Department of Veterans Affairs

Veterans Health Administration

Washington, DC 20420

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VHA DIRECTIVE 2010-014

ASSESSMENT AND MANAGEMENT OF VETERANS WHO HAVE BEEN VICTIMS OF ALLEGED ACUTE SEXUAL ASSAULT

1. PURPOSE: This Veterans Health Administration (VHA) Directive provides policy regarding the evaluation and treatment of victims who have sustained recent sexual assault.

2. BACKGROUND: Victims of alleged acute sexual assault, defined as sexual contact with an alleged perpetrator within the last 72 hours, need immediate and effective treatment addressing both physical and psychological aspects appropriate to their individual circumstances. The quality of care provided early often plays an instrumental role in the victim's long-term adjustment. The attitudes of medical staff are important to the victim; when genuine concern for the victim is shown, the benefits of the medical treatment are enhanced and the psychological trauma of the victim is reduced.

a. It is vital that a detailed account of the incident, as reported by the victim, is accurately recorded and that careful collection of evidence needed for law enforcement purposes is performed and appropriately held until turned over to proper authorities. The ability to perform an appropriate exam, collect the necessary specimens (evidence), and maintain the chain of evidence should be completed by properly trained

and experienced providers. VHA employees must always act with sensitivity and concern for the victim.

b. VHA endorses the universal access of appropriate emergency services for all Veterans. It is recognized that there can be a wide spectrum of emergency services available among VHA facilities and the parent facility must determine its capabilities in terms of providing services to victims of alleged acute sexual assault.

3. POLICY: It is VHA policy that emergency departments, urgent care clinics, outpatient clinics, and all inpatient and residential settings have plans in place to appropriately manage the medical and psychological assessment, treatment, and collection of evidence from male and female Veterans who are victims of alleged acute sexual assault.

4. ACTION

a. Veterans Integrated Service Network (VISN) Director. The VISN Director is responsible for ensuring that each facility within the network has a plan in place to manage victims of alleged acute sexual assault. This includes ensuring that:

(1) All facilities assess the educational needs of the appropriate staff, and develop an educational plan that addresses local reporting procedures, identification, signs, symptoms, and treatment of sexual assault. This also includes institutional, local, state, and Federal reporting mandates, and instruction on maintaining and safeguarding evidence of alleged sexual assault.

(2) Facilities that currently have a contract or formal arrangement for transfer and care of these patients in place with a local facility capable of providing this service may continue with this practice. A process must be developed to monitor the services provided under this agreement to ensure Veterans are receiving quality acute care and appropriate referrals for follow-up care. Facilities that do not currently have a contract or formal agreement with another VA or non-VA facility to provide this service must provide

full care on site for alleged acute sexual assault patients and have appropriately trained staff available 24 hours a day, 7 days a week (24/7) for the examination, treatment, and collection of evidence that fully meets patient needs and is conducted in consultation with Rape Crisis Centers, a Sexual Assault Nurse Examiner (SANE) unit, or other appropriate organizations having knowledge and experience in the issues of sexual assault.

b. Facility Director. The Facility Director is responsible for ensuring:

(1) Referral to Mental Health. When sexual assault is suspected or identified by the primary care physician, a referral must be made to Mental Health to assist in the assessment, treatment, referral, reporting, and documentation of the sexual assault.

NOTE: Mental Health 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. For all victims referred to and seen in the Emergency Department, immediate support will be provided by mental health, social work, or nursing staff with familiarity of the psychological needs of victims of acute sexual assault.

(2) Informed Consent. Informed consent for a physical examination, collection of evidence, and treatment must be obtained from the alleged acute sexual assault victim by a licensed health care provider acting within the scope of the provider’s practice.

(a) In cases of alleged acute sexual assault, the patient who presents to a VHA facility may need two types of health care services. The different purposes, risks, and benefits associated with each of the two evaluations require that informed consent be obtained separately for medical evaluation and treatment, and a forensic exam. The two types are:

1. An evaluation and treatment of medical and mental health needs, and

2. A forensic examination to obtain all possible historical and physical evidence of the alleged sexual assault for possible future use by a law enforcement agency for purposes of investigation or prosecution.

(b) Informed consent for both medical evaluation and treatment and forensic examination must be obtained by the practitioner as specified in VHA Handbook 1004.01. Informed consent to an examination for evidence of sexual assault (forensic exam) must be obtained by a practitioner trained in conducting forensic evidentiary examinations.

NOTE: Alleged acute sexual assault victims must, as part of the informed consent discussion, be made aware of the applicable limits to confidentiality in the relevant state (s). VHA complies with state law concerning mandatory reporting of sexual assault only to the extent that it 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. Refer to current VHA policy concerning Reporting Cases of Abuse and Neglect. Consult with Regional Counsel as needed.

(c) If the patient is unable to provide informed consent because the patient lacks decision- making capacity, an authorized surrogate needs to be identified in accordance with VHA Handbook 1004.01. If there is concern that the surrogate is acting contrary to the patient’s best interests because of the surrogate’s involvement in suspected abuse or neglect or for other reasons, the practitioner must notify the Chief of Staff, or designee, and consult with the local ethics program or Regional Counsel before implementing the surrogate’s decision.

(d) Medical care may be provided in emergency situations without the patient or surrogate’s consent only under the limited specific conditions stipulated in VHA Handbook 1004.01. The practitioner must always obtain informed consent for a forensic examination since the examination is not necessary to preserve a patient’s life or avert serious impairment to the patient's health. If the patient’s inability to consent appears transitory, the practitioner must wait until the patient’s decision-making capacity returns. If the practitioner determines that a patient is unlikely to regain decision-making capacity in a reasonable period of time, an authorized surrogate must be sought.

(e) Each consent must be separately documented in the health record.

(3) Patient Rights. The patient has the right to accept or refuse any aspect of the medical evaluation and treatment or forensic evidentiary examination, which may

include: examination for the presence of injuries sustained as a result of the assault; evidence of sexual assault and collection of physical evidence; photographs of injuries; and further examination and collection as provided for by state law. Refusal of the forensic examination for evidence of sexual assault is not a ground for denial of treatment or examination for injuries, possible pregnancy, and sexually-transmitted diseases, if the person wishes to obtain treatment. Refusal of any recommended treatment or procedure must be documented in the electronic health record and those treatments or procedures must not be provided. NOTE: Patients have the option to have forensic evidence collected anonymously and decide at a later date whether or not to cooperate with law enforcement. Regional Counsel is to be consulted regarding state laws.

(4) Collection and Safeguarding of Evidence. The collection and safeguarding of evidence must be done in accordance with VA Office of Security and Law Enforcement Model Medical Center Standard Operating Procedure (SOP) "Evidence and Property Collection, Documentation and Processing Procedures," and in consultation with Rape Crisis Centers, SANE unit, or other organizations having knowledge and experience in the issues of sexual assault, as needed.

NOTE: A SANE is a registered nurse who has advanced education and clinical preparation in forensic examination of sexual assault victims, and a SANE unit can be located at http://www.sane-sart.com/.

(a) VA Police must be notified to assist in the proper collection, sealing, and labeling of the evidence.

(b) In all cases in which the patient has consented to the examination and collection of evidence of sexual assault, VA Police must be notified to safeguard and secure the evidence collected.

(5) A Report of Incident

(a) VA Police must be notified to refer the report of the incident to law enforcement in the appropriate jurisdiction after consultation with Regional Counsel under the following circumstances:

1. When the victim consents to report the incident to law enforcement, and

2. VA Police must also be notified when the facility is mandated to report the incident to law enforcement in accordance with valid state law and a properly executed standing request by a qualified representative of the civil or criminal law enforcement instrumentality charged with the protection of the public health or safety.

NOTE: VA regulations require prompt notification to the Office of Inspector General (OIG) about possible criminal matters involving felonies related to VA programs and operations. The OIG must be notified of sexual assaults when the crime occurs on VA premises or by VA employees in connection with VA treatment or services. Refer to Title 38 Code of Federal Regulations (CFR) Section 1.204.

(b) Policies and procedures must be established regarding the mandatory reporting of sexual assault utilizing definitions based on state statutes. NOTE: VA emergency departments, urgent care clinics, outpatient clinics and all inpatient and residential settings 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.

(c) Reports of alleged sexual assault 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 sexual assault 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: Refer to VHA policy regarding Reporting Cases of Abuse and Neglect and Regional Counsel as directed for information about what qualifies as a law enforcement instrumentality and the responsibilities of VA facilities concerning these instrumentalities.

(d) Reports of sexual assault are limited to providing the name and address of the victim 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, 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 sexual assault 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).

(6) Treatment and Support Services. Facility leadership, including the Chief of Staff, the Chief Nurse Executive, the Mental Health Care Line Manager and service or section Chiefs are responsible for providing the appropriate level of treatment and support services to ensure that care of the alleged acute sexual assault patient is delivered in a timely fashion.

(a) Facilities that do not currently have a formal contract or agreement with a VA or non-VA facility to provide this service and all facilities without a local, non-VA facility with staff providers experienced in the care of victims of alleged acute sexual assault must have appropriately trained staff available 24/7 for the examination, treatment, and collection of evidence that fully meets patient needs and is conducted in consultation with Rape Crisis Centers, a SANE unit, or other appropriate organizations having knowledge and experience in the issues of sexual assault. This may include local law enforcement with the consent of the patient or the patient's surrogate when the patient lacks decision-making capacity.

1. Providers caring for victims of alleged acute sexual assault must provide emergency treatment for the physical and emotional trauma, address the collection of evidence to properly care for the patient and maintain the chain of evidence.

2. Appropriate prophylaxis for sexually transmitted disease and pregnancy must be offered when clinically indicated.

3. A referral for psychological counseling (including an immediate electronic consult to Mental Health) must be offered immediately. Initial contact from a mental health provider must occur within 24 hours.

a. Alleged acute sexual assault victims may have an immediate need for mental health counseling, although a victim's decision to decline or defer mental health services must be respected.

b. For those patients who want to seek mental health care immediately, an initial contact with a mental health provider must occur within 24 hours and an appointment with a mental health clinician must be scheduled as soon as clinically indicated, but not later than 7 days. Those who choose to decline or defer mental health services need to be contacted again one week later to assess current desire for services.

(b) Facilities are not required to provide complete care on site as indicated above if the following procedures are implemented.

1. Emergency evaluation to stabilize and treat any acute medical or psychological problems must be provided with subsequent transfer to an appropriate local, non-VA facility with trained and experienced providers in the examination, treatment, and the collection of evidence of patients suffering from alleged acute sexual assault. An agreement with a local, non-VA facility needs to be arranged in advance and agreed to in a contract to provide this service 24/7 at VA expense.

2. Facilities that have a formal contract or agreement with a non-VA facility to provide this service or facilities unable to provide full care to alleged acute sexual assault victims that transfer patients to a local non-VA facility for additional treatment and collection of evidence must comply with the intent of the provisions 42 CFR 489.24, the Emergency Medical Treatment and Active Labor Act (EMTALA) and VHA's Inter-Facility Transfer Policy. While not technically subject to the EMTALA and the regulations implementing the Act issued by the Centers for Medicare and Medicaid Services (CMS), VHA complies with the intent of EMTALA requirements regarding the transfer of acute patients among health care facilities.

3. A non-VA consult must be entered in the Computerized Patient Record System (CPRS) to obtain authorization for payment of services rendered at the outside facility.

4. The sending facility assumes full responsibility for the alleged acute sexual assault patient during travel. If appropriately trained VA staff is not available to accompany the patient, arrangements need to be made with the local Rape Crisis Center, SANE, or other private or public community agencies for appropriately trained staff to be available on demand.

(c) A detailed Report of Contact of all actions taken to provide treatment and support must be provided to the Chief of Staff.

(d) All emergency departments, urgent care clinics, and inpatient sites must have rape evaluation kits available for use by the consulting organizations if needed in the event that a victim is too unstable for transfer and the collection process needs to occur on site. In this situation, a protocol must be in place for the collection of evidence based on the VA Office of Security and Law Enforcement Model Medical Center Standard Operating Procedure (SOP) Evidence and Property Collection, Documentation, and Processing Procedures and in consultation with the appropriate agencies, including Rape Crisis Centers, SANE unit, or local non-VA facility to assist in the proper collection process. Staff needs to be familiar with state law examination and collection requirements in the event the alleged acute sexual assault victim seeks to pursue legal action against the alleged perpetrator.

5. REFERENCES

a. VHA Handbook 1004.01, VHA Informed Consent for Clinical Treatments and Procedures.

b. VA Handbook 0730, Security and Law Enforcement.

c. VHA policy regarding Reporting Cases of Abuse and Neglect.

d. VA Office of Security and Law Enforcement Model Medical Center Standard Operating Procedure (SOP) Evidence/Property Collection, Documentation and Processing Procedures.

e. Sexual Assault and Nurse Examiner (SANE) Development and Operation Guide, available at http://www.sane-sart.com.

f. United States Department of Justice, Office on Violence Against Women, A National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents (September 2004) available at http://www.ovw.usdoj.gov/.

g. Sexual Assault Nurse Examiner Sexual Assault Response Team,

http://www.sane-sart.com.

6. FOLLOW-UP RESPONSIBILITY: The Office Patient Care Services (11), Medical-Surgical Services (111) is responsible for the contents of this Directive. Questions may be referred to the National Director for Emergency Medicine at (202) 461-7120.

7. RESCISSIONS: VHA Directive 2009-041, Assessment and Management of Veterans Who have been Victims Alleged Acute Sexual Assault. August 31, 2009. This VHA Directive expires March 31, 2015.

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Under Secretary for Health

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