

2.7 Sexual Abuse and Assault Prevention and Intervention

Introduction

This U.S. Immigration and Customs Enforcement (ICE) Family Residential Standard requires that Centers act affirmatively to prevent resident sexual abuse and/or assault (SAA); provide prompt and effective intervention and treatment for victims of SAA; and control, discipline, and prosecute the perpetrators of SAA.

Various terms used in this standard may be defined in the ICE Family Residential Standard on *Definitions*.

Program Philosophy

The requirements of this standard must be implemented in accordance with the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes*.

A. Language Access and Disability Requirements

Centers will adhere to the language access and disability laws, regulations, responsibilities, requirements, and laws cited in the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes* and the ICE Family Residential Standard on *Disability Identification, Assessment, and Accommodation*. These requirements must be promulgated in all Center policies, practices, and operations and its themes must be fully incorporated into every Center activity. This is of critical importance and will directly impact resident life, health, and safety.

Expected Outcomes

The expected outcomes of this standard are as follows (specific requirements are defined in the Expected Practices section in this standard):

1. Centers will articulate and adhere to a written zero-tolerance policy for SAA.
2. A designated Prevention of Sexual Assault (PSA) Compliance Manager will assist in ensuring Center compliance with sexual abuse and assault prevention and intervention (SAAPI) policies and procedures.
3. Staff will receive training on their responsibilities under the Center's SAAPI program.
4. Residents will be informed about the Center's SAAPI program.
5. The Center will utilize available community resources to provide victim services and other appropriate support to the fullest extent possible following incidents of SAA.

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6. Staff will be alert to potential risks or signs of SAA and take appropriate action to mitigate any identified risks or to protect a resident as necessary.
7. Residents will be screened upon intake for risk of sexual victimization or abusiveness and housed accordingly.
8. The Center will use a coordinated, multidisciplinary team approach to respond to all incidents of SAA effectively and address any safety, medical, or mental health needs.
9. Staff will report immediately any knowledge, suspicion, or information regarding an incident of SAA, retaliation against individuals who reported an incident, or any staff misconduct or violation of responsibilities that may have contributed to an incident or retaliation.
10. All allegations of SAA will be reported immediately to ICE/Enforcement and Removal Operations (ERO), and any other required entities based on the nature of the allegation.
11. Alleged victims will be referred promptly for medical or mental health services, as appropriate, and receive any necessary emergency or ongoing care related to the incident.
12. Staff suspected of perpetrating SAA will be removed from all duties requiring resident contact pending the outcome of the investigation.
13. Centers will ensure that each allegation of SAA is investigated by an appropriate criminal or administrative investigative entity and will cooperate with all investigative efforts to ensure a thorough and objective investigation.
14. Staff or resident perpetrators will be disciplined appropriately for any confirmed acts of SAA.
15. Centers will conduct a review following every investigation of SAA and on an annual basis, to assess whether changes to Center policy or practice could better prevent, detect, or respond to SAA.
16. The Center will maintain all records associated with incidents of SAA in appropriately secure files and locations.

Standards Affected

This standard replaces the ICE Family Residential Standard on *Sexual Abuse and Assault Prevention and Intervention* dated 12/21/2007.

Expected Practices

A. Written Policy and Procedures Required

Each Center's policy and procedures will reflect the unique characteristics of each Center, based on factors such as the availability of specialized community-based services, including rape crisis/trauma units in local medical centers, clinics, and hospitals.

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Each Center will have written policies and procedures for a SAAPI program. These policies must mandate zero-tolerance toward all forms of SAA, direct the Center's approach to preventing, detecting, and responding to such conduct, and include, at a minimum:

- Procedures on preventing SAA, including:
 - Procedures for assessing all residents for their risk of sexual abusiveness or victimization;
 - Procedures for housing residents in accordance with their classification assessment;
 - Training of all employees, contractors, and volunteers on ICE's and the Center's zero-tolerance policies and their responsibilities under those policies; and
 - Notification to residents of the Center's SAAPI program.
- Procedures for immediate reporting of SAA allegations, including:
 - Procedures for immediate reporting of any knowledge, suspicion, or information regarding SAA allegations through the Center's chain of command, from the reporting official to the highest Center official as well as the Field Office Director (FOD), and a method by which staff can report outside the chain of command;
 - Responsibility of all staff to report allegations or suspicions of SAA;
 - Referrals to law enforcement agencies;
 - Written documentation requirements to ensure that each allegation or suspicion is reported and addressed properly;
 - Guarantee that residents have multiple, effective avenues for privately reporting: SAA, retaliation for reporting SAA, or staff misconduct or violations of responsibilities that may have contributed to such instances; and
 - A method to receive third-party reports of SAA in its Center, with information made available to the public regarding how to report SAA on behalf of a resident.
- Procedures for prompt and effective intervention to address the safety and treatment needs of resident victims if an alleged SAA occurs, including:
 - Procedures for offering immediate protection, including prevention of retaliation, along with medical and mental health, legal, and safety referrals;
 - Plans to coordinate actions taken by staff first responders, medical and mental health practitioners, investigators, and Center leadership in response to an incident of SAA; and
 - Methods for addressing the alleged victim's future safety and medical and mental health needs.
- Procedures to include victim advocate services in SAAPI programs, if such resources are available;
- Procedures for investigation and discipline of assailants, including:

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- Coordinating with ICE and other appropriate investigative agencies to ensure that an administrative or criminal investigation is completed for all allegations of SAA;
 - Following a uniform evidence protocol, including access to a forensic medical exam, which maximizes the potential for obtaining usable physical evidence for administrative proceedings and criminal prosecutions;
 - Coordinating internal administrative investigations with the assigned criminal investigative entity to ensure noninterference with criminal investigations, as well as coordination with the ICE/Office of Professional Responsibility (OPR); and
 - Disciplinary sanctions for staff, up to and including termination, when there is a substantiated allegation of SAA, or when staff has violated ICE SAA policies.
- Procedures for data collection and reporting; and
 - A requirement to cooperate with all audits and monitoring of Center compliance with SAA policies and standards.

The Center's written policy and procedures require the review and approval of the FOD.

The Center Administrator will ensure that, within 90 days of the adoption of this standard, written policies and procedures are in place, and that the Center is in full compliance with its requirements and guidelines. The Center must meet all other requirements in this standard on the date the standard is adopted.

Each Center also will post its protocols on its website, if it has one, or otherwise make the protocol available to the public.

B. Acts of SAA

For the purposes of this standard, the following definitions apply:

1. Resident-on-Resident SAA

SAA of a resident by another resident includes any of the following acts by one or more residents who, by force, coercion, or intimidation, or if the victim did not consent or was unable to consent or refuse, engages in or attempts to engage in:

- Contact between the penis and the vulva or anus and, for purposes of this subparagraph, contact involving the penis upon penetration, however slight;
- Contact between the mouth and the penis, vulva, or anus;
- Penetration, however slight, of the anal or genital opening of another person by a hand, finger, or any object;
- Touching of the genitalia, anus, groin, breast, inner thighs, or buttocks, either directly or through the clothing, with an intent to abuse, humiliate, harass, degrade, arouse, or gratify the sexual desire of any person; or
- Threats, intimidation, or other actions or communications by one or more residents aimed at coercing or pressuring another resident to engage in a sexual act.

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- Repeated verbal statements or comments of a sexual nature to a resident.

2. Staff-on-Resident SAA

SAA of a resident by a staff member, contractor, or volunteer includes any of the following acts, if engaged in by one or more staff members, volunteers, or contract personnel who, with or without the consent of the resident, engages in or attempts to engage in:

- Contact between the penis and the vulva or anus and, for purposes of this subparagraph, contact involving the penis upon penetration, however slight;
- Contact between the mouth and the penis, vulva, or anus;
- Penetration, however slight, of the anal or genital opening of another person by a hand, finger, or any object that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;
- Intentional touching of the genitalia, anus, groin, breast, inner thighs, or buttocks, either directly or through the clothing, that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;
- Threats; intimidation; harassment; indecent, profane, or abusive language; or other actions or communications aimed at coercing or pressuring a resident to engage in a sexual act;
- Repeated verbal statements or comments of a sexual nature to a resident;
- Any display by a staff member, contractor, or volunteer of his/her uncovered genitalia, buttocks, or breast in the presence of a resident; or
- Voyeurism, which is defined as the inappropriate visual surveillance of a resident for reasons unrelated to official duties. Where not conducted for reasons relating to official duties, the following are examples of voyeurism: staring at a resident who is using a toilet in his/her cell to perform bodily functions; requiring a resident to expose his/her buttocks, genitals, or breasts; or taking images of all or part of a resident's naked body or of a resident performing bodily functions.

C. PSA Compliance Manager

The Center Administrator will designate a PSA Compliance Manager who will serve as the Center point of contact for the ICE PSA Coordinator and who has sufficient time and authority to oversee Center efforts to comply with Center SA-API policies and procedures. The PSA Compliance Manager will:

- Assist with the development of written policies and procedures for the SA-API program, as specified above in this standard, and with keeping them current;
- Assist with developing initial and ongoing training;
- Serve as a liaison with other agencies;
- Coordinate the gathering of statistics and reports on incidents of SAA, as detailed in the Data Collection section in this standard;

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- Review the results of every investigation of SAA and assist in conducting an annual review of all investigations in compliance with the Privacy Act to assess and improve prevention and response efforts; and
- Review Center practices to ensure required levels of confidentiality are maintained.

D. Sexual Conduct between Residents Prohibited

In addition to the forms of SAA defined above, all other sexual conduct—including consensual sexual conduct—between adult residents is prohibited and subject to disciplinary sanctions. However, staff should be sensitive to the possibility that seemingly consensual behavior may have involved coercion by either person involved.

Consensual sexual conduct between residents and staff, volunteers, or contract personnel is prohibited and is included within the definition of staff-on-resident SAA above.

E. Staff Training and Hiring

Training on the Center’s SA-API program will be included in training for all employees and will be included in annual refresher training thereafter.

Employee training will include:

- ICE and the Center’s zero-tolerance policy for all forms of SAA;
- Definitions and examples of prohibited and illegal sexual behavior;
- The right of residents and staff to be free from SAA, and from retaliation for reporting SAA;
- Instruction that SAA is never an acceptable consequence of detention;
- Recognition of situations where SAA may occur;
- How to avoid inappropriate relationships with residents;
- Working with vulnerable populations and addressing their potential vulnerability in the general population;
- Recognition of the physical, behavioral, and emotional signs of SAA, and ways to prevent and respond to such occurrences;
- The requirement to limit reporting of SAA to personnel with a need-to-know to make decisions concerning the resident-victim’s welfare, and for law enforcement/investigative purposes;
- The investigation process and how to ensure that evidence is not destroyed;
- Prevention, recognition, and appropriate response to allegations or suspicions of SAA involving residents with mental or physical disabilities;
- How to communicate effectively and professionally with residents, including lesbian, gay, bisexual, transgender, intersex, or gender nonconforming residents;
- Instruction on reporting knowledge or suspicion of SAA; and

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- Instruction on documentation and referral procedures of all allegations or suspicion of SAA.

The Center will ensure that all volunteers and other contractors who have contact with residents have been trained on their responsibilities under the Center's SAA prevention, detection, intervention, and response policies and procedures. The level and type of training for volunteers and contractors will be based on the services they provide and their level of contact with residents; however, all volunteers and contractors who have any contact with residents must be notified of the Center's zero-tolerance policy and informed how to report such incidents. In this paragraph, "other contractor" means a person who provides services on a nonrecurring basis to the Center pursuant to a contractual agreement with ICE or the Center.

The Center must maintain written documentation verifying employee, volunteer, and contractor training in accordance with the ICE Family Residential Standard on *Staff Training*.

Additionally, the Center will provide specialized training on SAA, and effective cross-agency coordination to Center investigators who conduct investigations into Center allegations of SAA. This training must cover, at a minimum, interviewing SAA victims, SAA evidence collection in confinement settings, the criteria and evidence required for administrative action or prosecutorial referral, and information about effective cross-agency coordination in the investigation process. The Center must maintain written documentation verifying specialized training provided to investigators pursuant to this paragraph.

Center medical staff will be trained in procedures for examining and treating victims of SAA, in Centers where medical staff may be assigned these activities. This training will be subject to the review and approval of the FOD or other designated ICE official.

The training will cover, at a minimum, the following topics:

- How to detect and assess signs of SAA;
- How to respond effectively and professionally to victims of SAA; and
- How to preserve physical evidence of SAA. If medical staff employed by ICE conduct forensic examinations, then such medical staff will receive appropriate training to conduct such examinations.

Hiring practices will follow the process defined in the ICE Family Residential Standard on *Staff Training*.

F. Resident Notification, Orientation, and Instruction

The Center Administrator will ensure that the orientation program and the resident handbook and local supplement notify and inform residents about ICE's and the Center's zero-tolerance policy for all forms of SAA. Centers will maintain documentation of resident participation in the intake process orientation.

The Center's SAAPI program resident notification, orientation, and instruction will include (at a minimum):

- The Center's zero-tolerance policy for all forms of SAA;

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- Prevention and intervention strategies;
- Definitions and examples of resident-on-resident SAA, staff-on-resident SAA, and coercive sexual activity;
- An explanation of methods for reporting SAA, including reporting to one or more staff members other than an immediate point-of-contact line staff, the Detention and Reporting Information Line, the U.S. Department of Homeland Security (DHS)/Office of Inspector General (OIG) and the ICE/Office of Professional Responsibility (OPR) investigation processes;
- Information about self-protection and indicators of SAA;
- Prohibition against retaliation, including an explanation that reporting SAA will not impact the resident's immigration proceedings negatively; and
- Resident treatment and counseling rights for residents who have been subjected to SAA.

The Center will develop policies and procedures to ensure that residents have multiple private ways to report SAA, retaliation for reporting SAA, or staff misconduct or violations of responsibilities that may have contributed to such incidents.

Each Center's SA-API program will provide residents the option to report any incident or situation regarding SAA or intimidation to a designated staff member other than an immediate point-of-contact line staff (e.g., the Program Coordinator or a mental health specialist). The Center will provide residents with the name of the Program Coordinator or designated staff member and information on how to contact him/her.

The Center will provide instructions on how residents may contact their consular official, the DHS/OIG, the Joint Intake Center (JIC), or, as appropriate, another designated office to report these incidents confidentially and, if desired, anonymously.

The Center will inform residents of at least one way for residents to report SAA to a public or private entity or office that is not part of ICE, and that is able to receive and forward resident reports of SAA immediately to ICE officials, allowing the resident to remain anonymous upon request. ICE/ERO has provided a sexual assault awareness notice to be posted on all Resident Information Center bulletin boards, as well as a "Sexual Assault Awareness Information" pamphlet to be distributed. The Center will post with this notice the name of the PSA Compliance Manager and information about local organizations that can assist residents who have been victims of SAA, including mailing addresses and telephone numbers (including toll-free hotline numbers where available). If no such local organizations exist, then the Center will make available the same information about national organizations. This information will be provided in English and Spanish, and to other segments of the resident population with limited English proficiency, through translations or oral interpretation.

G. Victim Advocate Services

Each Center will utilize available community resources and services to provide valuable expertise and support in the areas of crisis intervention, counseling, investigation, and the prosecution of SAA

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perpetrators to address victims' needs most appropriately. Each Center Administrator will establish procedures to make available, to the full extent possible, outside victim services following incidents of SAA. The Center also will attempt to make available such victim services for any individuals identified as having experienced sexual victimization prior to entering DHS custody.

The Center Administrator will maintain or attempt to enter into memoranda of understanding or other agreements with community service providers or, if local providers are not available, with national organizations that provide legal advocacy and confidential emotional support services for immigrant victims of crime. The Center will enable reasonable communication between residents and these organizations and agencies, in as confidential a manner as possible. The Center also will inform residents, prior to giving them access to outside resources, of the extent to which such communications will be monitored and the extent to which reports of SAA will be forwarded to authorities in accordance with mandatory reporting laws.

H. Prevention

All staff and residents are responsible for being alert to signs of potential situations in which SAA might occur, and for making reports and intervention referrals as appropriate. If a Center staff member has a belief that a resident is subject to a substantial risk of imminent SAA, then he/she will take immediate action to protect the resident by removing the resident from the potential situation and reporting to his/her first-line supervisor, who will take further action and notify management.

1. Classification and Screening

In accordance with the ICE Family Residential Standard on *Admission and Release*, the Center will assess all residents on intake to identify those likely to be sexual aggressors or SAA victims and will house residents to prevent SAA, taking necessary steps to mitigate any such danger. The Center also will use the information to inform assignment of residents to activities and voluntary work.

Each new arrival will be kept separate from the general population until he/she is classified and may be housed accordingly.

The Center will consider, to the extent that the information is available, the following criteria to assess residents for risk of sexual victimization:

- Whether the resident has a mental, physical, or developmental disability;
- The age of the resident;
- The physical build and appearance of the resident;
- Whether the resident has been incarcerated or detained previously;
- The nature of the resident's criminal history;
- Whether the resident has any convictions for sex offenses against an adult or minor;
- Whether the resident has self-identified as gay, lesbian, bisexual, transgender, intersex, or gender nonconforming;

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- Whether the resident has self-identified as having experienced sexual victimization previously; and
- The resident's own concerns about his/her physical safety.

The initial screening will consider prior acts of SAA, prior convictions for violent offenses, and history of prior institutional violence or SAA, as known to the Center, in assessing residents for risk of sexual victimization.

Residents will not be disciplined for refusing to answer, or for not disclosing complete information in response to questions asked pursuant to items above.

The Center will implement appropriate controls on the dissemination within the Center of responses to questions asked pursuant to this screening to ensure that sensitive information is not exploited to the resident's detriment by staff or other residents.

2. Supervision and Monitoring

Centers will ensure that they maintain sufficient supervision of residents, including through appropriate staffing levels and, where applicable, video monitoring, to protect residents against SAA.

Centers will develop and document comprehensive supervision guidelines to determine and meet supervision needs, and will review those guidelines at least annually.

In determining adequate levels of supervision and determining the need for video monitoring, the Center will take into consideration:

- Generally accepted practices;
- Any judicial findings of inadequacy;
- The physical layout of each Center;
- The composition of the population;
- The prevalence of substantiated and unsubstantiated incidents of SAA;
- The findings and recommendations of SAA incident review reports; and
- Any other relevant factors, including but not limited to the length of time spent in residence.

3. Transportation

Residents identified as being at risk for sexual victimization will be transported in accordance with the ICE Family Residential Standard on *Transportation (by Land)*.

4. Upgrades to Facilities and Technologies

When designing or acquiring any new Center and in planning any substantial expansion or modification of existing facilities, the Center will consider the effect of the design, acquisition, expansion, or modification upon its ability to protect residents from SAA.

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When installing or updating a video monitoring system, electronic surveillance system, or other monitoring technology in a Center, the Center will consider how such technology may enhance its ability to protect residents from SAA.

I. Prompt and Effective Intervention

Staff sensitivity toward residents who are victims of SAA is critical.

Staff will take seriously all statements from residents claiming to be victims of SAA and will respond supportively and nonjudgmentally. Any resident who alleges that he/she has been sexually abused or assaulted will be offered immediate protection and separation from the assailant and will be referred for an age-appropriate medical examination and/or clinical assessment for potential negative symptoms. Staff members who become aware of an alleged SAA immediately will follow the reporting requirements set forth in the written policies and procedures.

If a victim is transferred between Centers, then the sending Center will, as permitted by law, inform the receiving Center of the incident and the victim's potential need for medical or social services (unless, in the case of transfer to a non-ICE Center, the victim requests otherwise). If the receiving Center is unknown to the sending Center, then the sending Center will notify the FOD, so that he/she can notify the receiving Center.

Centers should use a coordinated, multidisciplinary team approach to responding to SAA, such as a sexual assault response team, which in accordance with community practices, includes a medical practitioner, a mental health practitioner, a security staff member, and an investigator from the assigned investigative entity, as well as representatives from outside entities that provide relevant services and expertise. The Center will attempt to make available to the victim a victim advocate from a rape crisis center to provide age-appropriate interventions. If a rape crisis center is not available to provide victim advocate services, then ICE will provide these services by making available a qualified staff member from a community-based organization, or a qualified ICE staff member. A qualified ICE staff member or a qualified community-based staff member means an individual who has received education concerning SAA and forensic examination issues in general. The outside or internal victim advocate will provide emotional support, crisis intervention, information, and referrals.

J. Protection Against Retaliation

Staff, contractors, volunteers, and residents will not retaliate against any person, including a resident, who reports, complains about, or participates in an investigation into an allegation of SAA, or for participating in SAA as a result of force, coercion, threats, or fear of force.

The Center will employ multiple protection measures, such as housing changes, removal of suspected staff or removal of alleged resident abusers from contact with victims, and emotional support services for residents or staff who fear retaliation for reporting SAA or for cooperating with investigations.

For at least 90 days following a report of SAA, the Center will monitor to see if there are facts that may suggest possible retaliation by residents or staff, and will act promptly to remedy any such retaliation. Items the Center should monitor include any resident disciplinary reports, housing or

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program changes, or negative performance reviews or reassignments of staff. The Center will continue such monitoring beyond 90 days if the initial monitoring indicates a continuing need.

K. Reporting, Notifications, and Confidentiality

Each Center will require all staff to report immediately any knowledge, suspicion, or information regarding an incident of SAA that occurred in a Center; retaliation against residents or staff who reported such an incident; and any staff misconduct or violation of responsibilities that may have contributed to an incident or retaliation.

Staff members who become aware of alleged SAA immediately will follow the reporting requirements set forth in the Center's written policies and procedures.

Apart from such reporting, staff will not reveal any information related to an SAA report to anyone other than to the extent necessary to: help protect the safety of the victim or prevent further victimization of other residents or staff in the Center; or make medical treatment, investigation, law enforcement, or other security and management decisions.

If the alleged victim is under 18 years of age or considered a vulnerable adult under a State or local vulnerable persons statute, then the Center will report that information to the FOD and to the designated State or local services agency under applicable mandatory reporting laws.

Staff will accept reports made verbally, in writing, anonymously, and from third parties, and promptly document any verbal reports.

Each Center will establish a method to receive third-party reports of SAA in its Center and will make available to the public information on how to report SAA on behalf of a resident.

1. Alleged Resident Perpetrator

When a resident is alleged to be the perpetrator, it is the Center Administrator's responsibility to ensure that the incident is referred promptly to the appropriate law enforcement agency having jurisdiction for investigation (if the incident is potentially criminal) and the FOD, who will report to the ICE/OPR or the DHS/OIG, and the OPR JIC as appropriate.

2. Alleged Staff Perpetrator

When an employee, contractor, or volunteer is alleged to be the perpetrator of resident SAA, it is the Center Administrator's responsibility to ensure that the incident is referred promptly to the appropriate law enforcement agency having jurisdiction for investigation (if the incident is potentially criminal) and the FOD, who will report to the ICE/OPR, the DHS/OIG, and the OPR JIC as appropriate. The local government entity or contractor that owns or operates the Center also will be notified.

Staff, contractors, and volunteers suspected of perpetrating SAA will be removed from all duties requiring resident contact pending the outcome of an investigation.

Upon receiving an allegation that a resident was sexually abused or assaulted while confined at another Center, the Center whose staff received the allegation will notify the FOD and the appropriate Administrator of the Center where the alleged SAA occurred. The notification provided in this section will be provided as soon as possible, but no later than 72 hours after receiving the

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allegation. The Center will document that it has provided such notification. The Center where the alleged SAA occurred then will ensure the allegation is referred for investigation and reported to the appropriate FOD in accordance with this standard.

L. Investigation, Discipline, and Incident Reviews

If a resident alleges SAA, then a sensitive and coordinated response is necessary. The Center will coordinate with ICE and other appropriate investigative agencies to ensure that an administrative or criminal investigation is completed for all allegations of SAA.

All investigations into alleged SAA must be prompt, thorough, and objective, and conducted by specially trained, qualified investigators.

Where an alleged victim of SAA that occurred elsewhere subsequently is transferred to the Center, the Center will cooperate with any administrative or criminal investigative efforts arising from the incident.

1. Preservation of Evidence

The first staff member to respond to a report of SAA or his/her supervisor will preserve and protect, to the greatest extent possible, any crime scene until appropriate steps can be taken to collect any evidence. The responder will request the alleged victim not take any actions, and will ensure that the alleged abuser does not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating.

2. Forensic Examinations

Where evidentiary or medically appropriate, at no cost to the resident, and only with the resident's consent, the Center Administrator will arrange for an alleged victim to undergo an age-appropriate forensic medical examination by qualified health care personnel, including a Sexual Assault Forensic Examiner (SAFE) or Sexual Assault Nurse Examiner (SANE) where practicable. If SAFEs or SANEs cannot be made available, then the examination can be performed by other qualified health care personnel.

As requested by a victim, the presence of his/her outside or internal victim advocate, including any available victim advocacy services offered by a hospital conducting a forensic exam, will be allowed for support during a forensic exam and investigatory interviews.

The results of the physical examination and all collected physical evidence are to be provided to the investigative entity. Part of the investigative process also may include an examination and collection of physical evidence from the suspected assailant(s). Upon completion of the investigation, a final report will be provided to the PSA Compliance Manager, the Juvenile and Family Residential Management Unit Chief, and the respective FOD. Under no circumstances should Center staff conduct the forensic exams.

In the event the investigation is being conducted by a non-Federal investigating agency, the Center will request that the investigating agency follow the applicable requirements of this standard, including subsections 1 and 2 of this section.

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3. Procedures for Administrative Investigations

Upon conclusion of a criminal investigation where the allegation was substantiated or in instances where no criminal investigation has been completed, an administrative investigation will be conducted. Upon conclusion of a criminal investigation where the allegation was unsubstantiated, the Center will review any available completed criminal investigation reports to determine whether an administrative investigation is necessary or appropriate. “Substantiated allegation” means an allegation that was investigated and determined to have occurred. “Unsubstantiated allegation” means an allegation that was investigated and the investigation produced insufficient evidence to make a final determination as to whether or not the event occurred.

Administrative investigations will be conducted after consultation with the appropriate investigative office within DHS, and the assigned criminal investigative entity. The ICE/OPR typically will be the appropriate investigative office within DHS, as well as the DHS/OIG in cases where the DHS/OIG is conducting an investigation.

To the extent the Center conducts SA-API investigations, it will develop written procedures for administrative investigations, including provisions requiring:

- The investigator to have received specialized training in accordance with this standard;
- Preservation of direct and circumstantial evidence, including any available physical and DNA evidence and any available electronic monitoring data;
- Interviews of alleged victims (as appropriate), suspected perpetrators, and witnesses;
- Review of prior complaints and reports of SAA involving the suspected perpetrator;
- Assessment of the credibility of an alleged victim, suspect, or witness, without regard to the individual’s status as resident, staff, or employee, and without requiring any resident who alleges SAA to submit to a polygraph;
- Investigation to determine whether actions or failures to act at the Center contributed to the SAA;
- Documentation of each investigation by written report, which will include a description of the physical and testimonial evidence, the reasoning behind credibility assessments, and investigative facts and findings; and
- Retention of such reports for as long as the alleged abuser or assailant is detained or employed by ICE or the Center, plus five years.

Such procedures will govern the coordination and sequencing of administrative and criminal investigations, in accordance with the first paragraph of this section, to ensure that the criminal investigation is not compromised by an internal administrative investigation.

The departure of the alleged abuser or victim from the employment or control of the Center will not provide a basis for terminating an investigation.

When outside agencies investigate SAA, the Center will cooperate with outside investigators and will endeavor to remain informed about the progress of the investigation.

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Following an investigation conducted by the Center into a resident's allegation of SAA, the Center will notify the FOD of the results of the investigation and any responsive actions taken so that the information can be reported to ICE headquarters and to the resident.

4. Discipline

Disciplinary Sanctions for Staff. Staff will be subject to disciplinary or adverse action up to and including removal from their position for substantiated allegations of SAA or for violating ICE or Center SAA rules, policies, or standards. Removal from their position is the presumptive disciplinary sanction for staff who has engaged in or attempted or threatened to engage in SAA, as defined under the definition of staff-on-resident SAA in this standard.

ICE and the Center will report all incidents of substantiated SAA by staff, and all removals of staff, or resignations in lieu of removal for violations of ICE or Center SAA policies, to appropriate law enforcement agencies unless the activity clearly was not criminal.

The Center also will report all such incidents of substantiated SAA, removals, or resignations in lieu of removal to the FOD, regardless of whether the activity was criminal, and will make reasonable efforts to report such information to any relevant licensing bodies, to the extent known.

Corrective Action for Contractors and Volunteers. Any contractor or volunteer who has engaged in SAA will be prohibited from contact with residents. The Center will take appropriate remedial measures and will consider whether to prohibit further contact with residents by contractors or volunteers who have not engaged in SAA, but have violated other provisions within these standards.

Incidents of substantiated SAA by a contractor or volunteer will be reported to law enforcement agencies, unless the activity clearly was not criminal. The Center also will report such incidents to the FOD regardless of whether the activity was criminal and will make reasonable efforts to report such incidents to any relevant licensing bodies, to the extent known.

Disciplinary Sanctions for Residents. Residents will be subjected to disciplinary sanctions pursuant to a formal disciplinary process following an administrative or criminal finding that the resident engaged in SAA, consistent with the requirements in the ICE Family Residential Standard on *Behavior Management*. The Center will not discipline a resident for sexual contact with staff unless there is a finding that the staff member did not consent to such contact. For the purpose of disciplinary action, a report of SAA made in good faith based upon a reasonable belief that the alleged conduct occurred will not constitute falsely reporting an incident or lying, even if an investigation does not establish evidence sufficient to substantiate the allegation.

5. SAA Incident Reviews

Each Center will conduct an SAA incident review at the conclusion of every investigation of SAA and, where the allegation was not determined to be unfounded, prepare a written report within 30 days of the conclusion of the investigation recommending whether the allegation or investigation indicates that a change in policy or practice could better prevent, detect, or respond to SAA. Unfounded allegation means an allegation that was investigated and determined not to have occurred. The Center will implement the recommendations for improvement or will document its

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reasons for not doing so in a written response. Both the report and response will be forwarded to the FOD or his/her designee, for transmission to the ICE PSA Coordinator. The Center also will provide any further information regarding such incident reviews as requested by the ICE PSA Coordinator.

The review team will consider whether the incident or allegation was motivated by race; ethnicity; gender identity; lesbian, gay, bisexual, transgender, intersex, or gender nonconforming identification, status, or perceived status; or gang affiliation; or was motivated or otherwise caused by other group dynamics at the Center.

Each Center will conduct an annual review of all SAA investigations and resulting incident reviews to assess and improve SAA intervention, prevention, and response efforts. If the Center has not had any reports of SAA during the annual reporting period, then the Center will prepare a negative report. The results and findings of the annual review will be provided to the Center Administrator and FOD or his/her designee, for transmission to the ICE PSA Coordinator.

M. Medical and Mental Health Care

Resident victims of SAA will be provided emergency medical and mental health services and ongoing care. All treatment services, both emergency and ongoing, will be provided to the victim without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident. Consent for minors will be in accordance with the ICE Family Residential Standard on *Health Care* and *Health Care (Females)* and in conjunction with state licensing requirements.

1. Access to Emergency Medical and Mental Health Services

Resident victims of SAA will have timely, unimpeded access to emergency medical treatment and crisis intervention services, including emergency contraception and sexually transmitted infections prophylaxis, in accordance with professionally accepted standards of care.

Where evidentiary or medically appropriate, the Center Administrator will arrange for an alleged victim to undergo a forensic medical examination, in accordance with the requirements of this standard.

Transportation of an alleged victim for emergency care or other services provided off-site will be arranged in a manner that takes into account the special needs of victimized residents.

2. Ongoing Medical and Mental Health Care for Sexual Abuse Victims and Abusers

Each Center will offer medical and mental health evaluation and, as appropriate, treatment to all residents who have been victimized by SAA while in residence.

The evaluation and treatment of such victims will include, as appropriate, follow-up services, treatment plans, and, when necessary, referrals for continued care following their transfer to, or placement in, other facilities, or their discharge.

The Center will provide such victims with medical and mental health services consistent with the community level of care.

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Resident victims of vaginal penetration by a male abuser while in residence will be offered pregnancy tests. If pregnancy results, then the victim will receive timely and comprehensive information about and timely access to all lawful pregnancy-related medical services.

Resident victims of SAA while in residence will be offered tests for sexually transmitted infections as medically appropriate.

The Center will attempt to conduct a mental health evaluation of all known resident-on-resident abusers within 60 days of learning of such abuse history and offer treatment when deemed appropriate by mental health practitioners.

N. Data Collection

Each Center will maintain in a secure area all case records associated with allegations of SAA, including incident reports, investigative reports, offender information, case disposition, medical and counseling evaluation findings, and recommendations for post-release treatment, if necessary. Any counseling and documentation will be maintained in appropriate files in accordance with these standards and applicable policies, and retained in accordance with the ICE Family Residential Standard on *Resident Files*.

Particularly applicable to the storage, confidentiality, and release of case records are the requirements of the Confidentiality and Release of Medical Records section in the ICE Family Residential Standard on *Health Care* and the requirements of ICE Family Residential Standard on *Resident Files*, especially in regard to the Privacy Act of 1974. Because of the very sensitive nature of information about victims and their medical condition, including infectious disease testing, staff must be particularly vigilant about maintaining confidentiality and releasing information only for legitimate need-to-know reasons.

Monitoring and evaluation are essential for assessing both the rate of occurrence of SAA and the effectiveness in reducing SAA behavior. Accordingly, the Center Administrator must maintain two types of files of SAA incidents that include the following minimum information in general files:

- The victim(s) and assailant(s) of an SAA;
- The date, time, location, and nature of the incident;
- The demographic background of the victim and perpetrator (including citizenship, age, gender, and whether either has self-identified as gay, lesbian, bisexual, transgender, intersex, or gender nonconforming);
- Detailed reporting timeline, including the names of the individuals who reported the incident and received the report of SAA, date and time the report was received, and steps taken to communicate the report up the chain of command;
- Any injuries sustained by the victim;
- All formal and/or informal action taken, including all post-report follow-up response taken by the Center (housing placement/custody classification, medical examination, mental health counseling, etc.);
- All reports;

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- Medical forms or other relevant medical information;
- Supporting memos and videotapes, if any;
- Any sanctions imposed on the perpetrator; and
- Any other evidentiary materials pertaining to the allegation.

The Center Administrator will maintain these files chronologically in a secure location.

In addition, the Center Administrator will maintain a listing of the names of SAA victims and assailants, along with the dates and locations of all SAA incidents occurring within the Center, in an incident reporting system. Such information will be maintained on a need-to-know basis in accordance with the ICE Family Residential Standards on *Health Care* and on *Resident Files*, which includes protection of electronic files from unauthorized access. At no time may law enforcement sensitive documents or evidence be stored at the Center. Access to this designation will be limited to those staff involved in the treatment of the victim or the investigation of the incident. The authorized designation will allow appropriate staff to track the resident victim or assailant of SAA across the system.

On an ongoing basis, the Center PSA Compliance Manager and Center Administrator must work with the Field Office and ICE PSA Coordinator to share data regarding SAA incidents and response.

O. Center Audits

Centers will cooperate with all audits of the Center's compliance with this standard, including by making available relevant documents, records, and other information as requested (including available videotapes and other electronically available data).

Centers will permit auditors access to all areas of the Center and will make available space suitable for interviews of residents and staff. Residents will be permitted to have private interviews with auditors, and to send confidential information or correspondence to the auditor.

References

- ICE Family Residential Standard on Admission and Release
- ICE Family Residential Standard on Behavior Management
- ICE Family Residential Standard on Definitions
- ICE Family Residential Standard on Health Care
- ICE Family Residential Standard on Health Care (Females)
- ICE Family Residential Standard on Program Philosophy, Goals, and Expected Outcomes
- ICE Family Residential Standard on Resident Files
- ICE Family Residential Standard on Staff Training
- ICE Family Residential Standard on Transportation (by Land)