoenas. Only a client has the right to waive the privilege of confidential communications and allow disclosure of information. This privilege belongs to the The Initiative’s client alone, and advocates of The Initiative must abide by the wishes of the client (except in those instances as outlined in Policy 1.3.10--"Limitations to confidential communications").

Upon receipt of a subpoena, The Initiative staff, in conjunction with the client (when possible), will evaluate whether The Initiative will resist or cooperate with the subpoena. In all cases where an The Initiative advocate complies with a subpoena, that advocate must obtain a release of information in accordance with “Client releases of information.”

(A) Subpoenas generated by clients or their attorneys—compliance with a subpoena will not take place without a discussion *first* with the client, the subpoenaed advocate, and an The Initiative supervisor or the Executive Director, to outline for the client all possible pros and cons of the advocate’s testifying, as well as possible alternatives for more appropriate sources of testimony. There shall be no exception to this policy.

(B) Subpoenas generated by abusers or their attorneys—appropriate steps will be taken to quash the subpoena, through an attorney hired by The Initiative, or with assistance from the Colorado Coalition Against Domestic Violence regarding additional ways to respond to the subpoena, including obtaining a sample motion to quash letter.

(C) Subpoenas or requests for statements generated by public servants—no statements shall be written, nor will a subpoena be responded to, until a discussion has *first* taken place with the client, the subpoenaed advocate, and a second The Initiative staff employee or volunteer, to outline for the client all possible pros and cons of the advocate’s testifying or creating a statement, as well as possible alternatives for more appropriate sources of testimony. There shall be no exception to this policy.

Discussions with clients and outside individuals/agencies should underscore the importance of privileged communications to the services The Initiative provides. It should also be pointed out that once on the witness stand, the advocate will have to answer questions posed by both attorneys, opening lines of questioning that may make the advocate reveal more information than had been anticipated.

The Initiative will file a motion to quash the subpoena unless the client expressly requests The Initiative to testify. The Initiative will seek to contact the client when a subpoena has been received but will not wait to file the motion to quash.

### **Informing clients of confidential services & exceptions to confidentiality**

Per DVP Rule 12.202.3 B.4, as soon as possible after a client’s immediate safety needs have been addressed, all The Initiative clients will be informed of their right to confidential communication and services with The Initiative either verbally or via the Client Rights Form to include the exceptions to confidentiality. This will be documented in client files.

The Initiative employees and volunteers may only disclose confidential information if there is knowledge or suspicion of child maltreatment or if there is a release of information as described in the section “Release of Information.” See the Mandatory Reporting of Child Maltreatment Policy for more information.

### **Other professionals**

Per DVP Rule 12.201.2 F., if The Initiative has any professionals employed or contracted, such as licensed social workers, attorneys, licenses or unlicensed counselors, who are providing services within their professional license, The Initiative must establish a separate set of confidentiality, mandatory reporting, and duty to warn disclosure materials to provide to clients.