

VA Responsibilities Concerning Registered Sex Offenders Seeking Treatment at VA Facilities

It has come to our attention that some VA Medical Centers and Health Care Systems have developed internal policies concerning registered sex offenders. These policies include flagging a patient's medical record to indicate sex offender status, and having VA Police check to ensure the sex offender is living at the address at which he or she is registered. Such policies are improper.

VA Medical Centers should treat Veterans eligible for VA health care who are also registered sex offenders the same as they would any other patients. Their medical records should not be flagged to reveal their sex offender status as there exists no health care treatment reason to do so. Indeed, in accordance with 38 USC 5701, 38 USC 7332, the Privacy Act, 5 USC 552a, and the HIPM Privacy Rule, a patient's status as a sex offender should only be disclosed to VA employees that a need to know the information in order to perform their official duties. However, if Security and Law Enforcement believe that a patient poses a risk to other individuals and should be escorted by Security while on VA property as a matter of health care operations, the medical records could be flagged to indicate that the patient needs an escort and Security and Law Enforcement should be contacted when the patient is on VA property. The flag should not identify the patient as a sex offender.

VA Police law enforcement authority is limited to crimes occurring on the property. See 38 U.S.C. § 902. Hence VA Police have no authority or responsibility to follow up with local authorities to ensure that registered sex offenders are living at the correct address.

Finally, many states prohibit registered sex offenders from coming within a certain distance of a childcare center. VAMCs with childcare centers are not bound by such laws as enforcement of same could result in a Veteran who is otherwise eligible for treatment under Federal law, being denied care at the VAMC because of a State law. The Supremacy Clause of the United States Constitution would thus preclude enforcement of the State law. However, if Security and Law Enforcement believe that a patient poses a threat to children, the medical records could be flagged to indicate that an escort is needed for the patient while on VA property.