

2012 Update to Memorandum of Understanding Guidance

Overview

Family Violence Centers (hereafter Centers), including both shelters and non-residential Centers, who receive funding from the Health and Human Services Commission (HHSC) Family Violence Program must sign a Memorandum of Understanding (MOU) with the Department of Family and Protective Services (DFPS) which provides both entities with a guiding framework for working together as well as promoting cross-training. This document seeks to highlight recent changes and updates to the MOU and to offer guidance for DFPS staff as well as the staff at Centers.

Definitions

In Texas there are two main codified definitions for family violence, the one contained in Section 71.004 of the Family Code and the one contained in Chapter 51 of the Human Resource Code. The definition in Chapter 51 is utilized for service provision by Centers whereas the Family Code is cited in most other areas including DFPS. For the purposes of the MOU, and this document, the definition in Section 71.004 will serve as the guiding definition.

Section 71.004 of the Texas Family Code defines family violence as:

"Family violence" means: (1) an act by a member of a family or household against another member of the family or household that is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places the member in fear of imminent physical harm, bodily injury, assault, or sexual assault, but does not include defensive measures to protect oneself; (2) abuse, as that term is defined by Sections 261.001(1)(C), (E), and (G), by a member of a family or household toward a child of the family or household; or (3) dating violence, as that term is defined by Section 71.0021.

Statutory Updates: Confidentiality, Release, and Working Relationships

In the years since the original MOU was drafted both state and federal statutes have changed necessitating the revision of the MOU. Most of the shifts in language and responsibilities have come as a result of the reauthorization of the Family Violence Prevention and Services Act (FVPSA-2010) and the Violence Against Women Act (VAWA-2005) and the additional clarity provided around these statutes.

In relation to this document, these statutory changes largely acknowledge the critical importance of confidentiality when providing services to victims of family violence and their children and provide for clearer parameters for Centers navigating disclosure of identifying information.

Language and Glossary

One of the overriding changes to the 2012 MOU is in the language utilized. For example, rather than referring to a family violence program as a 'Shelter' the document now uses the statutory definition for those contracting with HHSC of 'Family Violence Center.' None of the changes in terms are meant to affect the content; rather, they simplify the reading of the MOU. In an effort to assist in reading this document a glossary has been attached. Please reference this as you read through the text.

DFPS Conservatorship

Another aspect to the revised MOU is the addition of new language that covers roles and responsibilities when DFPS has conservatorship of a child that is accessing the services of a Center. In instances of conservatorship, DFPS is acting as the legal guardian of the child and thus the Centers should treat the relationship with them as such. DFPS Caseworkers should be prepared and carry a copy of the order showing managing conservatorship of the youth in case the Center staff request verification that the child is in DFPS conservatorship.

Section 1: Guidance for Implementation for DFPS Staff (pgs. 3-5)

Section 2: Guidance for Implementation for Family Violence Centers (pgs. 6-8)

Guidance for Implementation for DFPS Staff

Key Aspects: 2012 MOU Update

Guidance and Recommendations

This guidance was developed as a result of the revision of the MOU to assist with the relationship between DFPS and Centers. The recommendations in this document can be applied to both clients residing in shelters and/or clients receiving non-residential services, taking variations in circumstances into account.

Upon receiving a report of abuse/neglect where family violence is involved and the caseworker suspects that the child is now residing at the Center, the caseworker should first contact the Center. The first question the caseworker should ask is if the parent residing at the Center has signed a release of information. If the answer is no, the caseworker should then inform the Center member that he/she will attempt to conduct a home visit at the Center, and provide an estimated time of arrival. This will allow the Center staff to prepare and speak with the parent should the parent be residing at the Center. The caseworker should be mindful of the fact that without a release of information signed by the parent, information released by the Center staff over the phone may be limited. Caseworkers should also know that they may be asked to provide verification that they are indeed a caseworker. Caseworkers can verify DFPS employment by faxing a copy of their work badge along with a business card in advance or by presenting it in person.

If the Center staff member confirms that a release of information has been signed by the parent, then the caseworker can inquire whether or not the parent is still residing at the Center. If yes, the caseworker should schedule an appointment with the Center staff for the parent/child interview.

Unannounced visits are not recommended for several reasons. The time for preparation is important because the Center staff is trained to be an advocate for the parent and serve as a support system. If the parent is hesitant to be interviewed, the Center staff can assist in facilitating the parent's understanding as to why it is important to cooperate with DFPS.

Once the caseworker arrives at the Center, the caseworker should be prepared to show their work badge and identify themselves and DFPS employment once again. Caseworkers can ask to speak to the parent privately. By coordinating in advance, the caseworker has also allowed the Center staff time to prepare or identify a room that will be available for the interview.

Once interviews have been conducted, the caseworker is encouraged to ask the parent what services are available or what services the parent has already initiated. The Center staff can assist with protective orders, counseling services, etc. Knowing what resources are available and can be provided through the Center is important.

Additional Ways to Collaborate with Center Staff

If the caseworker anticipates that the parent will not be willing to participate/cooperate with DFPS, it is recommended that a consultation with family violence Center staff be conducted. Center staff is trained to work with this specific population who may have fears or anxieties about sharing any information regarding their experience. The Caseworkers should provide as much information and explanation to the parent as possible regarding why certain information is needed, and that this is the parent's opportunity to demonstrate their protective capacities. The Caseworkers can acknowledge that seeking assistance from the Center is the best first step the parent could have taken for themselves. Family violence advocates can also make recommendations as to what services would be beneficial that the parent would like to receive. If the service is not available or provided at the Center, the caseworker and the Center staff can together make arrangements and recommendations by identifying the services and other community providers who can provide the services.

Additional ways to work with Family Violence Center Staff:

Conduct case consultations regarding the following topics:

- A person within the dynamics of family violence may not see herself/himself as a victim or a perpetrator of family violence, however the Center staff can assist the caseworkers in ways to reach out or offer services to the victim, perpetrator, or children exposed to the family violence. It is not uncommon that victims see the perpetrator as someone they love, not as an abuser.
- Human trafficking victims and the dynamics that parallel between human trafficking and family violence.
- How to articulate to licensed professional counselors or therapists working with victims and perpetrators of family violence what to address in therapy. Not all licensed professionals have experience working with family violence victims or perpetrators. The Caseworkers should also inquire whether or not counseling services are available at the Center.
- How immigration status may be used as a form of control in a relationship, and how the victim or perpetrator may not see that as a characteristic of power and control in family violence.
- Characteristics of a healthy relationship and learning how to share this information to educate children and families involved in family violence.

External Involvement: Risk Factors

When working family violence cases, it is important to recognize that perpetrators may view any external person or group providing assistance or services to the victim/family unit as a threat. Whether the external entity is the family violence Center, DFPS, law enforcement, or a family member or friend who is willing to provide services to the victim, all parties must recognize that the help being offered to the victim can potentially

escalate the risk of harm. The MOU has updated language that states that in instances where DFPS is compelled to notify the alleged perpetrator of family violence about an investigation, attempts will be made to notify and safety plan with the parent who is a victim of family violence. It is also important to be mindful that the alleged perpetrator of family violence and the child may continue to have contact while the case is being investigated. DFPS must follow all existing court orders regarding parent-child visitation until the orders are modified in court. If this is the case, all parties should be aware of associated risks and work with the adult victim to safety plan accordingly.

Conflicts between DFPS and Family Violence Center

A solid working relationship between Centers and DFPS fosters the best outcome for both the child and the adult victim of family violence. If for some reason the caseworker arrives at the Center and there are problems with receiving cooperation from the Center staff, the caseworker is encouraged to call and speak with their DFPS liaison who has established rapport with the Center and has a point of contact to discuss all problems encountered. There is an identified staff member who is the designated liaison with the Center(s) for DFPS in every region and the list is available on the intranet. Finally, it is encouraged that cross training and frequent meetings between DFPS and family violence Centers occur as frequently as possible to begin building a team approach to obtain the goal of preventing family violence and keeping children and families safe.

Guidance for Implementation for Family Violence Centers

Key Aspects: 2012 MOU Update

Confidentiality: An Overview

Confidentiality is the critical underpinning to the advocacy that Centers provide and to the safety, integrity, and efficacy of services offered to not only the adult victim of family violence but also their children. Centers are often aware of private and personal areas of victim's lives and it is their responsibility, per statute, to maintain confidentiality for each and every client. Any contact with an external entity, including governmental entities such as DFPS, absent the statutory mandate for reporting abuse and neglect explained below, must be approached within the limits of confidentiality and with a signed, client-initiated release of information. As an overriding principal all Centers recognize that information regarding the victim belongs solely to the victim and it is their choice when and to whom s/he shares personal information.

Confidentiality: Making an Initial Report to DFPS and Exemption from Confidentiality

Chapter 261 of the Texas Family Code requires anyone with cause to believe a child is at risk of abuse, neglect, or exploitation to make a report to DFPS with these concerns. The contents of the report, per section 261.104 of the Family Code, are outlined within the MOU and should be followed. Section 48.051 of the Texas Human Resource Code requires that should one have cause to believe that a Covered Adult is in a "state of abuse, neglect, or exploitation" a report must be made. The MOU provides details about the necessary contents of the report.

These disclosures do not require a release of information as mandatory reporting is an existing exemption to confidentiality requirements; however, the center should make efforts to obtain a release of information prior to making the report in order to fit within the framework of empowerment based services. This initial report must contain only the information directly related to the reported abuse, neglect, or exploitation incident and additional information cannot be shared without a release of information signed by the client.

Subsequent to the initial report DFPS' investigating staff may contact the Center regarding the report and ask follow up questions per their regulatory requirements. The MOU provides the following framework for these interactions:

The Center agrees to provide the information directly related to the report of suspected abuse, neglect, or exploitation incident

- 1. If the Center staff reported the abuse, neglect, or exploitation; or*
- 2. If the parent or covered adult has signed a release.*

This allows the Center to provide the caseworker with a replica of the contents in the initial report, however, any additional questions asked, or information requested, outside of the contents of the reported incident will require a release of information.

As an endnote to the issue of reporting it is critical for Centers to be mindful that above all else when responding to concerns around child protection they should strive for a deliberate and thoughtful response to allow them to both maintain the adult client's safety while seeing that the risk to the child or Covered Adult is dealt with appropriately.

Confidentiality: Working with DFPS past the Initial Report

Outside of the initial report of family violence, or in instances where the Center is not the reporter, all other confidentiality parameters apply. A release of information must be obtained from the client for any subsequent information that DFPS may request following an initial report. In the event that there is no signed release of information by the client, the Center is unable to release any information regarding the client that is not included in the initial report. Should the DFPS worker request information in those instances, the Center should relay that they have no additional information to share.

External Involvement: Risk Factors

The MOU has additional language that states that in instances where DFPS is compelled to notify the alleged perpetrator of family violence about an investigation that attempts will be made to notify and safety plan with the parent who is a victim of family violence. Both the Center and DFPS should be aware that involvement from any external entities, including DFPS, has the potential to escalate the risk of harm and that making an initial report does not mean that risk of harm is no longer an issue. For example, it is important to be mindful that the alleged perpetrator of family violence and the child may continue to have contact while the case is being investigated. If this is the case, all parties should be aware of associated risks and work with the adult victim to safety plan accordingly.

Ongoing DFPS Involvement

Throughout DFPS' involvement, the Center should assist the client with their interactions with DFPS and look for opportunities where Center participation may be beneficial, such as multi-agency meetings regarding the case. The Center should advocate for the family and, as experts on the issue of family violence, be available to provide this information to DFPS workers when needed. The Center is in a position to share with DFPS the dynamics of family violence and, if a release has been signed, the protective steps the adult victim is taking through accessing shelter and/or services.

Should the client make contact with the DFPS worker and an appointment be scheduled, the interview may occur at the Center if the client is comfortable with this. The client may ask that an advocate from the Center be present during the interview or the DFPS worker may request to interview the client and family members on their own. When communicating with DFPS workers, the Center must always verify the identity of the

DFPS worker and look at their badge and a business card. It is essential that the DFPS worker's identity be verified prior to any information being shared for the safety of the client.

DFPS may request printed materials on family violence and available resources to provide to clients. When providing printed materials, the Center should also advise the DFPS worker on how these materials might be provided with the client's safety in mind.

Conflicts between DFPS and Family Violence Center

Every Center must identify a staff person to liaise with DFPS. If, for whatever reason, the Center and DFPS staffs are not able to resolve issues, the Center must bring this concern to the attention of the Center's liaison (this may be the ED or another staff person). This liaison will in turn contact his/her counterpart at DFPS to address the issue. Efforts should be made to resolve concerns at a local level, but if this is not possible, concerns can be brought to the Texas Council on Family Violence or the Family Violence Program at HHSC who will seek to address the issue at the state level through an existing interagency workgroup known as the Texas Family Violence Interagency Collaborative (TFVIC.) In an effort to avoid potential conflicts, Centers should strive to develop relationships with their regional DFPS office, particularly their allocated liaison. This can be accomplished in part through joint trainings between Centers and DFPS.

GLOSSARY

Terms used in the MEMORANDUM OF UNDERSTANDING have the following meanings:

Adult abuse, neglect, or exploitation – The abuse, neglect, or exploitation of an elderly or disabled adult as defined in Section 48.002 of the Human Resources Code.

Appropriate release (Family Violence Shelter use) - An informed, written, reasonably time-limited consent that is not to exceed the resident's stay in a shelter or a non-resident's active participation in services, can be terminated by the resident or non-resident at any time, and is signed by the person at their discretion.

APS – The Adult Protective Services division of the Texas Department of Family and Protective Services charged with investigations of adult abuse, neglect, or exploitation.

Child – A person under the age of 18 who is not and never has been married or emancipated by a court.

Child abuse or neglect – The abuse or neglect of a child as defined in Section 261.001 of the Family Code.

Covered adult - An elderly person (age 65 or older) or disabled person, who is not a child, as defined in Section 48.002 of the Human Resources Code

CPS – The Child Protective Services division of the Texas Department of Family and Protective Services charged with investigations of child abuse or neglect.

Dating Violence – As defined in the Section 71.0021 of the Family Code, which states: Dating Violence means an act, other than a defensive measure to protect oneself, by an actor that:

- (1) is committed against a victim:
 - (A) with whom the actor has or has had a dating relationship; or
 - (B) because of the victim's marriage to or dating relationship with an individual with whom the actor is or has been in a dating relationship or marriage; and
- (2) is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places the victim in fear of imminent physical harm, bodily injury, assault, or sexual assault.

(b) For purposes of this title, "dating relationship" means a relationship between individuals who have or have had a continuing relationship of a romantic or intimate nature. The existence of such a relationship shall be determined based on consideration of:

- (1) the length of the relationship;
- (2) the nature of the relationship; and
- (3) the frequency and type of interaction between the persons involved in the relationship.

(c) A casual acquaintanceship or ordinary fraternization in a business or social context does not constitute a "dating relationship" under Subsection (b).

DFPS - The Texas Department of Family and Protective Services, the state agency charged with investigations of abuse and neglect of children and abuse, neglect, or exploitation of the elderly or disabled adults.

Domestic violence – See definition below for “family violence.” For the purposes of this MOU, “domestic violence” and “family violence” are the same.

Family violence – As defined by Section 71.004 of the Family Code, which states: Family Violence means:

(1) an act by a member of a family or household against another member of the family or household that is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places the member in fear of imminent physical harm, bodily injury, assault, or sexual assault, but does not include defensive measures to protect oneself.

(2) abuse, as that term is defined by Sections 261.001(1)(C), (E) and (G), by a member of a family or household toward a child of the family or household; or

(3) dating violence, as that term is defined by Section 71.0021.

For the purposes of this MOU, “domestic violence” and “family violence” are the same.

Family Violence Center - Family violence center includes a family violence shelter center and a family violence non-residential center.

- A family violence non-residential center is a program that is operated by a public or private nonprofit organization that provides comprehensive non-residential services to victims of family violence.
- A family violence shelter is a program that is operated by a public or private nonprofit organization that provides comprehensive residential and non-residential services to victims of family violence.

Family violence safety plan - A verbal or written plan that identifies ways to promote the safety of family violence victims including preparation needed to separate from the batterer, identification of community resources and how to stay safe from future incidents of violence (whether prior to or after separation from the batterer).

HHSC – The Texas Health and Human Services Commission, the state agency that oversees the operations of the health and human services system, provides administrative oversight of Texas health and human services programs, and provides direct administration of some programs, including the Family Violence Program.

TFVIC – The Texas Family Violence Interagency Collaborative, a workgroup consisting of staff from DFPS, APS and CPS, the HHSC Family Violence Program, and the Texas Council on Family Violence, with a goal of enhanced interagency collaboration to promote strong communication between family violence services providers and DFPS staff as well as streamlining services to survivors of family violence.