

September 4, 2012

## REPORTING CASES OF ABUSE AND NEGLECT

**1. PURPOSE:** This Veterans Health Administration (VHA) Directive establishes policy for Department of Veterans Affairs (VA) medical centers, VA outpatient clinics (OPC), Vet Centers, VA Community Living Centers (CLC), Home Based Primary Care (HBPC), Home and Community-based programs, State Veterans Homes, and Community-based Outpatient Clinics (CBOC) on the reporting of abuse and neglect cases as stipulated by state statute.

**2. BACKGROUND:** A state cannot ordinarily compel a VA facility or its employees, while acting within the scope of their employment, to comply with state law. However, as a matter of policy, all VA medical centers, VA OPCs, Vet Centers, VA CLCs, Home Based Primary Care, Home and Community based programs, State Veterans Homes and CBOCs must comply with their own state laws for reporting abuse and neglect. Specifically, relevant state statutes must be followed for the identification, evaluation, treatment, referral and/or mandated reporting of possible victims of physical assault, rape or sexual molestation, abuse and/or neglect of elders, spouses, partners, and children.

a. The Victims of Child Abuse Act of 1990, as amended, codified at title 42 United States Code (U.S.C.) 13001-13041, requires certain professionals engaging in their profession on Federal land, or in a Federally-operated facility, who learn of suspected acts of child abuse, to report such acts to the agency designated by the United States Attorney General to receive such reports. The U.S. Assistant Attorney General advises that "section 13031 is best read to impose a reporting obligation on all persons who, while engaged in the covered professions and activities on federal lands or in federal facilities, learn of facts that give reason to suspect that child abuse has occurred, regardless of where the abuse might have occurred or where the suspected victim is cared for or resides." See U.S. Department of Justice, Office of Legal Counsel, Assistant Attorney General's Memorandum for Will A. Gunn General Counsel, United States Department of Veterans Affairs, dated May 29, 2012 [*Re: Duty to Report Suspected Child Abuse Under 42 U.S.C. § 13031*]. That is, a covered professional is required to report suspected child abuse discovered while engaged in the covered activities (i.e., professions or occupations specified in section 13031(b)) on federal lands or in federal facilities. This is not to be interpreted as limiting the reporting requirement to cases of suspected child abuse occurring or taking place on Federal lands or in Federal facilities. "Covered professionals" subject to this requirement include "hospital personnel," "persons performing a healing role," and "social workers." *Id.* § 13031(b)(1), (3).

b. The U.S. Assistant Attorney General also addressed whether a covered professional's mere knowledge that a patient had viewed child pornography would trigger that professional's duty to report the suspected child abuse. It was concluded that a covered professional's knowledge of a patient under his or her care viewing child pornography also triggers the reporting requirement under section 13031, because they may be aware of facts that give reason to suspect that the child-- subject of the pornographic images viewed by the patient-- has suffered an incident of child abuse under 42 U.S.C. §13031(a).

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Moreover, the professional is not relieved of the obligation to report such a fact simply because the identity of the injured child is unknown. In short, any person who, while engaged in a professional capacity or activity described in subsection (b) of section 13031 on any federal land or in any federally operated (or contracted) facility, learns of facts that give reason to suspect that a child has suffered any incident of child abuse must report the suspected abuse to a designated agency. The fact that a patient has viewed child pornography may give reason to suspect that a child has suffered an incident of child abuse as defined under the statute, and a covered professional is not relieved of an obligation to report the possible abuse simply because neither the covered professional nor the patient knows the identity of the child depicted in the pornography. A covered professional's failure to file a required report will not necessarily result in criminal liability, however. **NOTE:** *Consult your Regional Counsel for more on the reporting requirements and when criminal penalties may be triggered for a covered professional's failure to report.*

c. The Department of Justice has issued regulations providing that the reports, required under the Act, be made to "the local law enforcement agency or the local child care protective services agency that has the jurisdiction to investigate reports of child abuse or to protect child abuse victims in the land area or facility in question." title 28 Code of Federal Regulations (CFR) Section 81.2. Federal law requires the reporting of suspected acts of child abuse to entities designated by state law to receive such reports.

d. **Definitions.** Federal law defines child abuse as "physical or sexual abuse or neglect of a child." (See 42 U.S.C. § 13001a(5) for this definition.) For purposes of the statutory requirement to report child abuse, the term is further defined as "the physical or mental injury, sexual abuse or exploitation, or negligent treatment of a child," and, in turn, the term "sexual abuse" includes "the employment [or] use ... of a child to engage in ... sexual exploitation of children," and "the term 'exploitation' means child pornography or child prostitution." (See 42 U.S.C. §§ 13031(c)(1), 13031(c)(4)-(6) for these definitions and for more information.)

e. Each state has unique laws on reporting of abuse, neglect, or other types of physical assault, and the definitions of these terms vary. **NOTE:** *VA facility staff needs to consult with Regional Counsel for guidance on the definitions in place within each state.*

**3. POLICY:** It is VHA policy that VA facilities must comply with state law regarding the reporting of abuse and neglect. All cases of sexual assault that occur on VA property must be reported in accordance to VHA Directive 2010-014, Assessment and Management of Veterans Who Have Been Victims of Alleged Acute Sexual Assault.

#### **4. ACTION**

a. **Medical Facility Director.** The Medical Facility Director is responsible for:

(1) Ensuring policies and procedures are established regarding the identification, evaluation, treatment, referral and mandatory reporting of abuse and/or neglect in compliance with state laws. These policies must address the issues of domestic abuse, child abuse, elder abuse, and sexual assault and abuse utilizing definitions based on state statutes.

(2) Ensuring all cases of sexual assault, suspected abuse and/or neglect that occur on VA property are to be reported to the VA Chief of Police, who determines the need for reporting to local law enforcement authorities and/or the Office of the Inspector General. For purposes of reporting to VA police, all VA employees must report any sexual assault on VA property as outlined in paragraph 3. **NOTE:** *VA Medical Centers, VA OPCs, Vet Centers, VA CLCs, HBPC, Home and Community-based programs, State Veterans Homes, and CBOCs need to follow state law only to the extent that they can do so consistently with Federal records confidentiality statutes, the Privacy Act at 5 U.S.C. 552a and 38 U.S.C. 5701 and 7332.*

(3) Ensuring a plan for staff education is developed and published which addresses the:

- (a) Signs and symptoms of abuse and neglect;
- (b) Identification and treatment of abuse;
- (c) Local reporting procedures;
- (d) Institutional, local, state, and Federal reporting mandates;
- (e) Documentation of abuse; and
- (f) Instruction about maintaining and safeguarding evidence of alleged abuse and neglect.

(4) Reporting of abuse pursuant to valid state laws which require that such reports be made and legal authority under Federal law to disclose the individual's information. In the absence of a prior written authorization from the individual whose information is to be disclosed to the state, such legal authority is in the form of a standing written request letter that complies with the requirements of VHA Handbook 1605.1 and 38 U.S.C. 5701(f). In order for a standing written request to be valid, the letter must be prepared by the qualified representative of the state agency that qualified as a law enforcement authority charged with the protection of the public health or safety. **NOTE:** *In order to qualify as a law enforcement authority, the state agency must have the power to enforce some aspect of the state reporting scheme, such as by penalizing the institution for failure to report or by penalizing the individual, who is the subject of the report.*

(5) Ensuring all standing requests are maintained on file in the medical facility and acknowledging each request.

(6) Ensuring the standing request is sent to the requesting agency every 3 years for review and renewal.

(7) Ensuring each standing request is submitted to Regional Counsel for review. The corresponding Privacy Act routine use authority (for disclosing information pursuant to a standing request) is contained at 5 U.S.C. 552a(b)(3), and specifically at routine use number 10 of the Privacy Act System of Records, 24VA19, "Patient Medical Record – VA."

(8) Ensuring that reports of abuse are limited to providing the name and address of the abused person and that information specifically permitted or required by the statute be in compliance with the reporting provisions of the applicable state law. **NOTE:** *In no event will*

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*information protected under 38 U.S.C. 7332 which pertains to treatment for drug and alcohol abuse, sickle cell anemia, or testing for infection with human immunodeficiency virus be disclosed to comply with a state request unless the Veteran signs a prior written special consent or there is a valid court order. If the state agency which has received a report of abuse seeks additional information, such information may be provided only with the patient's authorization or in response to a letter prepared by the law enforcement agency charged with the investigation in accordance with the provisions of 5 U.S.C. 552A (b)(7).*

(9) Preparing a reporting form, which compiles that information specifically provided for, or required to be reported, by the state law in response to its standing request. This information is to be reported to the state law enforcement agency, and a copy is to be placed in the patient's administrative record.

**NOTE:** *An administrative document class may be created in the Computerized Patient Record System (CPRS), and the report document must be scanned into CPRS.*

(10) Ensuring a referral is made to Social Work to assist in the assessment, treatment, referral, reporting, and documentation of the abuse, when abuse is suspected or identified by the primary physician of the Veterans' health care team, or other member of the Patient Aligned Care Team. **NOTE:** *Social Work maintains a list of private and public community agencies that provide or arrange for evaluation and care for victims of abuse, and referrals are made as appropriate.*

(11) Ensuring a report is made with the state in which the Veteran currently resides, regardless of where the incident occurred.

b. **Clinician Who Determines That A Report Be Made.** The clinician who determines that a report is to be made is responsible for documenting pertinent information about the abuse and/or neglect in CPRS, or in the case of the Vet Center, the Readjustment Counseling Service client counseling record. Although social workers generally make the report, other clinicians can make reports and are to follow the procedures outlined in this Directive.

(1) The electronic health record contains the clinical assessment and treatment information and the administrative record contains the state required form, which compiles that information specifically provided for, or required to be reported, by state law.

(2) The clinician must document the following:

(a) Confirmation that a verbal report has been made and ensuring a copy of the written administrative report is forwarded to the appropriate agency.

(b) Examination and treatment offered and provided, including whether any specific evidence has been retained such as specimens or photographs.

**5. REFERENCES**

- a. Accreditation Manual for Hospitals, 2011, The Joint Commission, Provision of Care, Treatment, and Services (PC.01.02.09) and Rights and Responsibilities of the Individual (RI.01.06.03).
- b. The Victims of Child Abuse Act of 1990, as amended, codified at 42 U.S.C. 13001-13041.
- c. Child Abuse Reporting Designations and Procedures, 28 C.F.R. Part 81.
- d. VHA Directive 2010-014, Assessment and Management of Veterans Who Have Been Victims of Alleged Acute Sexual Assault.
- e. Title 5 U.S.C. Section 552a.
- f. Title 38 U.S.C. Section 5701(f).
- g. Title 38 U.S.C. Section 7332.

**6. RESPONSIBILITY:** Chief Consultant, Care Management and Social Work Service (10P4C), is responsible for the contents of this Directive. Questions may be referred to 202-461-6780.

**7. RESCISSION:** VHA Directive 2006-068 is rescinded. This VHA Directive expires March 31, 2015.

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