Guidance for Implementing the Federal Confidentiality Provisions for Children's Advocacy Centers Funded by the Michigan Division of Victim Services

Division of Victim Services,
Michigan Department of Health & Human Services
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This document was prepared by the Michigan Division of Victim Services (DVS). It was written to provide DVS-funded Children's Advocacy Centers (CACs) with guidance for implementing certain aspects of federal victim services confidentiality provisions that are a condition of receiving federal funds administered by DVS. It focuses primarily on the provision of victim services at CACs and the intersection of those services with the forensic interview and multidisciplinary team (MDT) process. It does not address other legal, ethical, and other contractual obligations and is not a comprehensive overview of all the CAC's obligations related to confidentiality or the handling of Personally Identifying Information (PII).

Nothing in this guidance should be construed as legal advice. It is intended to be used by CACs to develop organization-specific policies, procedures, and practices in consultation with an attorney hired to represent the interests of the agency and the board of directors. Statutory citations, regulatory citations, and federal guidance referenced in this document are accurate as of August 2020. However, agencies must be aware that these sources may be revised in the future. Electronic versions of this document are thoroughly cross referenced and source documents are directly linked for ease of access.

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I. Introduction

Confidentiality is a critical component of providing services to victims of crime in many settings, including Children's Advocacy Centers (CACs). The protection of victim/survivor privacy is essential to healing and safety, as well as promoting autonomy and establishing trust. While there are many legal and professional regulations that protect service participant information, the guidance contained in this document is limited to the confidentiality regulations that organizations must comply with as a condition of receiving certain federal funds. It does not address other legal, ethical, and other contractual obligations.[1] This guidance includes an overview of those federal provisions and their applicability to CAC programs as well as implementation considerations for policy and practice. It is not a comprehensive overview of all of a CAC's federal obligations, and it does not discuss important confidentiality issues such as electronic record keeping, the use of cloud storage services, and the provision of virtual/remote victim services. Rather, this guidance focuses on the provision of victim services at CAC programs and the intersection of these services with the forensic interview and multidisciplinary team (MDT) process. This guidance was developed for CAC programs funded by the Michigan Division of Victim Services in consultation with the Children's Advocacy Centers of Michigan and a working group of leaders from the victim services field.

II. Overview of the Federal Victim Service Confidentiality Provisions

The federal victim services confidentiality provisions are a set of nearly identical laws and regulations found in the Victims' of Crime Act (VOCA) (28 CFR 94.115), the Violence Against Women Act (VAWA)(34 USC §12291(b)(2); 28 CFR 90.4(b)), and the Family Violence Prevention and Services Act (FVPSA) (42 USC § 10406(c)(5)). Because these funding provisions mirror each other so closely, the Frequently Asked Questions (FAQs) and guidance from US Department of Justice (DOJ), Office on Violence Against Women (OVW), and DOJ-funded technical assistance providers have been referenced throughout this document and can generally be relied upon for understanding the full scope of the basic federal provisions.

Information about victims/survivors and non-offending family members receiving counseling/therapy, advocacy, forensic interviews, medical examinations, and other services at Children's Advocacy Centers (CACs) are protected by other state, federal, and/or tribal laws, rules of evidence, professional licensing standards, and codes of ethics. These authorities create a confidentiality and privacy framework that is an essential element to providing CAC services. CACs are responsible for understanding the breadth of these other confidentiality and privacy rules that may apply to their organization and their employees.[2]

[1] Grantees of the Michigan Division of Victim Services must comply with contract requirements which generally address the non-disclosure of confidential information and require compliance with all provisions of the Victims of Crime Act of 1984 and all applicable federal and state laws, regulations, and guidance.

[2] This guidance does not address these other laws in any depth. See Appendix A for a list of other state and federal laws that may apply.

A. Basic Framework of the Provision

The federal victim services confidentiality provisions recognize that confidentiality is an essential cornerstone to the provision of victim services. As a condition of receiving VOCA, VAWA, and/or FVPSA funds, funded victim service programs are prohibited from disclosing, revealing, or releasing personally identifying information or individual information collected in connection with services utilized, requested, or denied unless (1) the service participant has signed a release of information, (2) a law mandates disclosure, or (3) a court has ordered disclosure. (28 CFR 94.115; 34 USC §12291(b)(2); 28 CFR 90.4(b); 42 USC § 10406(c)(5)).

The confidentiality provisions apply to the entire victim services program, even if the specified federal funding only covers a single staff position or a small part of those victim services.3 The confidentiality provisions explicitly do not apply to law enforcement- and prosecution-generated information necessary for law enforcement and prosecution purposes. Similarly, the confidentiality provisions do not apply to funded victim witness assistants employed by police departments or prosecutors' offices.4 As used throughout this guidance, the terms advocate, counselor, therapist, and service provider refer to individuals providing Victim Support Services at a CAC organized as a private non-profit victim services organization.

B. Applicability to Children's Advocacy Centers

Victim Support Services (e.g., personal advocacy/accompaniment, therapy, support groups, criminal/civil justice system assistance, and information and referrals) provided by CACs that receive VOCA, VAWA or FVPSA funds are required by statute to be kept confidential. This means that service participant information gathered during the provision of these services cannot be disclosed to anyone, including multidisciplinary team (MDT) members, without a release from the service participant or a specific statutory or court mandate.[5]

The forensic interview itself, however, is not subject to the provisions that prohibit disclosure. Although DOJ has not provided specific written guidance on this issue as it relates to the operations of CACs, a fair reading of the existing guidance and rules supports this conclusion. The federal rules authorize the use of VOCA funds to support forensic interviews at CACs, provided that the "results of the interview will be used not only for law enforcement and prosecution purposes, but also for identification of needs such as social services, personal advocacy, case management, substance abuse treatment, and mental health services" (28 CFR § 94.119 (h)). The US Department of Health and Human Services further provides that "Forensic interviewing is a means of gathering information from a victim or witness for use in a legal setting, such as a court hearing . . . .The purpose of these interviews is to gather factual information in a legally defensible and developmentally appropriate manner about whether a child (or other person) has been abused."[6] As noted above, the federal confidentiality provisions do not apply to "law enforcement-

[3] Frequently Asked Questions (FAQs) on the VAWA Confidentiality Provision, DOJ, OVW, (2017), Question 11.
[4] Frequently Asked Questions (FAQs) on the VAWA Confidentiality Provision, DOJ, OVW, (2017), Question 12.
[5] See Section C for more on the elements of the federal victim services confidentiality provisions.
[6] Forensic Interviewing: A Primer for Child Welfare Professionals, Child Welfare Information Gateway, USDHHS, July 2017, retrieved from https://www.childwelfare.gov/pubs/factsheets/forensicinterviewing/.

and prosecution-generated information necessary for law enforcement and prosecution purposes" (28 CFR § 94.115(c)(3)). While the individuals conducting forensic interviews are frequently employed by private non-profit CACs, the forensic interview process is structured to generate information for law enforcement and prosecution purposes. Accordingly, the federal confidentiality provisions do not apply in the narrow context of a forensic interview.

It is important to note here that although the forensic interview and corresponding records are not subject to the federal victim services confidentiality provisions, other laws may require that this be treated as protected or confidential information. These laws are not reviewed in depth here, but CACs are responsible for understanding the scope and application of these provisions.[7]

As with forensic interviews, medical examinations or SANE services provided by a CAC would not be subject to the federal victim services confidentiality provision. In this instance, DOJ has provided specific guidance as it relates to SANE services, stating that "SANE and SAFE programs are not covered, although they may be subject to other confidentiality provisions such as the Health Insurance Portability and Accountability Act (HIPAA)."[8]

With the exception of the Forensic Interview and Medical Services that may be offered by a CAC, the federal victim services confidentiality provision applies to the entire CAC. The requirement to maintain confidentiality must be observed by all staff, interns, and volunteers at a CAC. This includes staff, interns, or volunteers in positions not directly funded by VOCA/VAWA/ FVPSA, as well as staff that do not directly interact with victims, such as administrative and support staff, prevention educators, and MDT coordinators. This is true even though the federal funds are used to pay for only some of the services or staff of the CAC.[9]

If the CAC is housed in a larger umbrella organization, such as a healthcare institution, unit of government, tribe, or other community service provider, the federal victim service confidentiality provision applies only to the victim service program receiving the federal funds. For example, a hospital may also operate a CAC, and only the CAC receives VOCA/VAWA/FVPSA funds. The non-CAC programs of the hospital are not covered by the federal confidentiality provisions. For that reason, the CAC program cannot share information about CAC service participants with other components or programs of the hospital without a release from the service participant or a specific statutory or court mandate.

Finally, the federal victim service confidentiality provision does not apply to the CAC's MDT partners, prosecutor or law enforcement-based victim witness assistants, or other community partners. Information cannot be shared by the CAC with the MDT or other community partners without a release from the service participant or a specific statutory or court mandate.

[7] See Appendix A for a list of other state and federal laws that may apply. See also Appendix D for a brief discussion of statutes related to the privacy of forensic interview records.
[8] Frequently Asked Questions (FAQs) on the VAWA Confidentiality Provision, DOJ, OVW, (2017), Question 14.
[9] Frequently Asked Questions (FAQs) on the VAWA Confidentiality Provision, DOJ, OVW, (2017), Question 11.

C. The Elements of the Federal Victim Service Confidentiality Provision

Victim Support Services (e.g., personal advocacy/accompaniment, therapy, support groups, criminal/civil justice system assistance, and information and referrals) provided by funded organizations are subject to the federal victim services confidentiality rule. Generally, confidentiality "is a promise that the [service provider] will not intentionally disclose information, the [service provider] will take protective measures to prevent inadvertent or unlawful disclosure of information, the [service provider] will vigorously challenge any attempts to take the information, and the [service provider] will alert the owner of the information about attempts to take it."[10]

The federal victim services confidentiality provision prohibits disclosing, revealing, or releasing personally identifying information or information collected in connection with services utilized, requested, or denied about service participants unless (1) that person has signed a release of information, (2) a law mandates disclosure, or (3) a court has ordered disclosure. As noted above, CACs are also responsible for understanding the breadth of other confidentiality and privacy and rules that may apply to their organization and their employees that are not discussed here.[11] Below is a brief overview of the major elements of the federal provision.

1. Personally Identifying Information (PII)/ Individual Information

The federal rule protects a broad category of information. It is intended to "protect the confidentiality and privacy of persons receiving services" and it prohibits the disclosure of "personally identifying information or individual information collected in connection with . . . services utilized, requested, or denied regardless of whether such information has been encoded, encrypted, hashed, or otherwise protected." (28 CFR 94.115.) Accordingly, it protects information about a person who requests services (regardless if the service is actually provided), is receiving services, or has received services in the past.

The code of federal regulations defines Personally Identifying Information (PII):

"PII means information that can be used to distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual * * * [It] includes for example, first and last name, address, work telephone number, email address, home telephone number, and general educational credentials. The definition of PII is not anchored to any single category of information or technology. Rather, it requires a case-by-case assessment of the specific risk that an individual can be identified. Non-PII can become PII whenever additional information is made publicly available, in any medium and from any source, that, when combined with other available information, could be used to identify an individual." (2 CFR § 200.79.)

[10] A Primer on Privilege & Confidentiality for Victim Service Providers, Confidentiality Institute, (2015).
[11] See Appendix A for a list of other state and federal laws that may apply.

In addition to PII, the federal confidentiality provisions protect individual information. Individual information is any information collected in connection with services. This could be information that is not necessarily identifying such as the existence of a health condition or information about serve participants observed by CAC staff. The protection of such individual information is particularly important in any context where that information could easily be connected back to an individual service participant such as in an MDT meeting.

While the primary focus of CAC services is the child victim/survivor, both the child and the non-offending family are often *persons receiving services* at a CAC. As service participants, information about and provided by both the child and the non-offending family members in connection with these Victim Support Services is protected under the federal confidentiality provision, unless it falls into one of the recognized exceptions that allow for disclosure.

2. Release of Information

In the absence of specific statutory or court mandate, information about service participants can only be shared when that individual has signed a release of information. The federal confidentiality provisions require that releases be written, informed, reasonably time-limited, and signed by the person participating in services. In addition, service participants cannot be *required* to consent to the release of information as a condition of services. A release of information must include the following four elements:

a. Informed: Releasing information is the end of a process that begins with a conversation about the service participant's goals and the available alternatives to share the information. A release is "informed" when the service provider and the service participant have a shared understanding of (1) how the release supports the participant's goals, (2) who will have access to the information, (3) what information can be shared under the release, and (4) how/when the information will be disclosed. The release should reaffirm for service participants that they have the right to confidentiality and that releasing information is voluntary.

b. Written: Oral releases are not allowed. A written release is typically executed on a standardized form designed by the organization. For remote communications, a digital release[12] or a simple release handwritten or typed by the service participant that captures the necessary elements can be used and sent to the organization via e-mail, photograph, text message, fax, or other electronic means. Staff executing a remote release should still review the essential elements of the organization's written release with the service participant.

[12] See Digital Written Consent to Share Information, National Network to End Domestic Violence, Safety Net Project, (2020).

c. **Time Limited:** The release must be reasonably time limited. A reasonably time-limited release is valid only for the minimum time necessary for the *specific* information to be shared. This time limit often ranges from a few hours to a few weeks but could be shorter or longer depending on the needs of the service participant.

d. **Signed:** A release must be signed by the service participant. For remote communications, a digital signature can be used and sent to the organization, via e-mail, photograph, fax, or other electronic means.

   If the service participant is primarily the non-offending caregiver, the caregiver can sign the release. When the minor child is the service participant, both the minor and the non-offending parent/guardian should sign the release. If the minor is too young to be able to understand and give informed consent, the non-offending parent/guardian may consent on the minor's behalf. In such cases, though, CAC staff should attempt to inform the child, in an age-appropriate and trauma-informed manner, about the disclosure of information.[13]

   Consent for release may *not* be given by the abuser of a minor or by the abuser of the other parent of the minor (28 CFR §94.115(a)(2)). If a minor is permitted by law to receive services without a parent's/guardian's consent, then the federal confidentiality provisions permit the release of information based solely on the minor's consent, without additional consent from the parent or guardian. CACs should consult their legal advisors to determine whether Michigan law allows the minor to receive services without a parent's/guardian's consent and to release information without a parent's/guardian's consent.

Practice Considerations: A few important practice considerations arise from the principles behind these required elements. Agency policies and practices regarding how and when to release information should first focus on the goals and needs of the service participant(s). Policies and practices need to support the philosophy that service participants own their experience and information about their experience. Executing releases carefully and appropriately is essential to the integrity of the program's confidentiality policy. Complete and careful attention to each release of information request not only underscores for staff the importance of confidentiality but also reassures service participants of the program's commitment to their privacy and ownership of experience.[14]

[13] There may be circumstances where the minor and parent/guardian do not agree about releasing information, where the minor declines to release and the parent/guardian consents to release of information, or vice versa. The CAC should consult with its legal adviser to determine the appropriate course of action in that event.
[14] See Confidentiality Policy Considerations and Recommendations: A Resource Manual for Michigan Domestic and Sexual Violence Programs, Chapter 4, 2nd Ed. Michigan Coalition to End Domestic and Sexual Violence, (2018).

- **Always consider alternative ways to share information that do not require a release:** Consider whether the service participant could share the information themselves or participate in a three-way call with the service provider and the third party. This can be a way to help a service participant build trust with other institutions and have the chance to control how their information or that of their child is shared.

- **A release should be considered a one-time use document:** In most cases, a new release of information should be completed anytime a new piece of information needs to be shared. If the person or agency to whom the information is being released or the specific information to be shared was not included in the original release of information form that the service participant signed, a new release of information form is needed.[15]

- **A release of information cannot be prospective:** A release cannot cover information that the service participant has not yet disclosed but may share in future appointments or conversations. If, at the time of signing the release, the service participant is not aware of exactly what information the service provider intends to share, the release is neither specific nor truly informed. Circumstances can change quickly for service participants, and they should understand exactly how, when, and what information will be shared.

- **Releases should be as specific as possible:** Blanket releases of information that broadly allow staff to share non-specific information with others, including MDT partners, cannot be used. For example, a release that is signed at the onset of services and which allows staff to disclose "information related to the criminal case" is overly broad and not specific. A release should specify the information that the service participant is allowing staff to disclose (e.g., "parent's concern that child will be psychologically harmed and distressed by seeing perpetrator in court"). If a release would allow the staff person to use their own discretion about what information should or should not be released, then it is not specific enough and would not meet the requirements of the federal confidentiality provisions.

- **Release forms should be separate from consent for services and/or intake forms:** Service participants cannot be required to consent to the release of information as a condition of services. CACs should ensure that a release of information is presented to a service participant in a context that makes it clear that consent is voluntary and is not tied to services. Accordingly, a release of information form should not be combined with other forms, such as a consent for services or intake questionnaires.

- **A MDT Confidentiality Agreement does not allow the CAC to share information with the team:** Many local protocols and linkage agreements between CACs and MDT

[15] See FAQ on Survivor Confidentiality Releases, Confidentiality Institute and The Safety Net Project, (2016).

partners include language about confidentiality and information sharing. Additionally, MDT team members may sign a written agreement to keep confidential the information disclosed during the MDT case review process. These practices are an important element to conducting victim-centered case work, and it is important for service participants to know that such agreements are in place. However, the existence of such agreements does not relieve victim service providers of their duty to keep information confidential. Advocates, counselors, and therapists participating in an MDT still need a separate release from the service participant before any information can be shared with the MDT.

- **A release directing CAC staff to share specific information with the MDT at case review or case consultations may be allowable:** A release form designed for this purpose may be allowable if it is informed, written, time-limited, and signed as outlined above. A release of this kind must be as specific as possible regarding who the information will be shared with and what information will be shared. It must also be prefaced with a conversation with the service participant thoroughly explaining the participants and purposes of the MDT, the setting in which information will be shared, and the pros and cons of sharing information in this context.

The DOJ, OVW, and its national technical assistance providers have provided significant guidance regarding release of information practices. See Appendix A for a list of resources on this topic.

3. Legally Mandated and Court Ordered Disclosures

Protected information can be disclosed without a service participant's consent when the disclosure of information is compelled by statute or court order. When information is released under such circumstances, victim service providers are required to "make reasonable attempts to provide notice to victims affected by the disclosure of the information, and take reasonable steps necessary to protect the privacy and safety of the persons affected by the release of the information." (28 CFR 94.115.)

This guidance does not review or provide an in-depth analysis of all the state or tribal mandatory reporting laws that may impact CACs. The most common statutory mandate that may impact a CAC is the mandate to report child abuse and neglect. CAC employees who work for an organization receiving VOCA/VAWA/FVPSA funding are required to make a report under Michigan Law to Children's Protective Services if they have reasonable cause to suspect child abuse or child neglect committed by certain individuals.[16] CAC employees may also have an obligation under Michigan or Tribal law to make a report based on their professional status. (MCL 722.622; 722.623). Staff should be familiar with the circumstances that trigger reporting

[16] Michigan Law requires reporting by "employees of an organization or entity that, as a result of federal funding statutes, regulations, or contracts, would be prohibited from reporting in the absence of a state mandate or court order." MCL 722.623(1)(c). Here the VOCA/VAWA/FVPSA confidentiality requirements trigger this obligation.

under the Child Protection Law or any analogous tribal code.[17] Additionally, certain professionally licensed staff may also be required to provide information to Children's Protective Services in response a request for medical records or mental health records.[18]

CACs should also have a policy addressing common circumstances where they may be required to disclose information in response to a court order such as a search warrant, arrest warrant, or more commonly, a subpoena. Responses to court orders, including subpoenas, should be formulated with the assistance of legal counsel when possible. In addition, the Common Law Duty to Warn is considered a 'court order' that would allow disclosure in some circumstances where there is a threat of harm to the service participant or a third person. Organizations are responsible for understanding the scope of these and any other reporting duties that may apply to them and how they may interact with other privacy rules such as HIPAA and professional licensing standards that may apply to employees.[19]

Practice Considerations: A few important practice considerations when applying the victim services confidentiality rule should be noted:

- **Distinguish between laws that mandate disclosure and laws that "allow" or "permit" information sharing:** The exception to confidentiality is for mandated disclosures, not for permitted disclosures. If disclosure of information "is allowed, but not required, under state or tribal law, then the state or tribal law would not constitute a 'statutory mandate' for the purposes of the [victim services] Confidentiality Provision."[20] Disclosure of information about service participants under a permissive mandate would violate the federal victim services confidentiality provision.

- **Disclosure must be limited to that which is required by law or court order:** Disclosing more information than that which is required by a statute or court order means that the CAC is disclosing information that is not mandated to be disclosed. This would be a violation of the federal confidentiality provision. For example, Michigan Child Protection Law requires individuals to disclose information that might establish the cause of the child abuse and neglect. Disclosing information unrelated to child abuse, such as a non-offending caregiver's unrelated health concerns, is not mandatory and so would be a violation.

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[17] See MDHHS guidance on mandatory reporting found in MDHHS Children's Protective Services and Reporting Suspected Child Abuse and Neglect in Michigan: A Guide to Detailed Reporting.
[18] See statutes and associated forms applying to medical records MCL 333.16281 (DHHS 1163-M) and mental health records MCL 330.1748a (DHHS 1163-P).
[19] For a full discussion of applicable Michigan law and reporting statutes see Confidentiality Policy Considerations and Recommendations: A Resource Manual for Michigan Domestic and Sexual Violence Programs, 2nd Ed., MCEDSV, (2018).
[20] Frequently Asked Questions (FAQs) on the VAWA Confidentiality Provision, DOJ, OVW, (2017), Question 23.

- **Disclosure can only be made to the individual/entity specified in the law or court order:** If a statute specifies to whom a mandated report is directed, the CAC can only disclose the information to that entity or person. For example, if a CAC staff person is required to report child abuse or neglect under Michigan's Child Protection Law, the report must be made to *CPS* in the manner prescribed by the law. The fact that the CAC has disclosed the information to CPS does not mean that the information can be shared by CAC staff with the larger MDT. Although other MDT members will likely learn about the report as part of the CPS investigative process, it would be violation of the victim services confidentiality provision for CAC staff to talk directly with law enforcement or the prosecutor about the report or the information disclosed in that report without a release from the service participant.

- **Service participant notification and involvement:** The federal victim services confidentiality provision mandates that the CAC make reasonable attempts to provide notice to the service participants impacted by the disclosure and take steps to protect their privacy and safety of persons affected by the release. Service participants should be made aware if information is being disclosed due to a court order or statutory mandate. In some circumstances, such as making a mandated report to CPS, involving the service participant in the reporting process can be a good option so long as the child will not be endangered by such involvement.

- **Supervisory review:** The organization's confidentiality policy should include a process to ensure supervisory review whenever information about a service participant is requested or released pursuant to a statute or court order.

III. Implementation Considerations for CACs

Implementing the federal victim services confidentiality provision raises unique questions across all kinds of victim service organizations. This is particularly true for organizations that are attached to large institutions, such as universities and health systems, or organizations whose services are closely tied to coordinated response models such as Family Justice Centers, Supervised Visitation Centers, and CACs. Another complicating factor for many organizations occurs when the same organization provides confidential Victim Support Services in conjunction with other services that may not be subject to the federal victim services confidentiality provision, such as SANE examinations or forensic interviews.

This section tackles these issues with special consideration for unique confidentiality complications that surface for CACs. It starts by reviewing two foundational issues: the importance of confidentiality to victim service provision and partnering with non-offending caregivers. While these issues are largely philosophical discussions, they are important because policies and practices grounded in a shared philosophical approach will ultimately facilitate confidentiality policy implementation and provide a foundation for problem solving when particularly complex confidentiality issues arise. It is important that organizations consider their approach on these issues as they develop confidentiality policies and organizational culture.

Next this section reviews several more practical issues including navigating the CAC's role in the MDT response and distinguishing the purpose of supportive services from that of the forensic interview. Finally, this section provides some final implementation guidance and programming considerations for CACs.

A. The Importance of Confidentiality in Victim Service Provision at CACs

The confidentiality of certain helping relationships is well recognized in law and policy, including the federal victim services confidentiality provisions. This legal and ethical framework stems from the firm understanding that confidentiality and privacy are the cornerstone of providing effective and comprehensive victim services that promote healing and safety. A CAC's internal procedures, policies, and training around confidentiality should be organized around and centered on this core philosophical framework with a clear understanding of what is at stake for service participants.

The protection of service participants' privacy is essential to providing effective and comprehensive services for child victims/survivors and their non-offending family members. In providing services such as advocacy and counseling/therapy to victims/survivors of child abuse and their non-offending family members, CACs become involved in otherwise private and intensely personal areas of people's lives. The success of the advocate/counselor/therapist's work with the victim/survivor and non-offending family members is based upon the development of trust that the service participant may confide sensitive and intimate information without losing control over who has access to that information. Confidentiality is essential for effective services because without an assurance of confidentiality, victims/survivors and their non-offending caregivers may avoid services altogether or may withhold certain information because they fear disclosure.

The protection of privacy can also go a long way toward promoting healing for child victims/survivors and their non-offending family members. A child who has been abused may experience a loss of power and control, personal safety, and ability to trust others. Many times, a child's disclosure of abuse is a traumatic event for non-offending family members as well, and they too may experience some of these losses. While providing services, an advocate/counselor/therapist has ample opportunity to not only walk alongside the child and family as they heal from trauma, but also to restore that lost sense of agency, safety, and trust. One important way service providers do this is through protecting service participants' privacy and respecting their right to control how their information is shared, as is developmentally appropriate.

In addition to the foundation of trust and healing that confidential services provide, many families' lived experiences include realities such as cultural identity, immigration status, mental health status, or domestic violence that may make confidentiality a significant priority. While this guidance cannot review all these complexities, an examination of domestic violence is demonstrative of the issues that can be at stake.

The Presence of Domestic Violence: For many families facing the aftermath of abuse, confidentiality may be more than just an issue of privacy and healing. It may directly affect their physical safety. The overlap between child maltreatment and domestic violence is significant, indicating that child victims of sexual abuse, physical abuse, and/or neglect presenting to the CAC may also be experiencing domestic violence, often unbeknownst to CAC staff and MDT members.[21,22] Accordingly, when the perpetrator of child abuse is the non-offending caregiver's partner, that person may also be perpetrating violence against the child's caregiver. Further research indicates that exposure to domestic violence may even increase the risk that a child is sexually abused by someone *outside* of the home.[23] This suggests that even when the perpetrator of sexual abuse is someone outside of the home, a domestic violence perpetrator may be present inside of the home of children seeking services at a CAC.

The large potential of domestic violence in the homes of children presenting at the CAC is cause for great care to be taken regarding service participant privacy. Information about the child, the non-offending caregiver, and/or the abuse that brought them to the CAC can be used by the domestic violence perpetrator in a myriad of ways to cause further harm. For instance, disclosure that the non-offending caregiver is living with the child at a friend's house would let the perpetrator know where to find them, putting the caregiver and perhaps the child at risk of harm. Many adult victims/survivors of domestic violence and their children have been threatened with further harm or even death if they reveal what their abusers have done. Particular attention should be paid to the fact that patterns of coercive control by a domestic violence perpetrator tend to continue after separation from the

[21] Edleson, J. L. (1999). The overlap between child maltreatment and woman battering. *Violence against women*, *5*(2), 134-154.
[22] Bidarra Z, Lessard G, & Dumont, A. (2016). Co-occurrence of intimate partner violence and child sexual abuse: Prevalence, risk factors and related issues. *Child Abuse & Neglect*. 55. 10-21. doi:10.1016/j.chiabu.2016.03.007.
[23] Holt S, Buckley H, & Whelan S. (2008). The impact of exposure to domestic violence on children and young people: a review of the literature. *Child Abuse Negl*. 32(8):797-810. doi:10.1016/j.chiabu.2008.02.004.

caregiver. The violence may even increase in severity and lethality, further proving the dire importance of confidentiality for victims/survivors and their non-offending family members.[18]

Confidentiality procedures, policies, practices, and organizational culture should be meaningfully grounded in a clear philosophical understanding of how such policies help promote trust, healing, and safety for service participants. Understanding the myriad of complex issues faced by families such as domestic violence can also play a key role in understanding the stakes of confidential services.

B. Partnering with Non-Offending Caregivers

An additional complexity to providing confidential services in the CAC setting can be negotiating the service relationship with more than one family member, especially when those relationships may appear to come into conflict. These confidentiality complexities are easier to negotiate when the organization is clear about its philosophy of how to effectively partner with non-offending caregivers while providing services centered around the needs of the child. Confidentiality procedures, policies, practices, and organizational culture should reflect the CAC's approach to this issue.

As the name suggests, Children's Advocacy Centers (CACs) promote a system of care centered around the child, meaning the healing and safety of the child is often the ultimate focus of advocacy and support. [24] The goal of child healing and safety is best achieved through supporting the non-offending caregiver and recognizing them as a *partner* in this shared goal. Research indicates that parental support after a child's disclosure may be a key factor in reducing the physical, mental, social, and emotional impacts of the abuse.[25, 26] Therefore, advocacy directed only at a child is temporary support for a long-term issue, while advocacy directed toward supporting and educating a caregiver can last a lifetime for the child.[27] Build an understanding that caregivers share the CAC's goal of child safety and healing and that caregivers are partners with the CAC working towards that shared goal side-by-side. In partnering with non-offending caregivers, CAC should consider centering services around the perspective that: 1) the caregiver knows best how to protect their child, 2) the caregiver is already engaged in efforts to promote their child's safety and healing, and 3) the child is, with rare exception, safest at home with the non-offending caregiver.

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[24] Although the primary focus of services for the entire family may be the child victim/survivor, both the child and the non-offending family members are *persons receiving services* at a CAC. Thus, information about and provided by both the child and the non-offending family members in connection with these victim services is protected under the federal confidentiality provision, unless it falls into one of the recognized exceptions that allow for disclosure. See "Overview" Section C, Subsection 3 for more on this topic.

[25] Bernard-Bonnin AC, Hébert M, Daignault IV, Allard-Dansereau C. (2008). Disclosure of sexual abuse, and personal and familial factors as predictors of post-traumatic stress disorder symptoms in school-aged girls. *Paediatr Child Health*. 13(6):479-486. doi:10.1093/pch/13.6.479

[26] Everson MD, Hunter WM, Runyon DK, Edelsohn GA, Coulter ML. (1989). Maternal support following disclosure of incest. *Am J Orthopsychiatry*. 59(2):197-207. doi:10.1111/j.1939-0025.1989.tb01651.x

[27] See *The Advocate's Guide: Working with Parents of Children Who Have Been Sexually Assaulted,* National Sexual Violence Resource Center, (2015).

While providing services to children and families, CAC staff may encounter circumstances in which concerns arise about a non-offending caregiver's ability or intent to protect their child from future harm. If these concerns do not amount to child abuse/neglect, then the federal confidentiality provisions prohibit disclosure of that information in the absence of a release of information, a court order or other law mandating disclosure. These challenging situations call for victim service providers to ground themselves in a child-centered philosophy of working alongside, or *partnering with*, non-offending caregivers to promote child safety and healing. In such situations, the caregiver's own trauma history, complex family dynamics, intersectional identities, and grooming behaviors or patterns of coercive control by the perpetrator may contribute to appearances of disbelief, ambivalence, or other behaviors and attitudes that may be confounding to CAC staff and MDT partners alike. Service providers can consider adopting an approach that reinforces to the MDT and others that (1) the caregiver is their best ally in achieving child safety and healing, (2) the caregiver presenting at the CAC is in crisis and their response is not a one-time event, and (3) the caregiver's behaviors must be examined in the context of the perpetrator's behaviors. If non-offending caregivers' behaviors and attitudes are misunderstood and case decisions are made accordingly, those decisions may actually undermine child safety and healing, unintentionally putting the child and family in more danger – particularly in situations where domestic violence is present.

The CACs' approach to these issues should be clearly reflected in confidentiality procedures, policies, practices, and organizational culture. Policies and practices grounded in a shared philosophical approach will ultimately facilitate policy implementation and provide a foundation for problem solving when particularly complex confidentiality issues arise.

C. The Children's Advocacy Center's Role in the Multidisciplinary Team Response

The most successful victim services programs are those that engage in meaningful coordinated community response and systems change efforts. These types of coordinated response models exist in many arenas under many names, one of which is the child abuse multidisciplinary team (MDT). Such coordinated response models always give rise to complicated issues around role clarification, confidentiality, and information sharing.

Participation in an effective MDT is fundamental to the work of a CAC. The Michigan Child Protection Law (MCL 722.628 § 8(6)) requires that in each county, the local Prosecuting Attorney's Office, law enforcement agencies, and Children's Protective Services coordinate their efforts and form the central multidisciplinary team (MDT). The MDT may include additional professionals such as the Children's Advocacy Center (CAC), medical personnel, mental health personnel, and others. "The primary purpose of the [MDT] is to ensure coordination of the procedures and practices of the various agencies, organizations, and personnel involved in the detection, investigation and prosecution of child abuse and

neglect cases".[28]

While CACs are victim-serving organizations, it is of significant note that the CAC model was originally developed from a criminal justice orientation.[29] As such, as CACs continue to grow into robust victim services agencies, incorporating confidentiality considerations into CAC policies and practices can sometimes create challenges and cause misunderstanding. The National Children's Alliance frames the MDT approach around shared information as follows: "A coordinated MDT approach facilitates efficient interagency communication and information sharing, ongoing involvement of key individuals, and support for children and families. Each agency gains the benefit of a broadened knowledge base from which decisions are made, thorough and shared information, and improved and timely evidence gathering".[30] With such great value placed on communication and information sharing, the CAC must consider their role within the MDT and how service participant confidentiality is protected within the context of the MDT response. While the MDT operates around the shared vision of a compassionate and coordinated response to child abuse, each agency comes to this partnership with its own individual goals, roles, and responsibilities – including those around privacy and confidentiality.

It is critical in the context of maintaining service participant confidentiality that CACs clarify their goals, roles, and responsibilities on the MDT. According to the Governor's Task Force's Model Child Abuse and Neglect Protocol, "[the] CAC is the hub from which the [Multidisciplinary] Team functions. It is a centralized location for the [MDT]'s initial contact with the family and continued case review, team support, and potential victim support services." CACs play unique - and often multiple - roles within a MDT depending upon how that community's child abuse response is structured. CACs are designed to be neutral, safe places for the child and family in which some core elements of the community response may be provided, such as: (1) a coordinated forensic interview for investigative purposes, (2) confidential Victim Support Services such as advocacy and counseling/therapy, and (3) specialized medical examinations. In many communities, the CAC may also play a central role in coordination of the tasks involved in the MDT process such as scheduling forensic interviews and organizing and facilitating case review. Although a CAC may play a critical role in providing all of these elements of the community's response to child abuse, it is important when discussing confidentiality to clarify the distinct purposes of these services. While the purpose of Forensic Interview Services and Medical Services may be – at least in part – to gather information to aid the investigation and prosecution of the case, the purpose of other Victim Support Services is very different. Rather, the purpose of Victim

[28] A Model Child Abuse and Neglect Protocol with an Approach Using a Coordinated Investigative Team, DHS-Pub-794. MDHHS, Governor's Task Force on Child Abuse and Neglect (2012).

[29] The CAC model was born in 1985, when Former Congressman Robert "Bud" Cramer (AL), a prosecutor at the time, saw the need to improve the systems response to child abuse - especially child sexual abuse. Cramer observed that the child protection and criminal justice systems were not working together in an effective manner, often creating a disjointed investigation and a re-traumatizing experience for child victims. It was out of this need to improve the coordination between systems that the multidisciplinary team (MDT) approach was developed and the first CAC was born in Huntsville, Alabama. Today, there are nearly 900 CACs across the country that provide a wide array of victim services and work with their MDT partners to improve their community's response to child abuse. (NCAC, 2019)

[30] National Children's Alliance Standards for Accredited Members, (2017).

Support Services is to surround the child and family with support as they navigate their involvement in the criminal justice and/or child protection systems and begin their healing process.

The National Children's Alliance acknowledges the importance of protecting the child and family's privacy and complying with federal confidentiality provisions and other related laws when working as a part of the MDT. "Confidentiality should be addressed in the written protocol or guidelines. State and/or federal law may govern information sharing among MDT members, including during case review".[31] Most MDT partners have their own policies and practices around confidentiality. It is critical that partners are clear on each other's obligations to protect victim privacy and sensitive information pertaining to ongoing criminal or child protection cases. For example, police and prosecutors do not generally need a release to speak about a case, but an advocate from a CAC or another federally funded non-profit victim services program can only speak about a case if they have a signed release of information allowing that disclosure. Without a mutual understanding of such obligations, requests for information can put CACs in the difficult position of being perceived by MDT partners as "uncooperative", especially by those partners who regularly provide information to the CAC. Once there is a mutual understanding between the CAC and MDT partners, there are plenty of ways that the CAC and MDT partners can benefit from working together while still protecting the confidentiality of children and non-offending caregivers receiving services.

D. Division of Program Areas within a Children's Advocacy Center

Each CAC should clearly define the scope of their mission, programs, and services. As discussed above, CACs often have multiples roles within a community's child abuse response. The organization should carefully consider how to structure staffing, services, policies, and protocols that are consistent with these multiple roles and any confidentiality standards that attach.

To effectively implement the federal victim services confidentiality provision, it is helpful to divide CAC services into at least three distinct program areas: (1) Victim Support Services, (2) Forensic Interview Services, and, in some communities, (3) Medical Services. This division of program areas recognizes that these program areas have separate purposes, goals, and rules around information sharing, record keeping, and confidentiality.

- **Victim Support Services**
  Victim Support Services are subject to the federal victim services confidentiality provision.[32] The goal of Victim Support Services (e.g., personal advocacy/accompaniment, therapy, support groups, criminal/civil justice system assistance, and information and referrals) is to surround the child and non-offending family members with support as they navigate their involvement in the criminal justice and/or child protection systems and begin their healing process. While the child

[31] National Children's Alliance Standards for Accredited Members, (2017).
[32] The federal victim services confidentiality provisions do not apply to funded victim witness assistants at police departments or prosecutors' offices. (See Frequently Asked Questions (FAQs) on the VAWA Confidentiality Provision, DOJ, OVW, (2017), Question 12.) While not typically the case in Michigan, there may be CACs across the country that operate as a part a law enforcement organization or prosecutor's office and/or which utilize victim witness assistants to fulfill some advocacy roles at the CAC.

is often the focus of CAC services, effectively partnering with the non-offending caregiver(s) is essential to reach the goal of child safety and healing. Because the federal victim services confidentiality rule applies broadly to the entire agency and staff, it covers activities that may not initially be thought of as Victim Support Services because they do not interface directly with service participants, such as MDT coordination, community outreach, prevention, and administrative activities.

- **Forensic Interview Services**
  The goal of the forensic interview is to use a trauma-informed and child-centered process to gather information about an allegation of abuse for the purposes of investigation and prosecution. It is also a way to identify the need for supports such as counseling/therapy, advocacy, a medical examination, or other community services. While the forensic interview is not subject to the federal victim services confidentiality provision, forensic interview records in Michigan are protected by other statutes, professional privacy standards, and rules of evidence.[33] It is important to remember that aside from Forensic Interview Services and Medical Services, the federal confidentiality provision is broadly applied to the entire CAC as a victim services organization.

- **Medical Services**
  The goal of Medical Services is to provide trauma-informed medical care to the victim/survivor, and if appropriate, document injury and collect evidence that may be used in an investigation or prosecution. Medical Services, such as sexual assault medical forensic exams, are not subject to the federal victim services confidentiality provision. However, these services are protected by the Health Insurance Portability and Accountability Act (HIPAA), other statutes, professional privacy standards, and rules of evidence.[28] It is important to remember that aside from Forensic Interview Services and Medical Services, the federal confidentiality provision is broadly applied to the entire CAC as a victim services organization.

[33] See Appendix A for a list of other state and federal laws that may apply.

The chart below represents the three distinct program areas within a CAC, examples of program activities and services within each program area, and the confidentiality/privacy statutes that attach.

Program Areas		
Forensic Interview (FI) Services	**Victim Support Services**	**Medical Services**
Confidentiality/Privacy: Not subject to federal victim services confidentiality provisions Subject to other federal and state confidentiality and privilege statutes (See Appendix A)	**Confidentiality/Privacy:** Must comply with federal victim services confidentiality provisions[34] Subject to other federal and state confidentiality and privilege statutes (See Appendix A)	**Confidentiality/Privacy:** Not subject to federal victim services confidentiality provisions Subject to other federal and state confidentiality and privilege statutes (See Appendix A)
Examples of Program Activities: • Conducting Forensic Interview (FI) • Intake/Scheduling for FI • Peer Review/Supervision for FI • Participating in Pre-/Post-FI Meetings (as FI staff) • Court Testimony Related to FI	**Examples of Program Activities:** • Information & Referral • Personal Advocacy/ Accompaniment • Criminal/Civil Justice System Assistance • Emotional Support & Safety Services • Trauma-Informed Therapy • Support Groups • Intake/Scheduling for Victim Support Services • Peer Review/Supervision for Victim Support Services • Participating in Pre-/Post-FI Meetings (Non-FI Staff)	**Examples of Program Activities:** • Specialized Medical Evaluation of Child Abuse (including Sexual Assault Forensic Medical Exam and non-emergent medical evaluation) • Intake/Scheduling for Medical Services • Peer Review/Supervision for Medical Services • Court Testimony Related to Medical Services

Distinguishing between program areas is a helpful mechanism for understanding and applying the scope of the confidentiality provision and its exceptions to the work of CACs. As outlined above, outside of the Forensic Interview Services and Medical Services, all contact with the child and their non-offending family members, including phone calls, meetings, counseling sessions, accompaniments, conversations, referrals, and paperwork is confidential under the federal victim services confidentiality provisions. These services are intended to support the child and family, not to gather information to be used by investigators or prosecutors. It is important to recognize that confidential Victim Support Services

[34] The federal victim services confidentiality provisions do not apply to funded victim witness assistants at police departments or prosecutors' offices. (See Frequently Asked Questions (FAQs) on the VAWA Confidentiality Provision, DOJ, OVW, (2017), Question 12.) While not typically the case in Michigan, there may be CACs across the country that operate as a part a law enforcement organization or prosecutor's office and/or which utilize victim witness assistants to fulfill some advocacy roles at the CAC.

include everything that happens on the day of the forensic interview that is separate from the forensic interview itself. This distinction between the forensic interview and other services must be made clear to CAC staff, MDT members, and service participants. Otherwise, there may be confusion about the goal of CAC services, the roles of CAC staff, and the family's right to privacy. When a victim/survivor and their caregiver understand that all CAC services (except for the forensic interview itself) are confidential, they may be more likely to engage with CAC staff and follow through with services offered.

While the federal confidentiality provision does not apply to information gathered by the forensic interviewer/medical provider during the forensic interview/medical examination, it does apply to any information that they learn about the child or the family outside of these activities. This is an important distinction where small staffs and small facilities may result in circumstances where a staff person primarily conducting Forensic Interview Services may inadvertently learn information about individuals receiving Victim Support Services. For instance, a forensic interviewer may notice that a child they interviewed is coming to the CAC for therapy. At MDT case review, the forensic interviewer may discuss the interview but cannot share that the child is in therapy at the CAC.

E. Considerations and Guidelines for Policy and Practice

This section provides additional considerations and guidelines for CACs to consider when applying the federal victim services confidentiality provision into practice. This section is not all-inclusive, but it provides some key points to consider.

1. **Structure staffing to avoid overlap between program areas and activities.**
   Many CACs report having a single staff person perform multiple roles due to budget constraints, the need for backup staff coverage when primary staff is unavailable, or concerns over large caseloads. CACs should consider structuring staff duties so that a single staff person does not perform activities in multiple program areas (i.e. avoid assigning Forensic Interview Services and Victim Support Services, such as counseling/therapy and advocacy, to the same person). Having a single staff person crossing between program areas will cause role confusion for the MDT, families, and staff themselves regarding the goal of the services they are providing and their confidentiality obligations.

   If agency size/structure make it impossible to structure staff positions without program crossover, consider developing staff positions that combine Forensic Interview Services program activities with activities that do not interface with confidential service participant information. For example, the Forensic Interviewer might also be assigned responsibilities such as MDT coordination, prevention education, community outreach, or administrative tasks.

   If the organization size requires staff members to perform activities across multiple program areas, CACs should carefully train staff and implement structures that will limit role confusion. For instance, staff should never act as advocate or counselor/therapist (or as supervisor of that role) in a case where they performed the forensic interview. See the Governor's Task Force's Model Child

Abuse and Neglect Protocol (DHS-Pub-794): "The forensic interviewer of a child for the investigation will not participate in any follow up mental health, advocacy or medical services in that child's case."

Other models to consider might include coordinating with another community to utilize a backup forensic interviewer rather than relying on a counselor/therapist or advocate to act as backup for the role. Alternatively, other MDT members could perform non-confidential activities associated with the forensic interview such as intake, coordination, or scheduling.

2. Understand how and when information/records can be shared between CAC staff.

All victim services programs should have clear policies that address internal information sharing between staff members, including staff access to client records, and staff should be trained to those policies. This is particularly important for organizations such as CACs that provide services subject to multiple or layered confidentiality obligations.

All Victim Support Services staff within a CAC are subject to the federal victim services confidentiality provision and are required to keep information about service participants confidential. Information about individuals participating in Victim Support Services can be shared on a limited, need-to-know basis with other CAC staff providing Victim Support Services for the purposes of coordination of services, meeting service participant needs, peer review, and supervision. For instance, in an effort to coordinate services and meet service participant needs, a therapist may share with the advocate that a family needs help with transportation to counseling appointments. Additionally, the receptionist may share with the counselor that their client called and is running late for their appointment. However, information gathered during the provision of Victim Support Services should not be shared with CAC staff who performed, or will be performing, the forensic interview or medical examination without a release of information from the service participant.

Information generated from Forensic Interview Services or Medical Services can be shared with other CAC staff to the extent that it is allowed under the privacy rules governing those activities.[35] However, even when sharing is allowed, staff should use discretion in sharing Forensic Interview or Medical Services information because it is private and personal information that the victim/survivor may not want shared without their permission. For instance, it may be helpful for a CAC therapist to hear a summary of the forensic interview and/or the facts of the case at a case review or internal case staffing. However, the therapist likely does not need to review the forensic interview recording to provide quality services to the child and/or their non-offending family members.

Client records should also be maintained in a way that protects client privacy. A client's file should not be readily accessible by every staff person at the organization. Rather, service records should be kept separately and staff access to client records should be on a limited, need-to-know basis. For instance, a forensic interviewer should not have access to a client's counseling file and an advocate

[35] See Appendix A for a list of other state and federal laws that may apply.

should not have access to a client's medical file. This may be accomplished with the use of permissions or passwords for electronic files or with separate locked filing cabinets for paper files.

3. **Utilize separate forms, disclosures, and releases for each program area.**
   CACs should review intake paperwork, consent for services, and release forms used by the organization to ensure that services with different confidentiality standards are not combined into the same form. Consider how to explain clearly to service participants the distinction between Forensic Interview Services, Medical Services, and Victim Support Services in terms of the goals and confidentiality of the different program areas. For example, consider using different colored forms to make the distinction clear to staff and service participants. Families should clearly understand that while forensic interviews and the forms related to forensic interviews are shared with MDT partners, Victim Support Services are confidential, voluntary, and do not exist to support the investigation/prosecution of the case. This is particularly important where the family's participation in the Forensic Interview may not be voluntary.

4. **Define roles and confidentiality for CAC staff participating in the forensic interview process.**
   The forensic interview process is one context in which it is especially critical that CAC staff clarify their roles on the MDT and the confidentiality rules that apply to the activities they are performing. In some communities, the CAC is the organization primarily responsible for scheduling the forensic interview. Scheduling the interview is considered part of the Forensic Interview Services offered by the CAC, such that sharing the name of the victim or any special accommodations needed for the interview does not violate confidentiality. However, the scheduling and intake process for the forensic interview should be done separately, whenever possible, from the intake or scheduling for Victim Support Services. This helps to ensure that service participants and staff clearly understand the distinctions between the services.

   In some CACs, staff from multiple program areas may attend the pre- and/or post-forensic interview meeting with MDT members and the non-offending caregiver. These meetings are a good opportunity to explain the different roles of everyone in the room. Not only could this be helpful for the non-offending caregiver, but it could also be a helpful reminder for MDT members about the differences in roles.

   - **The Role of the Forensic Interviewer:** The forensic interviewer is not subject to the federal victim services confidentiality provision *while* performing the forensic interview and participating in the pre-/post-forensic interview meeting. The forensic interviewer can act as an expert consultant on the forensic interview process and may share case-specific information about the interview, address concerns, and answer follow-up questions as appropriate with MDT members during pre- and post-forensic interview meetings.

   - **The Role of the Medical Provider:** If employed by the CAC or another victim services organization, the medical provider is not subject to the federal victim services confidentiality provision *while* participating in the pre-/post-forensic interview meeting. The medical provider can act as an expert consultant on the medical evaluation of child abuse and may answer

questions about the medical exam process during pre- and post-forensic interview meetings. They may advise the MDT, CAC staff, and caregiver on the appropriateness of a medical referral for the child being interviewed. Any disclosure of case-specific information must comply with other laws and professional standards that apply to medical information.[36]

- **The Role of the Advocate:** The advocate is subject to the federal victim services confidentiality provision, including while providing services on the day of the forensic interview. The advocate may participate in pre-/post-FI meetings and may sit with the non-offending family members while the child is being interviewed. Their role is to provide confidential support for the child and/or non-offending family members, not to gather information for the forensic interview or larger investigation. Information the advocate learns or opinions the advocate forms about the child and family cannot be shared with any other member of the MDT, including the forensic interviewer, without a signed release of information, statutory mandate, or court order. Families participating in services should understand this from the outset of the process. The advocate can support the caregiver during the pre-/post-FI meetings by asking follow-up questions of the MDT, clarifying answers, and making sure that the caregiver feels heard and understood without sharing any information without explicit permission. As discussed below, the advocate can also act as an expert consultant on the nature and dynamics of child abuse, trauma response, and other non-case specific information.

5. Define roles and confidentiality for CAC staff participating in case review.

MDT case review is another context in which it is especially critical that CACs clarify their goals, roles, and responsibilities on the team. The National Children's Alliance promotes case review as "a formal process for multidisciplinary discussion and information sharing regarding the investigation, case status, and services needed by the child and family"[37]. The Governor's Task Force's Model Child Abuse and Neglect Protocol echoes the importance of these collaborative forums when it states, "Among the duties and responsibilities [of the MDT] are regular meetings to increase communication among Team members. Whether Teams act only in an oversight capacity, or are actively involved in case-by-case decision-making, the Team will facilitate and support the work of its members, coordinate the sharing of information, and provide oversight to increase awareness of, and compliance with, the law and best practices."

Because of the multiple roles a CAC may play in the MDT response, different staff persons will have different roles at case review. For instance, the role of the forensic interviewer will differ from the role of the advocate and counselor/therapist because the functions and goals of their job duties are distinctly different.[38]

- **The Role of the Forensic Interviewer:** The forensic interviewer is not subject to the federal victim services confidentiality provision *while* performing the forensic interview, participating in pre-/post-forensic interview meeting, and participating in case review. The forensic interviewer

[36] See Appendix A for a list of other state and federal laws that may apply.
[37] National Children's Alliance Standards for Accredited Members, (2017).
[38] See "Implementation" Section D.

can act as an expert consultant on the forensic interview process and may share case-specific information about the interview, address concerns, and answer follow-up questions.

- **The Role of the Medical Provider:** If employed by the CAC or another victim services organization, the medical provider is not subject to the federal victim services confidentiality provision *while* participating in case review. According to the National Children's Alliance, the medical provider can act as an expert "[consultant] on specialized medical evaluations and [provide interpretation] of medical findings and reports" for the MDT.[39] Any disclosure of case-specific information must comply with other laws and professional standards that apply to medical information.[40]

- **The Role of the Advocate:** The advocate is subject to the federal victim services confidentiality provision, including while participating in case review. As with participation on the day of the forensic interview, the advocate can only share information that the service participant has specifically authorized them to share at case review meetings. In addition to information for which they have a release to share, advocates can provide general input about many things that are useful to the team, such as abuse dynamics, traumatic responses, available services, aggregate data, case trends, and other information that is not personally identifying. Advocates can also gather information (both by listening and by asking follow-up questions that do not reveal any identifying information) that is helpful to the family. They can relay messages or share information with the family, and then help the family decide what information they would like the MDT to know and how that information should be shared. [41]

- **The Role of the Counselor/Therapist:** The counselor/therapist is subject to the federal victim services confidentiality provision, including while participating in case review. Like advocates, counselors/therapists can only share information that the service participant has specifically authorized them to share at case review meetings. The National Children's Alliance states that counselors/therapists should participate in case review for the purpose of "sharing relevant information with the MDT while protecting the service participants' rights to confidentiality". Even in the absence of a release of information, counselors/therapists can provide general input about many things that are useful to the team. The National Children's Alliance supports this when it states that counselors/therapists "serve as a clinical consultant to the MDT on issues relevant to child trauma and evidence-based treatment". [42]

As an additional strategy to clarify roles for the case review process and distinguish what information is able to be shared without a release, consider developing a forensic interview cover sheet or case summary form that can be completed by the forensic interviewer and used when organizing and facilitating future case review meetings. This form could include information about

[39] National Children's Alliance Standards for Accredited Members, (2017).
[40] See Appendix A for a list of other state and federal laws that may apply.
[41] See FAQ on Survivor Confidentiality Releases, Confidentiality Institute and The Safety Net Project, (2016).
[42] National Children's Alliance Standards for Accredited Members, (2017).

the initial referral from the MDT as well as information about the forensic interview. Setting this information out on a form makes it clear what information is already available to the entire MDT and can be discussed at case review. It also takes the Victim Support Services staff out of the role of disclosing names or details necessary to conduct case review.[43]

6. **Work with the MDT to formally define roles and goals for the forensic interview and case review processes.**
   As already discussed, the coordinated forensic interview and subsequent case review processes raise complicated issues around role clarification, confidentiality, and information sharing. Encourage the MDT to formally create forensic interview and case review practices that recognize the roles each entity on the team plays and constraints on different professionals' ability to share information. Consider working with the MDT to create guiding principles for the forensic interview and case review processes that clearly define the goals and roles of each participant. This may be particularly helpful to new MDT members or professionals who may rotate on and off the team. This will give CAC staff an opportunity to share the rules that govern CAC staff participation in these processes.

7. **Empower service participants to decide when and how to share information with the MDT.**
   In some cases, victims/survivors and/or their non-offending family members may share information on the day of the forensic interview or during ongoing services that the service provider believes would be helpful for the MDT to know. The advocate/counselor/therapist should help the service participant explore the pros and cons of informing the MDT and the implications for child and family safety. If the service participant decides they want the information shared with the MDT, the service participant could share the information with the relevant members of the MDT directly, and the advocate/counselor/therapist could facilitate and be part of this process. This can be empowering and give service participants the greatest opportunity to control the information shared and build trust with other MDT partners. Alternatively, if the service participant desires, the service provider could execute a release of information and share the information with the necessary MDT member or at an upcoming case review meeting.

8. **Ensure that staff understand the laws regarding the privacy of forensic interview records.**
   While the forensic interview process and records are not subject to the federal victim services confidentiality provisions, they are subject to their own strict privacy protections. CAC staff and other members of the MDT should be familiar with the state laws protecting these records. See Appendix D for more information regarding the privacy of forensic interview records.

9. **Provide foundational and ongoing training for all staff on confidentiality.**
   Confidentiality should be a topic of foundational and ongoing training and supervision for staff from all program areas. Staff primarily providing Forensic Interview Services should be familiar with the confidentiality requirements of staff in the Victim Support Services program area and vice versa.

[43] See Appendix C for an example of a Forensic Interview Cover Sheet.

10. Develop a confidentiality policy.[44]

Most importantly, programs should develop and implement internal confidentiality policies that align with the federal victim services confidentiality provisions discussed here as well as other relevant state and federal laws that may apply.[45] The following general guidelines should be considered when developing or reviewing policies.

- The policy should contain a section on philosophy and rationale outlining the importance of confidentiality to victims/survivors and their families as well as the programs that serve them.
- The policy should be created with informed legal advice on relevant state and federal law by an attorney well versed in these issues, when possible.
- The policy should clearly distinguish between Forensic Interview Services, Medical Services, and Victim Support Services and whether/how confidentiality applies to each program area.
- The policy should require that victims/survivors and non-offending family members receiving Victim Support Services at the CAC be informed of their right to privacy, the instances in which staff will be required to disclose certain information, and how they can request that their information be shared with others (including the MDT).
- The policy should describe how the organization will respond to subpoenas or other court orders for information, as well as how staff makes legally mandated disclosures. The policy should require that staff review these situations with a supervisor when appropriate.
- The policy should be in writing, and should be provided to all staff, board, interns, volunteers, and persons receiving services. The written policy should be written in plain language that is easy to understand. Consider ways to make the policy available in a format and a language that is accessible to all service participants.
- The policy should be shared with MDT partners and other agencies with whom linkage agreements exist.
- The policy should be the subject of foundational and ongoing training and supervision. The policy should be the subject of ongoing training and supervision. Staff, board, interns, and volunteers should be trained on the policy and be required to sign an agreement that they understand and will abide by the policy.
- The policy should anticipate and address role conflicts that may arise for certain individuals, with appropriate safeguards in place.[46]
- The policy should be reviewed and updated regularly, or whenever changes in relevant law are made.

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[44] This section has been largely reproduced from *Confidentiality Policy Considerations and Recommendations: A Resource Manual for Michigan Domestic and Sexual Violence Programs, 2nd Edition* with permission from the Michigan Coalition to End Domestic and Sexual Violence.

[45] See Appendix A for a list of other state and federal laws that may apply. See Appendix D for a brief discussion of the statutes related to privacy of forensic interview records.

[46] See "Implementation" Section E, Subsection 1.

Appendix A – Statutory References & Other Resources

Federal Victim Services Confidentiality Provisions	
Family Violence Prevention and Services Act (FVPSA)	42 USC § 10406(c)(5)
Victims of Crime Act (VOCA)	28 CFR 94.115
Violence Against Women Act (VAWA)	34 USC §12291(b)(2); 28 CFR 90.4(b)
Guidance on the VOCA, VAWA, and FVPSA confidentiality provisions*	Understanding the Confidentiality Requirements of VOCA, FVPSA & VAWA, Webinar Series, Division of Victim Services, Michigan Victim Advocacy Network, (2019). *Requires a login for access.*
	Frequently Asked Questions (FAQs) on the VAWA Confidentiality Provision, Department of Justice, (2017).

**Note that the three federal victim services confidentiality provisions mirror one another. Accordingly, DOJ guidance on the VAWA confidentiality provision can be relied upon when interpreting the VOCA/FVPSA provisions.*

Forensic Interviews	
Revised Judicature Act of 1961	MCL 600.2163a
Probate Code of 1939	MCL 712A.17b
Child Protection Law	MCL 722.628(8)

See Appendix D for a brief discussion of these statutes.

Medical/Health Information	
Health Insurance Portability and Accountability Act (HIPAA)	45 CFR 160; 45 CFR 162; 45 CFR 164; Combined Regulatory Standards
Physician-Patient Privilege	MCL 600.2157; MCL 767.5a
Release of medical records to DHHS	MCL 333.16281 (DHHS 1163-M)

Victim Advocacy, Counseling/Therapy, & Mental Health	
Domestic Violence/Sexual Assault Counselor-Victim Privilege	MCL 600.2157a
Family Counselor-Client Privilege	MCL 551.339
Health Insurance Portability and Accountability Act (HIPAA)	45 CFR 160; 45 CFR 162; 45 CFR 164; Combined Regulatory Standards
Licensed Professional Counselor-Client Privilege	MCL 333.18117
Minor consent for outpatient mental health services	MCL 330.1707
Psychologist/Psychiatrist-Patient Privilege	MCL 333.18237
Release of mental health records to DHHS	MCL 330.1748a (DHHS 1163-P)
Social Worker-Client Privilege	MCL 333.18513

Mandatory Disclosures	
Duty to warn	MCL 330.1946
Mandated reporting of abuse of vulnerable adults	MCL 400.11a
Mandated reporting of child abuse/neglect	MCL 722.622; MCL 722.623

	Information about mandated reporting, Michigan Dept. of Health & Human Services
	Reporting Suspected Child Abuse and Neglect in Michigan: A Guide to Detailed Reporting, Michigan Dept. of Health & Human Services
Release of medical records to DHHS	MCL 330.1748a (DHHS 1163-P)
Release of mental health records to DHHS	MCL 333.16281 (DHHS 1163-M)

Release of Information	
Frequently asked questions	FAQ on Survivor Confidentiality Releases, National Network to End Domestic Violence, Safety Net Project & The Confidentiality Institute, (2016).
Template release of information	Client Limited Release of Information Template, National Network to End Domestic Violence. (See Appendix B.)
Utilizing a digital release of information	Digital Written Consent to Share Information, National Network to End Domestic Violence, Safety Net Project, (2020).

Other Resources	
Comprehensive legal review of state, federal, and case law relating to confidentiality for victim service organizations	Confidentiality Policy Considerations and Recommendations: A Resource Manual for Michigan Domestic and Sexual Violence Programs, 2nd Edition, Michigan Coalition to End Domestic and Sexual Violence, (2018).
General information about the concepts of privacy, confidentiality, and privilege	A Primer on Privilege & Confidentiality for Victim Service Providers, The Confidentiality Institute, (2015).

Appendix B – Release of Information Template

Created for adaptation by Julie Kunce Field, J.D. and National Network to End Domestic Violence. Download available here.

[APPROPRIATE AGENCY LETTERHEAD]

READ FIRST: Before you decide whether or not to let [Program/Agency Name] share some of your confidential information with another agency or person, an advocate at [Program/Agency Name] will discuss with you all alternatives and any potential risks and benefits that could result from sharing your confidential information. If you decide you want [Program/Agency Name] to release some of your confidential information, you can use this form to choose what is shared, how it's shared, with whom,

I understand that [Program/Agency Name] has an obligation to keep my personal information, identifying information, and my records confidential. I also understand that I can choose to allow [Program/Agency Name] to release some of my personal information to certain individuals or agencies.

I, _____, authorize [Program/Agency Name] to share the following specific information with:
name

Who I want to have my information:	Name: Specific Office at Agency: Phone Number:

The information may be shared: ☐ in person ☐ by phone ☐ by fax ☐ by mail ☐ by e-mail
☐ *I understand that electronic mail (e-mail) is not confidential and can be intercepted and read by other people.*

What info about me will be shared:	*(List as specifically as possible, for example: name, dates of service, any documents).*
Why I want my info shared: (purpose)	*(List as specifically as possible, for example: to receive benefits).*

Please Note: there is a risk that a limited release of information can potentially open up access by others to all of your confidential information held by [Program/Agency Name].

I understand:

☐ That I do not have to sign a release form. I do not have to allow [Program/Agency Name] to share my information. Signing a release form is completely voluntary. That this release is limited to what I write above. If I would like [Program/Agency Name] to release information about me in the future, I will need to sign another written, time-limited release.

☐ That releasing information about me could give another agency or person information about my location and would confirm that I have been receiving services from [Program/Agency Name].

☐ That [Program/Agency Name] and I may not be able to control what happens to my information once it has been released to the above person or agency, and that the agency or person getting my information may be required by law or practice to share it with others.

This release expires on: _____ _____
Date Time

Expiration should meet the needs of the victim, which is typically no more than 15-30 days, but may be shorter or longer.

I understand that this release is valid when I sign it and that I may withdraw my consent to this release at any time either orally or in writing.

Signed:_____ **Date:** _____ **Time:**_____ **Witness:**_____

Reaffirmation and Extension (if additional time is necessary to meet the purpose of this release)

I confirm that this release is still valid, and I would like to extend the release until _____ _____
New Date New Time

Appendix C – Sample Forensic Interview Cover Sheet

This cover sheet contains all the information that may be shared at case review meetings with members of the multidisciplinary team without an additional Release of Information from the service participant.

CAC Case #:	Date of Forensic Interview:		
Parties Involved			
Child's Name(s):	Gender:	DOB:	Age:
Law Enforcement: Detective: Agency: Case Number: Disposition:	**Children's Protective Services:** Investigator: Agency: Case Number: Disposition:		
Prosecution: Prosecutor: Agency: Disposition:	**Forensic Interviewer:** Interviewer: Agency:		
Caregiver's Name(s):	Gender:	DOB:	Age:
Caregiver's Relationship to Child:			
Alleged Offender's Name(s):	Gender:	DOB:	Age:
Alleged Offender's Relationship to Child:			
Allegations/Results of Forensic Interview			
Type of Abuse: ☐ Sexual abuse ☐ Physical abuse ☐ Witness to violence ☐ Other			
Presenting Allegations:			
Disclosure in Forensic Interview? ☐ Yes ☐ No ☐ Partial			
Time stamp(s) of disclosure: (For details of forensic interview, see recording.*)			
Custodian of Forensic Interview record:			
Was a referral for medical evaluation made? ☐ Yes ☐ No			

**Verbal summary of Forensic Interview may be provided at case review. Special consideration should be taken with regard to providing written summaries of forensic interviews.*

Appendix D – Brief Discussion of Statutes Pertaining to Privacy of Forensic Interview Records

Forensic interview records in Michigan are protected by statutes such as the Child Protection Law (MCL 722.621-722.628), the Revised Judicature Act of 1961 (MCL 600.2163a), and the Probate Code of 1939 (MCL 712A.17b). These statutes prevent the CAC and members of the MDT from sharing information it has gathered as part of the forensic interview process with anyone outside of the MDT. This means that information about the forensic interview can be discussed between CAC and MDT members, but cannot be shared with others. MCL 600.2163a addresses the confidentiality of the recorded forensic interview, and state in sum, that a custodian of the video-recorded statement may consent to the release of copies of a video-recorded statement to a law enforcement agency, an agency authorized to prosecute the criminal case to which the video-recorded statement relates, or an entity that is part of the county protocol established under the Child Protection Law (MCL 722.628(8)). This means that the CAC can share forensic interview records with a member of the MDT outlined in the county protocol. However, the CAC *cannot* share forensic interview records with others, such as a family member or a private attorney requesting records. Moreover, only the prosecuting attorney shall provide the defendant and, if represented, his attorney the access and means to view and hear the video-recorded statement in preparation for a court proceeding. This access is given under protective conditions, including, but not limited to, a prohibition on the copying, release, display or circulation of the video-recorded statement (MCL 600.2163a). This means that a defendant or defense attorney seeking forensic interview records from the CAC must be directed to the prosecuting attorney for access to those records.