

## **Guidance for Kansas Domestic Violence and Sexual Assault Programs**

### **Mandatory Reporting of Infectious Diseases: Kansas Laws & Protecting Confidentiality**

#### **FEDERAL CONFIDENTIALITY REQUIREMENTS**

Federal law prohibits Kansas domestic violence and sexual assault programs (Programs) that receive FVPSA, STOP or SASP (VAWA), or VOCA funds from releasing or sharing personally identifying information about victims/ survivors and their children who are receiving services. The only exceptions to these requirements are the following:

1. The survivor gives written, specific, time-limited consent for the release of their information after being fully informed of the potential consequences of releasing this information;
2. There is a state statute (law) that requires the release; or
3. There is a court order or mandate that requires the release.

Programs are absolutely prohibited from releasing personally identifying information unless there is one of these exceptions.

#### **KANSAS INFECTIOUS DISEASE MANDATORY REPORTING LAWS AND REGULATIONS**

Kansas is experiencing a Coronavirus (COVID-19) pandemic. Kansas, like many states, has a mandatory reporting statute regarding infectious or contagious diseases (K.S.A. 65-118).

The rules and regulations set by the Kansas Department of Health and Environment (KDHE) state that certain professionals “shall report each suspected case of the following infectious or contagious diseases or conditions to the secretary within four hours of knowledge of the suspected case” (K.A.R. 28-1-2).

Those required to report are the following:

- Each person licensed to practice the healing arts or engaged in a postgraduate training program approved by the state board of healing arts,
- licensed dentist,
- licensed professional nurse,
- licensed practical nurse,
- administrator of a hospital,
- licensed adult care home administrator,
- licensed physician assistant,
- licensed social worker, and
- teacher or school administrator.

COVID-19 fits within the definition of a reportable “infectious or contagious disease or condition” in two categories; 1) it is a coronavirus; and 2) it is an exotic and newly recognized disease (K.A.R. 28-1-2).

The mandatory reporter need only *suspect* that there is an infectious disease or condition (case) and must report it within 4 hours.

The mandated reporter must provide the following known information on the individual in the suspected case:

- First and last names and middle initial;
- address, including city, state, and zip code;
- telephone number, including area code;
- date of birth;
- sex;
- race;
- ethnicity (specify if hispanic or non-hispanic ethnicity);
- pregnancy status;
- date of onset of symptoms; and
- diagnosis;

They must also provide the following:

- type of diagnostic tests;
- type of specimen;
- date of specimen collection;
- site of specimen collection;
- diagnostic test results, including reference range, titer if quantitative procedures are performed, and all available results concerning additional characterization of the organism;
- treatment given;
- name, address, and telephone number of the attending physician; and
- any other necessary epidemiological information and additional specimen collection or laboratory test results requested by the secretary or local health officer.

#### **HOW DOES THIS IMPACT DOMESTIC VIOLENCE AND SEXUAL ASSAULT SERVICES?**

- If you have a licensed social worker on your staff (or one of the named health care professionals above), that person is required to report a suspected COVID-19 case to KDHE.
- If someone seeks medical care because they are exhibiting symptoms of COVID-19, the medical provider is a mandatory reporter and is required to make the necessary reports to KDHE. There is no indication by law or regulation that a suspected COVID-19 case needs to be reported more than once or that the same case needs to be reported by multiple people.
- People who are designated as mandated reporters by Kansas law need to disclose to victims/ survivors any limitations to confidentiality, including their reporting obligations of infectious diseases.
- Staff should work with victims/ survivors to seek medical care anytime they are experiencing COVID-19 symptoms. If a victim/ survivor seeks medical care, then the mandatory report will be taken care of. If the victim/ survivor chooses not to seek medical care, then provide the victim/

survivor with the option of self-reporting to KDHE, with the support and assistance of the mandated reporter.

- If the victim/ survivor chooses to self-report, the mandated reporter should assist them in preparing to make the report, including what information needs to be provided to KDHE.
- If Program staff or volunteers are required to report a suspected COVID-19 case to KDHE:
  - Notify victims/ survivors immediately when a report of infectious diseases must be made and what exact information will be disclosed to KDHE. Federal confidentiality requirements under VAWA/FVPSA also require that when Programs are releasing information to comply with a statutory mandate: 1) reasonable attempts to provide notice to victims affected by the disclosure of information must be made; and 2) necessary steps shall be taken to protect the privacy and safety of the persons affected by the release of the information.
  - Do not share more information than required by Kansas law (see above). No information about whether the person is receiving sexual assault or domestic violence services needs to be shared or disclosed. This is very different from mandatory reporting of child abuse, where information about abuse may need to be provided. Mandatory reporters should be able to meet their obligations without ever sharing that the person is receiving services.
  - Discuss with survivors the confidentiality protections in place of the information shared with KDHE (see below).
  - Reports of infectious or contagious diseases can be made to KDHE by calling 1-877-427-7317.

**WHAT PROTECTIONS ARE IN PLACE FOR THESE SURVIVORS? WILL OTHERS FIND OUT THEY ARE SICK OR WHERE THEY ARE STAYING?**

Kansas has strict confidentiality laws regarding reports of infectious diseases to public health officials (see K.S.A. 65-118 [c] below). The purpose of reporting infectious disease information is to decrease the chances that the disease will spread. The state’s confidentiality provisions should reassure those who have contracted the infectious disease. However, Programs should create relationships with their local public health officials BEFORE any infectious disease occurs and inform them of your legal obligations to protect confidentiality. Much like our work with the criminal justice system, Programs should be known to their public health officials and they should be able to rely on them for best practice health and safety information. There are many steps that can be taken to reduce infections in the shelter and workplace settings (see model Infectious Disease Policy).

K.S.A. 65-118 (c) states: “Information required to be reported...shall be confidential and shall not be disclosed or made public, upon subpoena or otherwise, ...except such information may be disclosed:

- (1) If no person can be identified in the information to be disclosed and the disclosure is for statistical purposes;

(2) if all persons who are identifiable in the information to be disclosed consent in writing to its disclosure;

(3) if the disclosure is necessary, and only to the extent necessary, to protect the public health;

(4) if a medical emergency exists and the disclosure is to medical personnel qualified to treat infectious or contagious diseases. Any information disclosed pursuant to this paragraph shall be disclosed only to the extent necessary to protect the health or life of a named party; or

(5) if the information to be disclosed is required in a court proceeding involving child abuse and the information is disclosed in camera.”

### **WHAT IS CONTACT TRACING AND HOW COULD IT IMPACT SURVIVORS?**

To decrease the spread of COVID-19, the health departments will be using a process called “contact tracing.” This process will ask people who have tested positive for COVID-19 to provide public health officials with information about who they have had personal interactions with so those people can be asked to isolate themselves from others. Kansas just recently passed a law on contact tracing, which was signed by Governor Kelly in early June 2020. It is effective until April 2021, giving the Kansas Legislature the opportunity to pass another law when it meets in 2021.

The new legislation, which applies to both the state and to local government authorities, contains the following provisions to protect citizens’ civil liberties and the privacy of information collected through contact tracing:

- Participation in contact tracing must be voluntary. No person may be required to participate, nor forbidden from participating.
- Contact tracing may not collect information through cellphone tracking and may not use any information collected through cellphone tracking.
- Information collected through contact tracing must be used only for contact tracing, kept confidential and not disclosed. The information must be safely and securely destroyed when no longer needed for contact tracing.
- Only specified information may be collected by contact tracers. The list of information that may be collected must be established by the Secretary of Health and Environment through the open and transparent process of adopting formal rules and regulations.
- The government may not require any third party to collect contact data. Information voluntarily collected by third parties may only be obtained by the government with the consent of both the third party and the person the information relates to, or with a judicially supervised warrant.
- People working as contact tracers must receive training and must affirm that they are familiar with the privacy and civil liberties protections in the legislation. (News Release, Office of the Kansas Attorney General, June 5, 2020)

So, Program should be aware that someone who has tested positive may be contacted by a contact tracer.

- Under this new law, sharing contact tracing information is voluntary. This means that there is no statutory requirement that programs or shelters share personally identifying information when a contact tracer contacts the program to let them know someone has tested positive who had contact with the program.
- Programs still have legal obligations to protect personally identifying information of survivors. Survivors are not under that same obligation, and even if they are encouraged not to share the names of others, they may do so out of fear, or if they are trying to be helpful during this crisis. Support best practices and work to protect a survivor's right to privacy, while also supporting their ability to make choices about and receive information related to their health.
  - Ideal scenario: If a survivor tests positive for COVID19 and is asked for information about who they've been in close contact with, they'll tell the public health worker they were at the shelter or program (they do NOT need to disclose that they were receiving services – there are many reasons someone would be at a program or shelter that don't include receiving services). Rather than providing names of people at the program, they can offer the name of the advocate they worked with or the name of the director at the program. The public health worker could then contact the staff member, and the program can notify the residents / others receiving services / and staff at the program that someone (not naming the person) who has been on site (again, not needing to disclose that they received services) tested positive for the virus (similar to the way schools notify families when there's been possible exposure to certain diseases, without naming the individual who was sick). This is similar to what doctor's offices do in similar situations – simultaneously protecting privacy and health.
- If a staff member tests positive for COVID19, they should not share the names of anyone at the program or shelter, but rather follow the same procedure outlined in the first scenario above. Do not share names; the staff member should provide notice to the program so that they can notify those who may have been exposed. Any information shared with the public health worker is voluntary.
- It's also important for staff to be prepared for calls from public health workers or contact tracers who HAVE been given names:
  - Due to the infectious nature of COVID-19, public health workers will not physically go to the program or shelter but will contact program staff by phone.
  - If a public health worker contacts the program or shelter asking to speak with specific people, it would be the usual protocol – “I can neither confirm nor deny if anyone by that name is here. But what I can offer is to get your name and contact information, share notice with the people here that someone who said they were here has tested positive for COVID19, and offer you as a person they can reach out to with questions / concerns.”
  - Create a protocol with your public health department BEFORE there is an issue with COVID19. You may already have a protocol set up for other communicable diseases and infections apart from the current public health pandemic.

## **COVID-19 TESTING & COMMUNAL LIVING**

Currently, there is no Kansas law that requires or mandates COVID-19 testing in communal living environments. Access to testing may be seen as a benefit to individual victims/ survivors. Therefore, it is important for Programs to start from a position of “how do we make this resource available to the people who *want* access to it?”

If Programs are approached by public health officials or others and told they must test all residents in the shelter, they should ask: “What is the statute that mandates this? Can I see it? Or, can you give me the citation so I can look at it for myself?”

Most public health responses are about people voluntarily participating in testing, but this can be misunderstood by the general public as being “mandated” to participate in testing. Programs should work to emphasize to victims/ survivors that testing voluntary, help them consider the pros and cons of testing, and not punish people for exercising choice.

## **OTHER RELATED LAWS TO BE AWARE OF**

### K.S.A. 65-129d:

It shall be unlawful for any public or private employer to discharge an employee solely because the employee or an immediate family member of the employee is under an order of isolation or quarantine. The violation of this section is punishable as a violation of K.S.A. 65-129, and amendments thereto.

### K.S.A. 65-129b:

In investigating actual or potential exposures to an infectious or contagious disease that is potentially life-threatening, the local health officer or the secretary [of KDHE]:

- May issue an order requiring an individual who the local health officer or the secretary has reason to believe has been exposed to an infectious or contagious disease to seek appropriate and necessary evaluation and treatment.
- When the local health officer or the secretary determines that it is medically necessary and reasonable to prevent or reduce the spread of the disease or outbreak believed to have been caused by the exposure to an infectious or contagious disease, may order an individual or group of individuals to go to and remain in places of isolation or quarantine until the local health officer or the secretary determines that the individual no longer poses a substantial risk of transmitting the disease or condition to the public.
- If a competent individual of 18 years of age or older or an emancipated minor refuses vaccination, medical examination, treatment or testing under this section, may require the individual to go to and remain in a place of isolation or quarantine until the local health officer or the secretary determines that the individual no longer poses a substantial risk of transmitting the disease or condition to the public.
- If, on behalf of a minor child or ward, a parent or guardian refuses vaccination, medical examination, treatment or testing under this section, may require the minor child or ward to go

to and remain in a place of isolation or quarantine and must allow the parent or guardian to accompany the minor child or ward until the local health officer or the secretary determines that the minor child or ward no longer poses a substantial risk of transmitting the disease or condition to the public.

- May order any sheriff, deputy sheriff or other law enforcement officer of the state or any subdivision to assist in the execution or enforcement of any order issued under this section.