

SUBCOMMITTEE #: 4

NAME: Confidentiality DV Workgroup Subcommittee

April 2009

Regulation Citation (if applicable)	Specific Proposed Change	Brief Rationale for Proposal	Comments
452.9 (a) (3) – Face-to-Face Interviews	Add the underlined section to the regulation: “Prior to the admission of a person to a residential program for victims of domestic violence a <u>face-to-face or telephone screening must be conducted by a domestic violence residential service provider with the potential resident to determine whether such person is a victim of domestic violence...</u> ”	We felt the conduct of face-to-face interviews is often not feasible considering the level of staffing at shelters. It can also be overly burdensome to clients seeking shelter, who do not have the time / flexibility to meet for face-to-face interviews due to the nature of the abuse they are experiencing. Allowing screenings to be conducted over the phone will allow clients to escape abuse and move into shelter more safely.	Addendum #1

<p>462.9 (a) (3) – Perpetrator access to records</p>	<p>Delete this section of the regulations:</p> <p>“a person receiving services from the program will have access to all information maintained in that person's individual case record in accordance with section 462.7(a) of this Part; provided, however, that a perpetrator or an alleged perpetrator of domestic violence may have access only to the information in the individual case record which pertains to the services provided to the perpetrator or alleged perpetrator;”</p>	<p>Our agencies do not provide services to perpetrators of domestic violence; therefore, this section of the regulations is not relevant.</p>	
<p>452.9 (e) – Reporting of Child Abuse</p>	<p>Delete sections 452.9 (e)(2) and 452.9(e)(3), and change 452.9(e)(1) to:</p>	<p>We felt it was preferable to refer to Social Services Law regarding the reporting of child</p>	<p>Addendum #2</p>

	<p>(1)All suspected cases of child abuse or maltreatment occurring while a family is in residence at a residential program for victims of domestic violence must be reported immediately by telephone to the State central register of child abuse and maltreatment, <u>in accordance with Social Services Law.</u></p>	<p>abuse, instead of providing an abridged explanation of when and how reports should be made. This allows the regulations to be compliant with the entirety of the law, and to remain current with any changes in the law.</p>	
<p>452.10(a) – Confidentiality</p>	<p>Add section 452.10(a)(3) between current 452.10(a)(2) and 452.10(a)(3), This section will read:</p> <p>452.10(a)(3) Any person or entity will have access to information only when express written consent</p>	<p>We felt it necessary to include in the regulations that express written consent must be provided by the resident in order for information to be released.</p>	<p>Addendum #3</p>

	is provided by the resident.		
452.10(b)(2) – Disclosure	<p>Change “New York State Department of Social Services” to “New York State Office of Children and Family Services”:</p> <p>(2) Employees of the New York State Department of Social Services <u>Office of Children and Family Services</u> and a local social services district given access to information...</p>	Update of name of office.	
452.10(b) – Disclosure	<p>Add section 452.10(b)(3). This section will read:</p> <p>452.10(b)(3) Employees of a residential program for victims of domestic violence given access to information pursuant to</p>	We felt it necessary to include consequences for shelter staff who breach confidentiality in the regulations.	

	<p>this section who redisclose information in a manner which is not consistent with the provision of this Part are subject to disciplinary action in accordance with applicable law and regulation.</p>		
<p>452.9(a)(7) – Informed consent</p>			<p>We agreed that informed consent should be clearly defined, explained at entry, should include a timeframe, cover specific info, and apply to specific providers. However, we determined that these details regarding implementation of informed consent, though important, do not need to be addressed in the regulations. Rather, this is a best practice issue.</p>
<p>452.10(a) – Access to Information</p>			<p>Our committee did not reach consensus on this issue. Some on committee felt that OCFS needs</p>

			<p>access to records to fulfill functions of licensing and supervision of facilities, and that such access is consistent with VAWA. Others on the committee felt that such access was not permitted by VAWA, and that allowing such access would be a violation of the law, and put at risk grants received through VAWA. Please see the relevant section of VAWA under Addendum #4. Our committee requests that this issue be considered by the full DV Workgroup Committee.</p>
--	--	--	--

Addendum #1 - 452.9 (a) (3) – Face-to-Face Interviews

Proposed Revision (add underlined):

Prior to the admission of a person to a residential program for victims of domestic violence a face-to-face or telephone screening must be conducted by a domestic violence residential service provider with the potential resident to determine whether such person is a victim of domestic violence as defined in section 452.2(g) of this Part, whether such person fits any of the criteria described in paragraph (2) of this subdivision, and whether the individual program

can appropriately meet such person's physical and personal needs, including medically prescribed diets. Persons who do not meet admission criteria must be referred to appropriate community resources.

Addendum #2 - 452.9 (e) – Reporting of Child Abuse

Proposed Revision (add underlined):

(e) Reporting of child abuse.

- (1) All suspected cases of child abuse or maltreatment occurring while a family is in residence at a residential program for victims of domestic violence must be reported immediately by telephone to the State central register of child abuse and maltreatment, in accordance with Social Services Law.
- ~~(2) Programs must report by telephone to the State central register of child abuse and maltreatment whenever a staff person has reasonable cause to suspect that a child coming before him/her has been abused or maltreated, or when the child's parent makes statements from personal knowledge, facts, conditions, or circumstances to a staff person, which if correct, would render a child abused or maltreated.~~
- ~~(3) Programs must designate an employee to be responsible for ensuring that all suspected cases of child abuse or maltreatment are reported.~~

Addendum #3 - 452.10(a) – Confidentiality

Proposed Revision:

452.10 Confidentiality.

- (a) Access to information. All records, books, reports and papers established and maintained pursuant to this Part and Parts 453, 454 and 455 of this Title relating to the operation of residential programs for victims of domestic violence and to the residents of such programs are confidential. Access to such information will be permitted only as follows:
- (1) the department will have full access to all books, records, reports and papers relating to the operation of residential programs for victims of domestic violence and to the residents of such programs including access to any client identifiable information for purposes of inspection and supervision as required by section 452.8 of this Part;
 - (2) any person or entity will have access to information as permitted by an order of a court of competent jurisdiction;
 - (3) Any person or entity will have access to information only when express written consent is provided by the resident.
 - (4) a residential program for victims of domestic violence will have access to information maintained in a resident's case record by another residential program for victims of domestic violence, excluding any information identifying the actual street address where the resident is sheltered, in those situations where a resident continues to be in need of a residential program for victims of domestic violence beyond the current program's length of stay policy and a referral has been made to another available residential program for victims of domestic violence;

Addendum #4 – Section of VAWA pertaining to the nondisclosure of information:

(2) Nondisclosure of confidential or private information

(A) In general

In order to ensure the safety of adult, youth, and child victims of domestic violence, dating violence, sexual assault, or stalking, and their families, grantees and subgrantees under this title shall protect the confidentiality and privacy of persons receiving services.

(B) Nondisclosure

Subject to subparagraphs (C) and (D), grantees and subgrantees shall not--

(i) disclose any personally identifying information or individual information collected in connection with services requested, utilized, or denied through grantees' and subgrantees' programs; or

(ii) reveal individual client information without the informed, written, reasonably time-limited consent of the person (or in the case of an unemancipated minor, the minor and the parent or guardian or in the case of persons with disabilities, the guardian) about whom information is sought, whether for this program or any other Federal, State, tribal, or territorial grant program, except that consent for release may not be given by the abuser of the minor, person with disabilities, or the abuser of the other parent of the minor.

(C) Release

If release of information described in subparagraph (B) is compelled by statutory or court mandate--

(i) grantees and subgrantees shall make reasonable attempts to provide notice to victims affected by the disclosure of information; and

(ii) grantees and subgrantees shall take steps necessary to protect the privacy and safety of the persons affected by the release of the information.