Domestic Violence
Sexual Assault
Confidentiality

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Overview

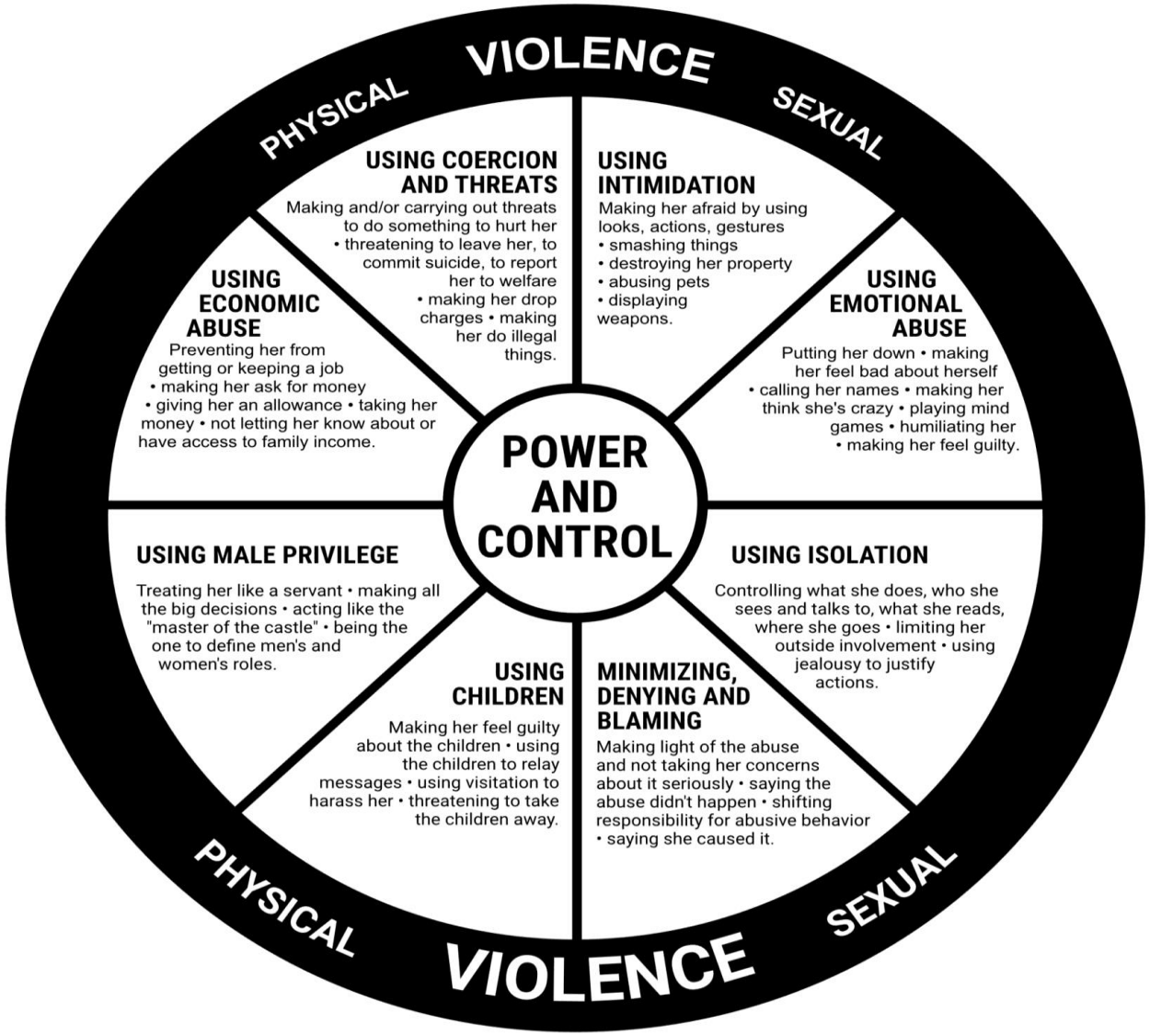
- This training will cover the following topics:
  - Dynamics of Domestic Violence
  - Sexual Violence and Consent
  - Tribal Advocacy in Michigan
  - Confidentiality – The Basics

Domestic Violence

Domestic Violence

- Domestic violence is the willful intimidation as part of a systematic pattern of **power and control** perpetrated by one intimate partner against another. Frequency and severity of domestic violence can vary dramatically, but the constant of domestic violence is one partner's consistent efforts to maintain power and control over the other. (NCADV)

Duluth Model Power and Control Wheel



DOMESTIC ABUSE INTERVENTION PROGRAMS
202 East Superior Street
Duluth, Minnesota 55802
218-722-2781
www.TheDuluthModel.org

The Duluth Power and Control Wheel

Using Coercion and Threats

Making and/or carrying out threats to do something to hurt her/threatening to leave her. To commit suicide, to report her to welfare/making her drop charges/making her do illegal things.

Using Intimidation

Making her afraid by using looks, actions, gestures/smashing things/destroying her property/abusing pets/displaying weapons.

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Using Emotional Abuse

Putting her down/making her feel bad about herself/calling her names/making her think she's crazy/playing mind games/humiliating her/making her feel guilty.

Using Isolation

Controlling what she does, who she sees and talks to, what she reads, where she goes/limiting her outside involvement/using jealousy to justify actions.

The Duluth Power and Control Wheel

Minimizing, Denying and Blaming

Making light of the abuse and not taking her concerns about it seriously/saying the abuse didn't happen/ shifting responsibility for abusive behavior/saying she caused it.

Using Children

Making her feel guilty about the children/using the children to relay messages/using visitation to harass her/threatening to take the children away.

The Duluth Power and Control Wheel

Using Male Privilege

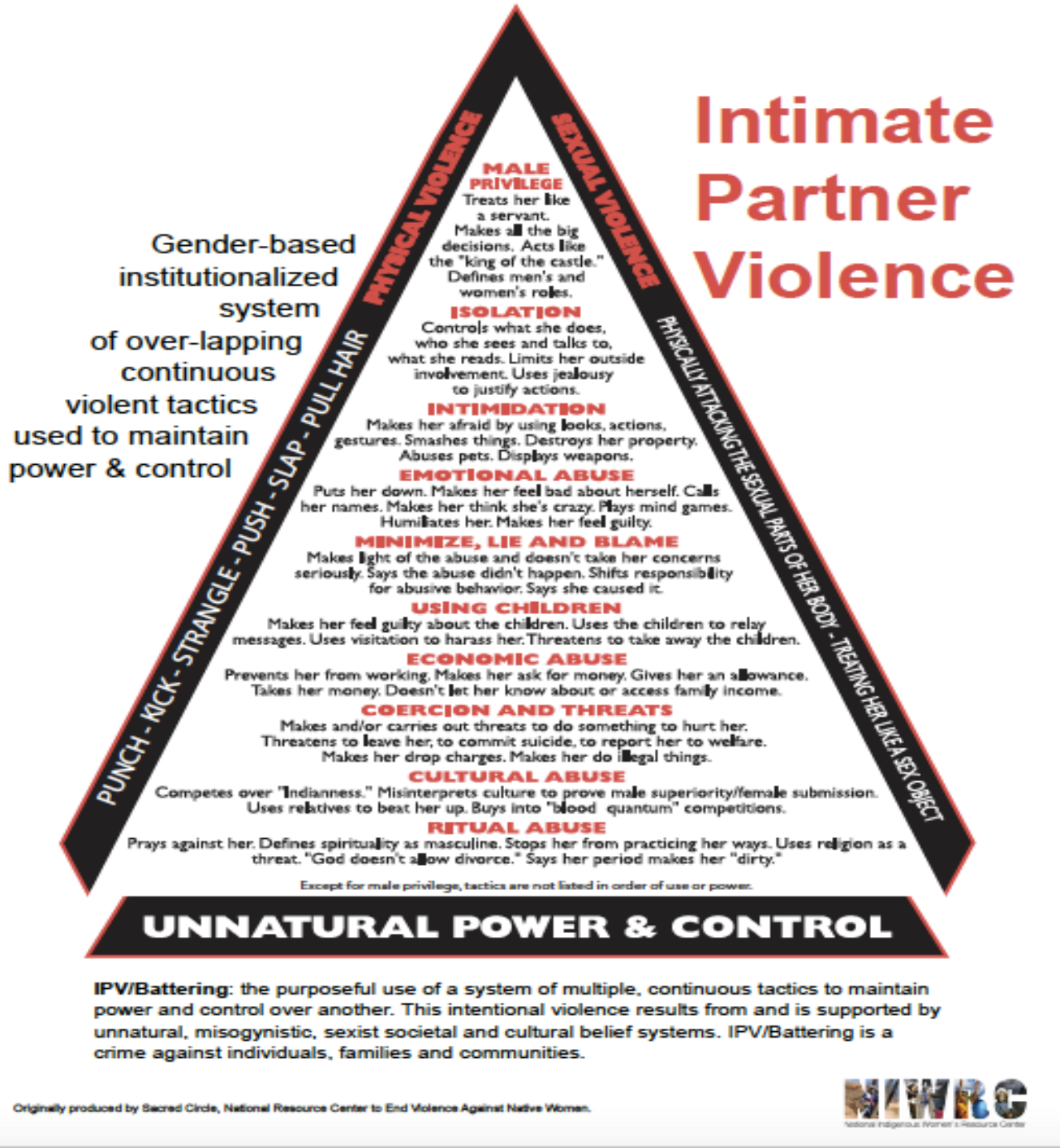
Treating her like a servant/making all the big decisions/acting like the “master of the castle”/being the one to define men’s and women’s roles.

Using Economic Abuse

Preventing her from getting or keeping a job/making her ask for money/giving her an allowance/taking her money/not letting her know about or have access to family income.

Cultural and Ritual Abuse

- Native Americans may face cultural and ritual abuse…. What does it look like?



Unnatural Power & Control

Sexual Assault

Sexual assault is an act of behavior, such as unwanted fondling, touching or penetration without explicit *consent* from the recipient



Sexual Assault and Consent



Five Things About Violence Against American Indian and Alaska Native Women and Men

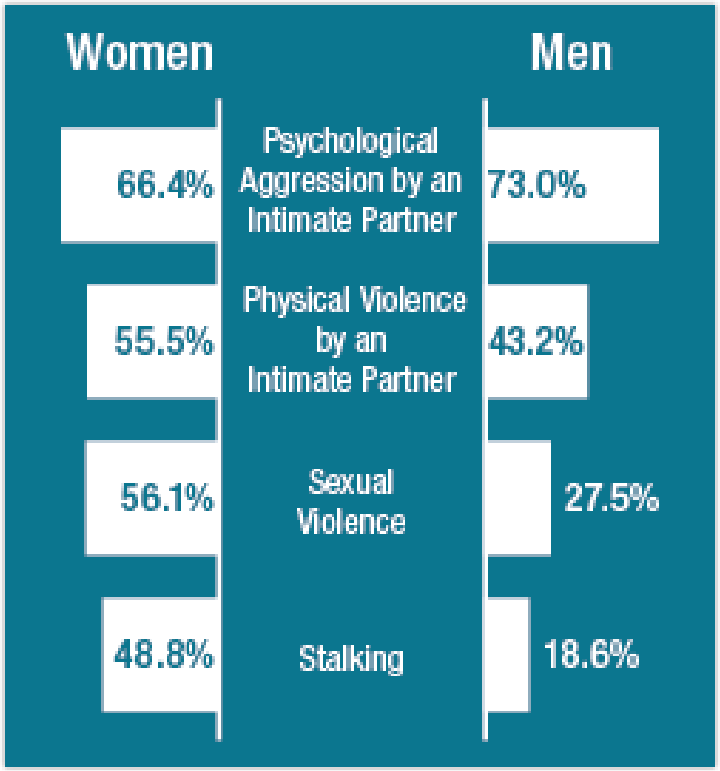
1. Most American Indian and Alaska Native adults are victims of violence.

More than four in five American Indian and Alaska Native adults (83 percent) have experienced some form of violence in their lifetime. That's almost 3 million people who have experienced psychological aggression or physical violence by intimate partners, stalking, or sexual violence.



2. Men and women are victimized at similar rates but in different ways.

- American Indian and Alaska Native women and men have been victimized at similar rates (84.3 percent for women and 81.6 percent for men).
- Experience similar levels of psychological aggression and physical violence by intimate partners.
- Women have experienced significantly higher levels of sexual violence (56.1 percent versus 27.5 percent for men) and stalking (48.8 percent versus 18.6 percent for men).



3. Victimization rates are higher for American Indians and Alaska Natives.

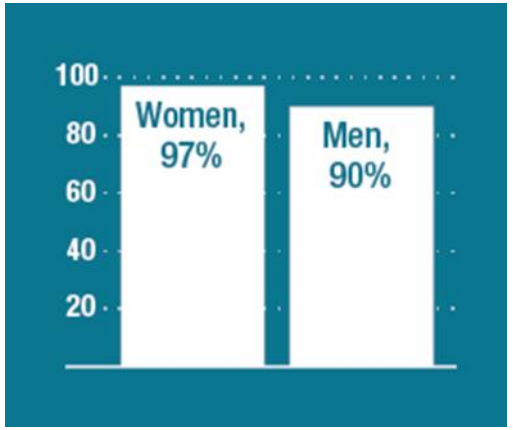
The lifetime victimization rate is 1.2 times as high for American Indian and Alaska Native women as for White women; for men, it is 1.3 times as high.

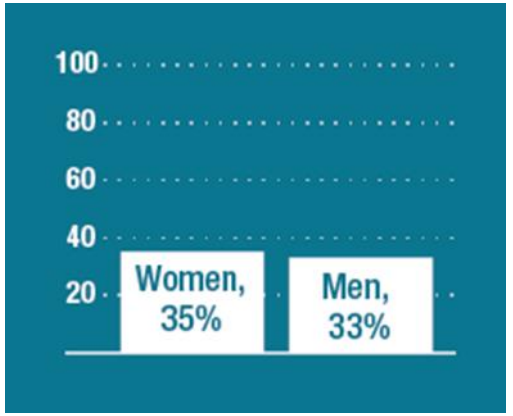
4. American Indian and Alaska Native female victims are more likely to need services, but they are less likely to have access to those services.

- More than two in five American Indian and Alaska Native female victims reported being physically injured, and almost half reported needing services.
- Most common services needed:
  - Medical care
  - Legal services
- More than one third (38 percent) were unable to receive necessary services.

5. For American Indians and Alaska Natives, interracial violence is more prevalent than intraracial violence.

Most American Indian and Alaska Native victims have experienced at least one act of violence committed by an interracial perpetrator (97 percent of women and 90 percent of men)





Why Do Native Americans Experience Violence at High Rates?

Assistance For Victims

Michigan Tribal Resources for Victims

- 12 Tribal Advocacy Agencies
  - Each Federally Recognized Tribe has their own victim advocacy programming
  - Two Tribal Domestic Violence Shelters/Transitional Homes
  - One comprehensive sexual assault center coming soon (SANE/SAFESTAR)
- Urban Centers
- Uniting Three Fires Against Violence
  - Michigan's Tribal Domestic and Sexual Assault Coalition
- Michigan Coalition to End Domestic and Sexual Violence
  - Michigan's Mainstream Domestic and Sexual Assault Coalition
- State of Michigan- Division of Victim Services

Things to remember while working with Indigenous Victims and Survivors

- There are 570+ Federally Recognized tribes in the United States
- Not every Native American lives on or near their reservation
- Not every Native American comes from a tribe that provides per-capita
- However, all tribal communities face historical trauma issues, jurisdictional issues, and cultural abuse issues

Advocating for Indigenous Victims and Survivors

- Understand the jurisdictional barriers Native's face living on or off of tribal land
- Recognize the cultural, intergenerational, and historical trauma that have impacted our communities and culture
- Researching and knowing what cultural, and traditional services may be available to your client, per their request
- Listen with intent to their needs, wants, and wishes for their situation
- Their reality may look very different from yours
- Meet them where they are at
- You may see the same survivor more than once (as is common across the board)

What is Confidentiality? What is Privacy?

- Confidentiality - Information entrusted to another in confidence either spoken or written given in secret or private.

- Privacy - The quality or state of being apart from company or observation/ freedom from unauthorized intrusion

Why is Confidentiality Important?

Confidentiality is so important to survivors!

- Survivors seek safety, but they also want healing
- It allows survivors to feel safe and protected while seeking out advocacy and healing
- Healing also comes through advocacy and validation, which victim advocates provide
- Counseling and validation are processes that require confidentiality

Conversations Between Victim Advocates and Survivors Must Be *Confidential*: What Does That Mean In Practice and Law?

- Do not share personally identifying information with anyone outside of the victim services program, except:
  - In cases of emergency
    - In dire circumstances only
      - Medical Emergency
      - Threat of safety of self or to others
  - Unless the program obtains consent from the survivor. The consent must be:
    - Voluntary
    - Informed
    - Time- and activity-limited
    - Signed by the survivor

Is Confidentiality a choice?

- No!
  - There are policies and laws in place that enable survivors to seek out services with the confidence of having their information protected and safe in the hands of their advocates and the agency they’re seeking services from.

VAWA Confidentiality (34 U.S.C. 12291(b)(2)) What does the law say?

"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 subchapter shall protect the confidentiality and privacy of persons receiving services."

- **This means that any tribe or tribal organization that receives VAWA funding, whether through CTAS or through discretionary grants, must agree to keep communications with survivors confidential.**

VAWA Confidentiality (34 U.S.C. 12291(b)(2)) What does the law say?

- "(B) Nondisclosure. Subject to subparagraphs (C) and (D),grantees and subgrantees shall not—(i) disclose, reveal, or release any personally identifying information or individual information collected in connection with services requested, utilized, or denied through grantees' and subgrantees' programs, regardless of whether the information has been encoded, encrypted, hashed, or otherwise protected."
- **This means that tribes or tribal organizations receiving VAWA funding can't share survivors' names, addresses, phone numbers, or any other information that might reveal the survivor's identity.**

VAWA Confidentiality (34 U.S.C. 12291(b)(2)) What does the law say?

- “(ii) disclose, reveal, or release 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 legal incapacity, a court-appointed guardian) about whom information is sought, whether for this program or any other Federal, State, tribal, or territorial grant program.”
- **This means that the program cannot release any information they receive from a client without informed, time-limited, written consent.**

VAWA Confidentiality (34 U.S.C. 12291(b)(2)) What does the law say?

- ***Exceptions***:
- "…Except that consent for release may not be given by the abuser of the minor, incapacitated person, or the abuser of the other parent of the minor."
- **This means a person who is found to be an abuser can never be the person to consent to the release of information of the victim.**
- "If a minor or a person with a legally appointed guardian is permitted by law to receive services without the parent's or guardian's consent, the minor or person with a guardian may release information without additional consent."
- **This means that if local law allows a minor to get services without parental or guardian consent, then that same minor is able to release or refuse to release information on their own.**

VAWA made a crucial distinction: "Who" is helping the survivor matters

- Prosecutorial victim advocate service provider state/tribal (may be subject to discovery)
- Stand-alone tribal victim advocate service provider (may be subject to discovery unless statute protects records)
- BIA Victim Specialist service provider (may be subject to discovery)
- Federal Victim Specialist service provider (may be subject to discovery)

Confidentiality & Intake/Services

- **Make sure the client understands the limits to confidentiality**
  - Mandatory reporting
  - Imminent danger: threat to self or others
  - Court order or subpoena (program will try to limit disclosure)
  - Sharing data in the aggregate with funders

What is Mandatory Reporting?

Mandatory reporting is the legislative requirement for selected classes of people to report suspected child abuse and neglect to government authorities.

Release of Information

- A release of information is required if an agency or advocate is asked by the survivor to release specific pieces of their individual personally identifying information outside of the advocate's own agency or program

Authorization to Release Information

I, _____, have discussed with [Agency] why I want information released and the privacy risks with it being shared. **I give [Agency] permission to release the following information:**

Who my information may be shared with:	Name: Title or agency: Contact information:
What information may be shared:	

The information may be shared: ☐ in person ☐ by phone ☐ by email ☐ by mail ☐ by fax

I understand that:

_____ I may receive services from [Agency] even if I don't release this information.

_____ Releasing this information could reveal my location.

_____ By releasing this information, some or all of it may no longer be privileged. Both "privilege" and "waiver" have been explained to me.

_____ This release is limited to the above information. If I want [Agency] to share additional information about me, I will sign another release.

_____ I may cancel this release at any time, verbally or in writing.

This release is valid for ____[time period]____ after signature or until: _____ [date].

Client signature: _____ Date: _____

Parent/Guardian signature (if required): _____ Date: _____

_____ **I extend this release of information. The release now expires:** _____.

Signature(s): _____ **Date:** _____

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Why is Confidentiality So Important to SARTs?

- Confidentiality is an underlying value of a trauma-informed, victim-centered response to sexual assault. SARTs committed to building such a response must understand both the policy considerations behind confidentiality and the ways in which confidentiality benefits the work of the team and empowers victims.

Personal Identifying Information

What is Personally Identifying Information (PII)?

- **PII** refers to data that can be used to identify, locate, or contract individuals or establishments, or reveal the characteristics or other details about them.

- **PII** consists of **direct identifiers and indirect identifiers**. When combined together these identifiers can disclose a client/victim's identity.

What are considered Direct and Indirect Identifiers?

- **Direct “Personal” Identifiers**
  - Personal information, such as names or social security numbers, are examples of direct personal identifiers
- **Indirect “Personal” Identifiers**
  - Age, sex, and detailed race and ethnicity

What are considered Direct and Indirect Identifiers?

- **Direct "Geographical" Identifier**
  - Client's mailing address
- **Indirect "Geographical" Identifiers**
  - Event's place of occurrence or hospitalization

Are there exceptions?

- **YES!**

There are specific exceptions in the law which allow disclosure of confidential information.

It is important to inform the person receiving services of these exceptions when confidentiality is explained. The person should be informed of disclosures made without their approval.

Legal Exceptions

- ***Emergency -*** includes any situation where there is clear and imminent threat or danger to a person. In an emergency or when there is abuse or neglect, necessary information may be released with the person's consent. It is limited only to that information necessary to accomplish the purpose.
  - Examples:
    - suicidal or other danger to self
    - Health/medical emergency
    - Responsibility to warn others of specific threatened harm.
- **BEST PRACTICE is to refer to your supervisor or organizational guidelines to ensure the safety of the victim and to protect yourself.**

Legal Exceptions Continued

- **Involuntary Admission** – requires sufficient information to justify admission – can only be done with a court order.
- **Mandatory Reporting** – abuse/neglect supersedes confidentiality. This applies whether the person is victim or perpetrator.
- If an organization (DHS) is asking an organization (DHS) to become **Guardian or Conservator**, basis information will need to be provided. Though is it always best to obtain approval if possible.
- **For Purposes of Reimbursement** – the organization may release information with a signed authorization for payment purposes such as billing for medical insurances.
- **Next of Kin/Emergency Contact** – may be given information about a person's physical or mental condition.

Legal Exceptions Continued

- **Caretaker** – depending on the circumstances under which detailed information maybe given.
- **Court Order** – best practice is refer to your supervisor or organizational guidelines to ensure the safety of the victim and to protect yourself.
- **Internal Operations** – information may be shared internally as needed for treatment and health care operation, including planning and administrative purposes.
- **As Otherwise Required by Law** - This includes reporting criminal activity or reporting certain diseases to public health.
- **Research** – must be approved by an Institution review board and requires informed consent for participation. This is very rare in Indian Country.

Rule of Thumb

- You know nothing, and you share nothing without an authorization.
- You don’t admit knowing or not knowing the person without authorization
- You do not share information with co-workers, professionals, the client’s family, law enforcement, legislators, Tribal Leaders, the Governor or your friends or family without authorization.

Things to Remember…

- Check the organization's Confidentiality Exception Policy and follow it's guidelines.
- If you have questions regarding the Confidentiality Exception Policy ask your organizational supervisor.
- It is always best to obtain permission for disclosure if possible with a signed authorization form.

Sources

- National Coalition Against Domestic Violence
- Power and Control Wheel developed by Ellen Pence and Praxis International
- Uniting Three Fires Against Violence gratefully acknowledges the U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, for allowing us to reproduce, in part or in whole, the publication of “Five Things About Violence Against American Indian and Alaska Native Women and Men”. The opinions, findings, and conclusions or recommendations expressed in this video are those of the speaker(s) and do not necessarily represent the official position or policies of the U.S. Department of Justice.
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