

September 27, 2012

**SEXUAL ASSAULTS AND OTHER DEFINED PUBLIC SAFETY INCIDENTS IN
VETERANS HEALTH ADMINISTRATION (VHA) FACILITIES**

1. PURPOSE: This Veterans Health Administration (VHA) Directive establishes a unified policy describing the management of all individuals in VHA facilities whose behavior has, or could, jeopardize the health or safety of others, undermine a culture of safety in VHA, or otherwise interfere with the delivery of health care at the facility. It implements the provisions of Public Law (Pub. L.) 112-154, section 106, by ensuring that behaviors which undermine a safe and healing environment are appropriately reported, addressed, and monitored.

2. BACKGROUND

a. VHA is committed to reducing and preventing disruptive behaviors and other defined acts that threaten public safety through the development of policy, programs, and initiatives aimed at patient, visitor, and employee safety. In addition, Pub. L. 112-154, section 106, directed the Department of Veterans Affairs (VA) to develop and implement a comprehensive policy on the reporting and tracking of sexual assault incidents and other public safety incidents that occur at each medical facility of the Department.

b. This Directive is consistent with VHA's longstanding commitment to public safety, achieved through evidence-based approaches addressing employee-generated behavior(s), patient-generated behavior(s), employee education, incident reporting (see Att. A) and tracking, and environmental design. All acts that jeopardize public safety compromise the VHA patient care mission and they are well-recognized concerns of patients, families, employees, and others. *NOTE: For more information see subparagraphs 5f, 5m, and 5n.*

c. **Definitions.** For the purpose of this Directive, the following definitions apply:

(1) **Sexual Assault.** Sexual Assault is any type of sexual contact or attempted sexual contact that occurs without the explicit consent of the recipient of the unwanted sexual activity. Assaults may involve psychological coercion, physical force, or victims who cannot consent due to mental illness or other factors. Falling under this definition of sexual assault are sexual activities such as: forced sexual intercourse, sodomy, oral penetration or penetration using an object, molestation, fondling, and attempted rape. Victims of sexual assault can be male or female. This does not include cases involving only indecent exposure, exhibitionism, or employee sexual harassment. *NOTE: For more information see subparagraph 5q.*

(2) **Sexual Assault Incident.** A sexual assault incident is any confirmed or substantiated sexual assault.

(3) **Public Safety Incidents.** Public Safety Incidents are defined as:

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- (a) Criminal and purposefully unsafe acts.
- (b) Disruptive or violent behavior(s) that undermine a culture of safety.
- (c) Any kind of event involving alleged or suspected abuse of a patient or other individual in a VHA facility.
- (d) Acts related to alcohol or substance abuse by an individual in a VHA facility. These acts pertain to sexual assaults, sexual assault incidents, and/or public safety incidents and the concurrent use of alcohol and/or substances.

(4) **Disruptive Behavior.** Disruptive behavior is behavior by any individual that is intimidating, threatening, dangerous, or that has, or could, jeopardize the health or safety of patients, Department of Veterans Affairs (VA) employees, or individuals at the facility. Disruptive behavior is behavior that interferes with the delivery of safe medical care to patients at the facility, or behavior that impedes the operations of the facility. Disruptive behavior does not depend upon the disruptive individual's stated intentionality or justification for the individual's behavior, the presence of psychological or physical impairment, whether the individual has decision-making capacity, or whether the individual later expresses remorse or an apology. *NOTE: For more information see title 38 Code of Federal Regulations (CFR) §§1.218(a)(5), 17.33, 17.107 (2011).*

(a) **Employee-generated Disruptive Behavior.** Employee-generated disruptive behavior(s), which undermine(s) a culture of safety, are committed by VHA employees, contractors, volunteers, academic affiliates, locum tenens, and any personnel whose responsibilities bring them onto a VHA facility.

(b) **Patient-generated Disruptive Behavior.** Patient-generated disruptive behavior(s) is committed by patients, beneficiaries, visitors, guardians, companions, spouses, friends, family members, or any individuals present at a VHA facility not covered by subparagraph 2c(4)(a).

(5) **Order of Behavioral Restriction (OBR).** An OBR represents a type of therapeutic limit-setting sometimes required to manage VHA Care (see subpar. 2c(6)) for patients whose behavior is disruptive. The restrictions on care may include, but are not limited to:

- (a) Specifying the hours in which non-emergent outpatient care is provided;
- (b) Arranging for medical and any other services to be provided in a particular patient care area (e.g., private exam room near an exit);
- (c) Arranging for medical and any other services to be provided at a specific site of care;
- (d) Specifying the health care provider and related personnel who will be involved with the patient's care;

(e) Requiring a police escort; or

(f) Authorizing VA providers to terminate an encounter immediately if certain behaviors occur.

(6) **VHA Care.** VHA care refers to the medical benefits package for eligible Veterans as set forth in 38 CFR 17.38. VHA cannot deny care to disruptive patients who are eligible to receive care under 38 CFR 17.38 and who are in need of continuing medical care; however, VHA may limit the time, place, and/or manner of care for these patients according to 38 CFR 17.107(b).

(7) **VHA Facility.** A VHA facility is any location of the Department, as well as any location that hosts VHA-sponsored programs that provide care, including: VHA medical facilities, outpatient clinics, contracted sites, State Veterans Homes, residential treatment programs, community living centers, and mental health residential rehabilitation treatment programs including domiciliaries. For purposes of reporting (see Att. A), tracking, and trending, a VHA facility includes any location where a VHA employee is performing official duties.

(8) **Disruptive Behavior Committee (DBC) or Disruptive Behavior Board (DBB).** A DBC or DBB is a facility-level, interdisciplinary committee whose primary charge is using evidence-based and data-driven practices for preventing, identifying, assessing, managing, reducing, and tracking patient-generated disruptive behavior (see subpar. 5d).

(9) **Employee Threat Assessment Team (ETAT).** An ETAT is a facility-level, interdisciplinary team whose primary charge is using evidence-based and data-driven practices for addressing the risk of violence posed by employee-generated behavior(s), that are disruptive or that undermine a culture of safety.

3. POLICY: It is VHA policy that each VHA facility Director must maintain and implement a centralized and comprehensive policy on the reporting (see Att. A) and tracking of sexual assaults, sexual assault incidents, and other public safety incidents.

4. ACTION

a. **Principal Deputy Under Secretary for Health.** The Principal Deputy Under Secretary for Health (10A) is responsible for:

(1) Ensuring the collaboration of VHA program offices and VA's Office of Security and Law Enforcement, in the implementation of this Directive

(2) Ensuring VHA's Employee Education System (EES), in collaboration with subject matter experts, develops course content and curriculum for implementing the "Prevention and Management of Disruptive Behavior" (PMDB) Program."

(3) Submitting an annual report to the Under Secretary for Health on the implementation and effectiveness of this Directive.

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b. **Deputy Under Secretary for Health for Operations and Management.** The Deputy Under Secretary for Health for Operations and Management (10N) is responsible for:

(1) Providing oversight to the Veteran Integrated Service Networks (VISN) to ensure implementation of this Directive, to include developing:

(a) The measures that are to be used to evaluate the effectiveness of this Directive no later than December 31, 2012.

(b) The mechanisms and guidance for reporting processes no later than March 30, 2013.

(2) Developing and utilizing evidence-based, data-driven assessment tools to examine any risks related to sexual assault that a Veteran may pose while being treated at a VHA facility to include, as appropriate, the legal history of the Veteran and the medical record of the Veteran, within the limitations of laws and policies.

(3) Ensuring appropriate VHA employees complete mandatory training on security issues including: awareness, preparedness, precautions, and police assistance, by September 30, 2013.

(4) Ensuring future appropriate employees complete mandatory training on security issues including: awareness, preparedness, precautions, and police assistance, within 90 days of hire.

c. **Deputy Under Secretary for Health for Policy and Services (10P).** The Deputy Under Secretary for Health for Policy and Services (10P) is responsible for:

(1) Developing, in collaboration with 10N, policies, procedures, guidelines, and tools for implementing evidenced-based initiatives that address the requirements related to risk assessment for sexual assaults and disruptive behavior(s) that undermine a culture of safety.

(2) Collaborating with VA and VHA offices that have similar or overlapping interests in programs and policies that promote a culture of safety.

d. **Chief Readjustment Counseling Officer (10P8).** The Chief Readjustment Counseling Officer (10P8) is responsible for:

(1) Ensuring sexual assault awareness training is conducted at every Vet Center. This may include collaboration with EES and relevant community members.

(2) Ensuring that Vet Centers implement, utilize, and regularly test appropriate physical security precautions and equipment to include, as appropriate, security surveillance television (SSTV), computer-based panic alarm systems, stationary panic alarms, and electronic personal panic alarms, and other equipment as determined by local risk assessment.

e. **VISN Director.** Each VISN Director is responsible for:

(1) Ensuring that each VISN facility reports any public safety incident, sexual assault, and

sexual assault incident to its VISN and to the VA Integrated Operations Center (07A2A) in accordance with current VHA policy and VA Directive 0321 (see subpar. 5j).

(2) Ensuring that these data are tracked and trended on a regular basis on a system, which must include:

(a) Systematic information sharing of reported sexual assault incidents and other safety incidents to officials of the Administration who have programmatic responsibility; and

(b) A centralized reporting, tracking, and monitoring system for such incidents (see subpar. 4a(2)).

(3) Ensuring the contents of this Directive are implemented at each VISN facility.

(4) Ensuring that appropriate physical security precautions and equipment are implemented, used, and tested at each VISN facility (see subpar. 5i).

(5) Ensuring an environment which supports the reporting of public safety incidents as defined by this Directive.

(6) Ensuring that each VISN facility conducts the Workplace Behavioral Risk Assessment (available at <https://vaww.portal.va.gov/sites/PMDB/default.aspx>) to designate high-risk areas within each facility. *NOTE: This is an internal web site and is not available to the public.*

(7) Reviewing patient appeals of OBRs that have been forwarded by the facility Chief of Staff (COS) through the facility Director according to regulation (see 38 CFR 17.107).

(8) Ensuring the ETAT, DBC or DBB, and PMDB program disruptive behavior reporting and tracking systems and the environmental design components operate successfully at each VISN facility.

f. **Facility Director.** The facility Director is responsible for:

(1) Ensuring there is a written and established policy, consistent with this Directive, implemented by December 31, 2012. This includes maintaining a centralized and comprehensive policy on the reporting and tracking of sexual assaults, sexual assault incidents, and other public safety incidents (see subpar. 2c(3)).

(2) Ensuring that appropriate physical security precautions and equipment are implemented, used, and tested in the facility (see subpar. 5i).

(3) Ensuring sexual assault incidents are addressed in accordance with current VHA policy, and those identified greater than 72 hours after the assault, are handled in accordance with appropriate clinical standards of care. Employees must be referred to Clinical Occupational Health, their own provider, Employee Assistance Program (EAP), or other appropriate treatment.

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(4) Ensuring an environment which supports the reporting (see Att. A) of public safety incidents as defined by this Directive and reported to the VISN Director.

(5) Ensuring that high-risk areas within the facility are designated based upon the Workplace Behavioral Risk Assessment conducted by facility staff.

(6) Ensuring the ETAT, DBC or DBB, and PMDB program disruptive behavior reporting and tracking systems, and the environmental design components operate successfully at the facility according to national guidance.

(7) Ensuring the facility VA Police Service supports the implementation of this Directive.

(8) Ensuring that employee-generated disruptive behavior(s) is addressed through administrative processes (e.g., ETATs) and that patient-generated disruptive behavior(s) is addressed through clinical processes (e.g., Clinical Executive works through DBCs or DBBs).

(9) Reviewing and ensuring that data required by this Directive are collected, tracked, trended, and analyzed with actions taken on findings, as appropriate.

(10) Ensuring that the facility implement, utilize, and regularly test appropriate physical security precautions and equipment to include, as appropriate: SSTV, computer-based panic alarm systems, stationary panic alarms, electronic personal panic alarms, and other equipment as determined by local risk assessment.

(11) Ensuring that all employees are:

(a) Informed about the requirement to report instances or allegations of sexual assault, sexual assault incidents, patient abuse, and any other public safety incidents to supervisors or VA police, as appropriate.

(b) Provided with knowledge or information about actual or possible violations of criminal law related only to public safety and sexual assault issues within VA programs, operations, facilities, contracts, or information technology systems, which must be immediately reported through their supervisor, any management official, or directly to the Office of Inspector General as directed by 38 CFR 1.201. This includes:

1. Possible violations of criminal laws relating directly to public safety and sexual assault issues within VA programs, operations, facilities, or involving VA employees, where the violation of criminal law occurs on VA premises, must be reported by VA management officials to the VA police component with responsibility for the VA station or facility in question.

2. Information regarding public safety and sexual assault issues must be reported to Federal, state or local law enforcement officials in situations where there is no VA police component with jurisdiction over the offense as appropriate, per 38 CFR 1.203

(12) Ensuring each appropriate VHA employee completes required training in security issues including: awareness, preparedness, precautions, and police assistance.

g. **Chief of Staff (COS) and Chief Nurse Executive.** The COS and Chief Nurse Executive are responsible for:

(1) Appointing DBC or DBB Chair and Committee members in accordance with current VHA policy (see subpar. 5d).

(2) Designating the DBC or DBB as the authority to evaluate, using evidence-based approaches, the risk posed by disruptive patient behavior(s), and recommending therapeutic limit-setting actions, including OBRs, when appropriate.

h. **COS.** By regulation, only the COS, or designee, is responsible for approving or disapproving of OBRs recommended by the DBC or DBB. Only the COS, or designee, is authorized to approve an OBR, and an OBR must apply to all facility service lines, product lines, inpatient wards, programs, clinics, and to all employees who interact with the patient receiving care under an OBR.

5. REFERENCES

- a. Title 38 CFR §17.107, VA Response to Disruptive Behavior of Patients (2010).
- b. Title 38 CFR § 1.201, Employee's Duty to Report (2003).
- c. Title 38 CFR § 1.203, Information to be reported to VA Police (2003).
- d. VHA Directive 2010-053, Patient Record Flags.
- e. VHA Directive 2010-008, Standards for Mental Health Coverage in Emergency Departments and Urgent Care Clinics in VHA Facilities.
- f. "Guidelines for Preventing Workplace Violence for Health Care and Social Service Workers," Occupational Safety and Health Administration (OSHA) OSHA 3148-01R 2004).
- g. Environment of Care Guidebook, The Joint Commission on the Accreditation of Healthcare Organizations (JCAHO), 2004.
- h. VHA Handbook 1050.01, VHA National Patient Safety Improvement Handbook.
- i. VA Handbook 0730, Security and Law Enforcement.
- j. VA Directive 0321, Serious Incident Reports.
- k. VHA Directive 2010-014, Assessment and Management of Veterans Who Have Been Victims of Alleged Acute Sexual Assault.

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l. VHA Directive 2011-020, Automated Safety Incident Surveillance and Tracking System (ASISTS).

m. “Violence: Occupational Hazards in Hospitals, National Institute for Occupational Safety and Health” (NIOSH) NIOSH 2002-101, April 2002.

n. Leadership Standards, The Joint Commission, LD.03.01.01, EPs 4 and 5, January 2012.

o. Environment of Care Standards, The Joint Commission, EC.02, July 2012.

p. Public Law 112-154 section 106 (2012).

q. VA Assistant Secretary OSP Memo, Clarification of Policy for Sexual Assault Reporting, June 2011.

r. VHA Directive 2012-022, Reporting Cases of Abuse and Neglect, September 4, 2012.

6. FOLLOW-UP RESPONSIBILITY: The Office of the Principal Deputy Under Secretary for Health is responsible for the contents of this Directive. Questions relating to data tracking and reporting may be addressed the Director, Network Support (10NA3) at 202-461-7031. Questions related to Disruptive Patient Behavior procedures or training should be addressed to the Office of Public Health, Occupational Health Strategic Healthcare Group (10P3D) at 503-220-8262 x33048.

7. RESCISSIONS: None. This VHA Directive expires February 28, 2015.

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Under Secretary for Health

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ATTACHMENT A

REPORTING REQUIREMENTS

1. All employees of the Veterans Health Administration (VHA) are required to report sexual assaults and public safety incidents to supervisory personnel. Supervisory personnel must inform law enforcement officials, and VHA facility leadership. VHA facility leadership must in turn notify the Veterans Integrated Service Network (VISN) and Department of Veterans Affairs (VA), to include the VA Integrated Operations Center in accordance with national policy (i.e., VHA National Patient Safety Improvement Handbook, 1050.01, VA Directive 0321, Serious Incident Reports). All allegations of sexual assault that meet the description in Notification of Serious/Emergent Incidents must be reported within 2 hours. All VA employees with knowledge of or information about actual or possible violations of criminal law related to VA programs, operations, facilities, contracts, or information technology systems must immediately report such knowledge or information to their supervisor, any management official, or directly to the Office of Inspector General as directed by title 38 Code of Federal Regulations (CFR) 1.201.
2. Information about actual or possible violations of criminal laws related to VA programs, operations, facilities, or involving VA employees, where the violation of criminal law occurs on VA premises, must be reported by VA management officials to the VA police component with responsibility for the VA station or facility in question. If there is no VA police component with jurisdiction over the offense, the information must be reported to Federal, state or local law enforcement officials, as appropriate, according to 38 CFR 1.203.
3. It is VHA policy that VA facilities must comply with state law regarding the reporting of abuse and neglect in accordance with VHA Directive 2012-022, Reporting Cases of Abuse and Neglect, dated September 4, 2012.