

December 28, 2006

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 (OPCs), Vet Centers, and Community-based Outpatient Clinics (CBOCs) 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. But as a matter of policy, all VA medical centers, VA OPCs and Vet Centers must comply with state law in reporting abuse and neglect. Relevant state statutes must be followed for the identification, evaluation, treatment, referral and/or reporting of possible victims of physical assault, rape or sexual molestation, and domestic abuse of elders, spouses, partners, and children.

a. The Victims of Child Abuse Act of 1990, requires certain professionals engaging in their profession on Federal land, or in a Federally-operated facility, who learn of suspected acts of child abuse involving children who are cared for or reside at a Federal facility, to report such acts to the agency designated by the United States Attorney General to receive such reports.

b. 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.” Federal law requires the reporting of suspected acts of child abuse to entities designated by state law to receive such reports.

3. POLICY: It is VHA policy that VA facilities must comply with state law regarding the reporting of abuse and neglect.

4. ACTION

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

(1) Policies and procedures are established regarding the mandatory reporting of abuse and/or neglect in compliance with state law. These policies must address the issues of domestic abuse, child abuse, elder abuse, and sexual assault and abuse utilizing definitions based on state statutes. **NOTE:** *VA medical centers, VA OPCs and Vet Centers need to follow state law only to the extent that they can do so consistent with Federal records confidentiality statutes, the Privacy Act at Title 5 United States Code (U.S.C.) Section 552a and 38 U.S.C. Sections 5701 and 7332.*

(2) A plan for staff education is developed which addresses the signs and symptoms of abuse; local reporting procedures; identification and treatment of abuse; institutional, local, state,

THIS VHA DIRECTIVE EXPIRES DECEMBER 31, 2011

and Federal reporting mandates; reporting and documentation of abuse; and instruction about maintaining and safeguarding evidence of alleged abuse.

(2) Reports of abuse are made pursuant to valid state laws which provide for, or require, that such reports be made. In the absence of a prior written consent, a report of abuse may be made only in response to a letter prepared by the qualified representative of the civil or criminal law enforcement instrumentality charged with the protection of the public health or safety. **NOTE:** *In order to qualify as a law enforcement instrument, it 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. This is a written (standing) request which must comply with all provisions of 38 U.S.C. Section 5701(f)(2).*

(4) All standing requests are maintained on file in the Medical Center and each request is acknowledged by the facility Director.

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

(6) Each standing requests is submitted to the Regional Counsel for review. The corresponding Privacy Act routine use authority (for disclosing information pursuant to a standing request) is contained at Title 5 U.S.C. Section 552a(b)(3), and specifically at routine use number 25 of the Privacy Act System of Records, 24VA19, "Patient Medical Record – VA."

(7) 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 to be in compliance with the reporting provisions of the applicable state law. **NOTE:** *In no event shall information protected under Title 38 U.S.C. Section 7332 that pertains to treatment for drug and alcohol abuse or sickle cell anemia or to testing for or infection with human immunodeficiency virus (HIV) 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).*

(8) A reporting form is prepared 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 scanned into CPRS.*

(9) When abuse is suspected or identified by the primary physician, a referral is made to Social Work to assist in the assessment, treatment, referral, reporting, and documentation of the abuse. **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.*

b. **Clinician Who Determines That A Report Be Made.** The clinician who determines that a report is to be made must document in CPRS. Due to the nature of the note, limited access must be maintained, or in the case of the Vet Center, the Readjustment Counseling Service client counseling record, the following must be done:

(1) The clinician confirms that a report has been made and forwards a copy of the report to the appropriate agency.

(2) The clinician documents the examination and treatment offered and/or provided, including whether any specific evidence has been retained such as specimens or photographs.

5. REFERENCES

- a. Accreditation Manual for Hospitals, 2006, Provision of Care, PC 3.10 and RI 1.2.150.
- b. Public Law 101-647, Section 201-255, "The Victims of Child Abuse Act of 1990."
- c. Title 5, U.S.C. Section 552a.
- d. Title 38, U.S.C. Section 5701(f)(2).
- e. Title 38, U.S.C. Section 7332.
- f. Title 38 Code of Federal Regulations (CFR) Part 81, Section 81.2.
- g. VA Handbook 1605.1.
- h. M-1, Part 1, Paragraph 9.51.

6. FOLLOW-UP RESPONSIBILITY: Director, Social Work Service (11CCSW), is responsible for the content of this Directive. Questions may be referred to 202-273-8549.

7. RESCISSION: VHA Directive 2001-031 is rescinded. This VHA Directive expires December 31, 2011.

Michael J. Kussman, MD, MS, MACP
Acting Under Secretary for Health

DISTRIBUTION: CO: E-mailed 12/28/2006
 FLD: VISN, MA, DO, OC, OCRO, and 200 – E-mailed 12/28/2006