

## REPORTING CASES OF ABUSE AND NEGLECT

**1. REASON FOR ISSUE:** This Veterans Health Administration (VHA) directive establishes policy for the reporting of abuse and neglect cases as stipulated by state statute for all Department of Veterans Affairs (VA) medical facilities, including VA medical centers, VA outpatient clinics (OPC), Vet Centers, VA Community Living Centers (CLC), Home Based Primary Care (HBPC), home and community-based programs, State Veterans Homes, and Community-based Outpatient Clinics (CBOC).

### 2. SUMMARY OF MAJOR CHANGES:

**Amendment dated March 17, 2023,** clarifies language in Appendix A, paragraph 4, Abortion and Abortion Counseling and revises the definition of “child” in paragraph 3.a.

#### **Amendment dated February 17, 2023, updates:**

a. Information on VA’s provision of abortion counseling and services as it relates to reporting cases of abuse and neglect (see Appendix A, paragraph 4).

b. Definition of “child” in relation to reporting cases of abuse and neglect (see paragraph 3.a.)

#### **As published November 28, 2017, major changes included:**

a. Clarification of VHA covered professionals’ responsibilities for reporting cases of abuse and neglect.

b. Information on Military Sexual Trauma (MST) as it relates to reporting cases of abuse and neglect.

c. Definitions for domestic violence (DV), intimate partner violence (IPV) in relation to reporting cases of abuse and neglect.

d. A new Appendix on the application to VHA staff of laws related to reporting suspected abuse and neglect, including a discussion of when a provider’s knowledge that a patient has been viewing child pornography creates a statutory duty to report suspected child abuse.

**3. RELATED ISSUES:** VHA Directive 1115 and VHA Directive 1605.01.

**4. RESPONSIBLE OFFICE:** The Chief Consultant, Care Management and Social Work (10P4C) is responsible for the content of this directive. Questions may be referred to 202-461-6780.

**AMENDED**  
**March 17, 2023**

**5. RESCISSIONS:** VHA Directive 2012-022, dated September 4, 2012, is rescinded.

**6. RECERTIFICATION:** This VHA directive is scheduled for recertification on or before the last working day of November 2022. This VHA directive will continue to serve as national VHA policy until it is recertified or rescinded.

/s/ Carolyn M. Clancy, M.D.  
Executive in Charge

**DISTRIBUTION:** Emailed to the VHA Publications Distribution List on December 4, 2017. Amendment: VHA Directive 1199(1) was emailed to the VHA Publications Distribution List on February 17, 2023. Amendment : VHA Directive 1199(2) was emailed to the VHA Publications Distribution List on March 22, 2023.

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## REPORTING CASES OF ABUSE AND NEGLECT

### 1. PURPOSE

This Veterans Health Administration (VHA) directive establishes policy for certain VHA professional staff related to the reporting of known and suspected cases of abuse and neglect as required by Federal and state laws. **AUTHORITY:** Title 38 United States Code (U.S.C.) § 7301(b) and 34 U.S.C. § 20341 (formerly 42 U.S.C. § 13031)).

### 2. BACKGROUND

The following summary of Federal and state laws governing reporting suspected child abuse provides necessary context for implementing this policy. These laws and their application to VHA covered professionals are addressed in greater detail in Appendix A.

a. The Victims of Child Abuse Act of 1990 (34 U.S.C. § 20341 (formerly 42 U.S.C. § 13031)) mandates that when a covered professional (see definition in paragraph 3), who is engaged in a professional capacity or activity on Federal land or in a Federally operated or contracted facility, learns of facts that give reason to suspect that a child has suffered an incident of child abuse (see definition in paragraph 3), that covered professional must report the suspected abuse as soon as possible to the appropriate state agency. Covered professionals must report suspected child abuse, regardless of where the child abuse may have occurred or where the suspected victim is cared for or resides. The reporting requirement is also triggered when the covered professional has knowledge that a patient under that professional's care viewed child pornography, even in those instances where the covered professional does not know the identity of the victim.

b. Reports of suspected child abuse must be made to the local law enforcement agency or local child protective services agency that has jurisdiction to investigate reports of child abuse or to protect child abuse victims in the land area or facility in question. See 28 Code of Federal Regulations (C.F.R.) 81.2. Criminal penalties for failure to comply with the reporting requirement are found at 18 U.S.C. § 2258, and include both a fine and imprisonment.

c. States have similar laws requiring certain professionals acting within their official or professional capacity to report suspected child abuse. Generally, reports of suspected child abuse must be made as soon as possible to the appropriate local or state law enforcement agency in accordance with state law.

d. In addition to a duty to report child abuse, some states require reporting of domestic violence/intimate partner violence (DV/IPV) and sexual assaults.

e. In the instance of state required reporting under paragraphs 2.c. and d., covered professionals must comply with such state reporting unless otherwise exempted in Appendix A of this directive.

### 3. DEFINITIONS

For purposes of this policy, the following definitions apply:

a. **Child.** For purposes of this directive, a child is an individual under the age of 18 who is born alive, meaning after complete expulsion or extraction from their mother, at any stage of development, and who does any of the following: (1) is breathing; (2) has a beating heart; (3) has pulsation of the umbilical cord; or (4) definite movement of voluntary muscles. See 1 U.S.C. § 8. **NOTE:** *Any pregnancy tissue, embryo or fetus is not considered a child under this definition, regardless of conflicting State law.*

b. **Child Abuse.** Child abuse means physical or mental injury, sexual abuse or exploitation, or negligent treatment of a child. This includes the employment or use of a child to engage in sexual exploitation of a child, such as for child pornography or child prostitution. Note that some states define child abuse to include a child's exposure to or witnessing of DV/IPV. In these states, "child abuse" includes any DV/IPV to which a child is exposed. Consult your local policy or Office of Chief Counsel in the District for clarification. **NOTE:** *Visit <https://www.va.gov/OGC/DistrictOffices.asp> to locate contact information for your Office of Chief Counsel District.*

c. **Covered Professional.** Covered professionals are VHA employees or contractors who are physicians, dentists, medical residents or interns, hospital personnel and administrators, nurses, health care practitioners, chiropractors, osteopaths, pharmacists, optometrists, podiatrists, emergency medical technicians, ambulance drivers, medical examiners, alcohol or drug treatment personnel, and persons performing a healing role or practicing the healing arts. The term also includes psychologists; psychiatrists and mental health professionals; social workers; licensed or unlicensed marriage, family, and individual counselors; and child care workers and administrators. **NOTE:** *All VHA Trainees have a duty to report suspected cases of abuse and neglect directly to their VHA supervisor. If the situation requires additional reporting to a state agency, the supervisor will assist and support the trainee through the process.*

d. **Domestic Violence.** Domestic violence (DV) means any violence or abuse that occurs within the "domestic sphere" or "at home," and may include child abuse, elder abuse, and other types of interpersonal violence.

e. **Elder Abuse.** Elder abuse means any abuse or neglect of persons age 60 or older by a caregiver or another person in a relationship involving an expectation of trust.

f. **Intimate Partner Violence.** Intimate partner violence (IPV) means physical violence, sexual violence, stalking, or psychological aggression (including coercive tactics) by a current or former intimate partner (i.e., spouse, boyfriend/girlfriend, dating partner, or ongoing sexual partner). Partners may or may not be cohabitating and may be same or opposite sex.

g. **VHA Health Care Facilities.** VHA health care facilities include VA medical facilities (inpatient and outpatient components); Vet Centers, VA Community Living

Centers, and Community-based Outpatient Clinics that are owned, operated, or leased/contracted for by VA. This definition also includes off-site VHA health care programs in which VA staff participate and to which they are assigned to provide professional services.

h. **VHA-Authorized Health Care Activities.** VHA-authorized health care activities include professionally assigned duties performed in VHA health care facilities plus those performed off-site, such as those performed under VA's Home-Based Primary Care (HBPC), Mental Health Residential Rehabilitation Programs, and other similar programs where health care services are delivered by VHA staff to Veteran-patients in home or community settings. If covered VHA professionals are tasked by contract or other similar arrangements to go into State Veterans Homes to deliver VA medical services to their residents, their actions are also VHA-authorized health care activity. Additionally, VHA-authorized health care activities include clinical outreach services provided to homeless veterans in the community.

i. **Vulnerable Adult.** A person eighteen years of age or older who has physical or mental condition which substantially impairs the person from adequately providing for their own care or protection. This includes a person who is impaired in the ability to adequately provide for the person's own care or protection because of the infirmities of aging including, but not limited to, organic brain damage, advanced age, and physical, mental, or emotional dysfunction.

#### 4. POLICY

It is VHA policy that all covered professionals, while acting in the scope of their VA employment, are required to adhere to Federal and state requirements laws which govern the reporting of suspected cases of abuse and neglect, as defined within this policy, unless specifically exempted in Appendix A. Reports of Military Sexual Trauma are covered by VHA Directive 1115.01, Military Sexual Trauma (MST) Mandatory Training and Reporting Requirements for VHA Mental Health and Primary Care Providers, dated April 14, 2017, or subsequent policy, and are excluded from reporting requirements under this directive. ***NOTE: This policy is independent of other VHA policy governing the reporting of sexual assaults and other defined public safety incidents that occur on VA property, including VHA facilities. For those reporting requirements and procedures, see VHA Directive 5019.02, Harassment, Sexual Assaults and Other Defined Public Safety Incidents in Veterans Health Administration, dated September 12, 2022. For sexual assault reporting that did not occur on VA property, see VHA Directive 1101.05(2), Emergency Medicine, dated September 2, 2016, or subsequent policy.***

#### 5. RESPONSIBILITIES

a. **VA Medical Facility Director.** The VA medical facility Director is responsible for:

(1) Ensuring policies and procedures are established to implement this directive, while also ensuring that required reports are made pursuant to applicable Federal and state law in a manner that is wholly consistent with Federal information disclosure laws, i.e., the Privacy Act at 5 U.S.C. § 552a, Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule at 45 C.F.R. Parts 160 and 164, and 38 U.S.C. §§ 5701 and 7332.

(2) Ensuring a plan for staff education is developed and published, which addresses:

(a) Federal child abuse reporting laws and applicable state abuse and neglect reporting laws, including a statement that VA's legal authority to disclose the information for these reports derives from a standing written request letter that complies with the requirements of VHA Directive 1605.01, Privacy and Release of Information, dated August 31, 2016, or subsequent policy, and 38 U.S.C. § 5701(f), and that in the absence of such a letter, which should be an infrequent situation, the report may not be made without prior written authorization from the individual whose information is to be disclosed to the state;

(b) Signs and symptoms of abuse and neglect (as those terms are used in applicable laws);

(c) Identification and treatment of abuse and neglect;

(d) State and local reporting procedures;

(e) Documentation of abuse and neglect; and

(f) Instruction on maintaining and safeguarding evidence of alleged abuse and neglect.

(3) Ensuring reporting of abuse and neglect pursuant to valid state laws is done in a manner consistent with the Federal laws governing the disclosure of the individual's information. VA's legal authority to disclose the information for these reports derives from a standing written request letter that complies with the requirements of VHA Directive 1605.01, and 38 U.S.C. § 5701(f). In the absence of such a letter, which should be an infrequent situation, the report may not be made without prior written authorization from the individual whose information is to be disclosed to the state. In the event the individual refuses consent, then the disclosure/report may not be made.

(4) Ensuring all standing requests are maintained on file in the medical facility and acknowledging each request, when required by VHA Directive 1605.01.

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

(6) Ensuring each standing request is submitted to the Office of Chief Counsel in the District for review. **NOTE:** Visit <https://www.va.gov/OGC/DistrictOffices.asp> to

*locate contact information for your Office of Chief Counsel District. The corresponding Privacy Act routine use authority (for disclosing information pursuant to a standing request) is contained at 5 U.S.C. § 552a(b)(3), and specifically at routine use number 10 of the Privacy Act System of Records, 24VA10P2, Patient Medical Record – VA.*

(7) Ensuring that reports of abuse are limited to providing the name and address of the abused person and that information specifically permitted or required by the state law do not violate Federal information disclosure laws. **NOTE:** *Information protected under 38 U.S.C. § 7332, which pertains to treatment for drug and alcohol abuse, sickle cell anemia, or testing for infection with human immunodeficiency virus, may be disclosed to comply with a state request if a Veteran signs a prior written special consent. This information may also be released to a public health authority charged under Federal or state law with the protection of public health pursuant to a standing written request; to a court of competent jurisdiction pursuant to a court order; or to a State Prescription Drug Monitoring Program (SPDMP). 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).*

b. **Covered Professionals.** The covered professional who determines that facts exist that trigger the requirement for reporting abuse or neglect is responsible for promptly documenting all pertinent information about the abuse or neglect in the Computerized Patient Record System (CPRS) or the Vet Center client record (RCS). A covered professional's failure to make a timely report can result in the imposition of significant criminal penalties, including both fines and imprisonment. A covered professional filing a report directly must:

(1) Document in CPRS or RCS that the required report was filed timely with the appropriate agency, include a copy of that report, and document any specific evidence that has been retained, such as physical specimens or photographs. **NOTE:** *An administrative document class may be created in CPRS, and the report document must be scanned into CPRS.*

(2) Document in CPRS that examination and treatment for conditions caused by the abuse or neglect were offered to Veterans who are eligible for VA health care. In non-emergency and non-acute cases where the Veteran is not eligible for VA care, document that the Veteran was referred to their private provider for any needed follow-up care.

(3) For patients who are victims of sexual assault, document compliance with the procedures set forth in VHA Directive 1101.05(2). **NOTE:** *Those procedures do not require compliance with State reporting laws. This directive does not apply to sexual assault. See the paragraph 2.e.*

(4) Complete all state-required reporting forms which compile 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.

(5) Ensure that with each report, an in-house referral is also made to VA Social Work.

(6) Ensure a report is made with the state in which the Veteran currently resides, regardless of where the incident occurred.

(7) If working in telehealth programs, follow the process of the VHA health care facility providing care to the Veteran for reporting cases of abuse and neglect covered by this policy.

(8) If a mandated report is being made about a Veteran who has experienced IPV, the clinician must check with the Veteran to ensure that the spouse/partner does not have access to the electronic health record before entering details of the IPV and the abuse report in the record. If a mandated report is being made about a Veteran using IPV against a spouse/partner, a collateral chart documenting the abuse and report must be created to ensure the safety of the spouse/partner and to prevent retaliation by the Veteran.

c. **VHA Social Workers:** VHA social workers are responsible for initiating a thorough assessment and identifying psychosocial risk factors requiring intervention for individuals experiencing abuse. This includes a duty to:

(1) Facilitate referrals for clinical assessment, treatment, and care for individuals experiencing abuse or using violence.

(2) Maintain a list of VA and community resources that provide or arrange for evaluation and care for individuals experiencing abuse.

## **6. PRIVACY AND CONFIDENTIALITY DURING REPORTING**

Any information disclosed by VA must comply with applicable privacy and confidentiality laws, including the Privacy Act at 5 U.S.C. § 552a, the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule at 45 C.F.R. Parts 160 and 164, and 38 U.S.C. §§ 5701 and 7332. Reports of abuse and neglect to states in accordance with Federal and state law may only be done in a manner consistent with Federal information disclosure laws. For purposes of this policy, this means that reports are to be filed pursuant to a standing written request letter from a law enforcement agency; in the event no such letter exists, then the report may only be made with the consent of the individual whose information is to be disclosed to the state. See VHA Directive 1605.01 and 38 U.S.C. § 5701(f). VHA health care facilities should work with the healthcare facility's Privacy Officer and/or their Office of Chief Counsel in the District to develop tools to assist them in streamlining and standardizing this reporting activity.

**NOTE:** *If the state requests health records of the Veteran, no disclosures can be made unless there is authority under 5 U.S.C. § 552a(b)(7).*

## 7. REFERENCES

- a. 5 U.S.C. § 552a.
- b. 28 C.F.R. Part 81, Child Abuse Reporting Designations and Procedures.
- c. 38 U.S.C. § 5701(f).
- d. 38 U.S.C. § 7332.
- e. 34 U.S.C. § 20341 (formerly 42 U.S.C. § 13031). The Victims of Child Abuse Act of 1990, as amended.
- f. VHA Directive 1101.05(1), Emergency Medicine, dated September 2, 2016, or subsequent policy.
- g. VHA Directive 1115.01, Military Sexual Trauma (MST) Mandatory Training and Reporting Requirements for VHA Mental Health and Primary Care Providers, dated April 14, 2017, or subsequent policy.
- h. VHA Directive, 1605.01, Privacy and Release of Information, dated August 31, 2016, or subsequent policy.
- i. VHA Directive 1115(1), Military Sexual Trauma (MST) Program, dated May 8, 2018.
- j. VHA Directive 5019.02(1), Harassment, Sexual Assaults and Other Defined Public Safety Incidents in Veterans Health Administration, dated September 12, 2022.
- k. Accreditation Manual for Hospitals, 2011, Joint Commission, Provision of Care, Treatment, and Services (PC.01.02.09) and Rights and Responsibilities of the Individual (RI.01.06.03).
- l. Breiding MJ et al., (2015). *Intimate Partner Violence Surveillance: Uniform Definitions and Recommended Data Elements, Version 2.0*. Atlanta (GA): National Center for Injury Prevention and Control, Centers for Disease Control and Prevention.
- m. National Center for Injury Prevention and Control, Division of Violence Prevention, Centers for Disease Control (January 2014)  
<http://www.cdc.gov/violenceprevention/elderabuse/definitions.html> **NOTE:** *This linked document is outside of VA control and may or may not be conformant with Section 508 of the Americans with Disabilities Act.*
- n. Wallace, H. (2004). *Family Violence: Legal, Medical and Social Perspectives*. Allyn & Bacon.
- o. National Center on Elder Abuse (NCEA)  
<https://ncea.acl.gov/resources/index.html> **NOTE:** *This linked document is outside of*

*VA control and may or may not be conformant with Section 508 of the Americans with Disabilities Act.*

p. Centers for Elders and the Courts (CEC) <http://www.eldersandcourts.org/> **NOTE:**  
*This linked document is outside of VA control and may or may not be conformant with Section 508 of the Americans with Disabilities Act.*

**APPLICATION TO VHA PRACTITIONERS: LAWS RELATED TO REPORTING  
SUSPECTED ABUSE AND NEGLECT**

**1. FEDERAL LAW APPLICABLE TO VA: CHILD ABUSE**

a. Federal law, the Victims of Child Abuse Act of 1990, as amended, provides that if a person in a covered profession (including certain cadres of Federal health care professionals), while engaged in that professional capacity or activity on Federal land or in a Federally operated (or contracted) facility, learns of facts that give reason to suspect that a child has suffered an incident of child abuse, that person shall make a report of the suspected abuse as soon as possible to the agency designated by the United States Attorney General to receive such reports. See 34 U.S.C. § 20341 (formerly 42 U.S.C. § 31031). The U.S. Assistant Attorney General also addressed whether a covered professional's mere knowledge that a patient had viewed child pornography would trigger that professional's duty to report the suspected child abuse. It was concluded that a covered professional's knowledge of a patient under their care viewing child pornography also triggers the reporting requirement because they may be aware of facts that give reason to suspect that the child-- subject of the pornographic images viewed by the patient-- has suffered an incident of child abuse. In addition, some state laws mandate the reporting of downloading, streaming or accessing child pornography through electronic or digital media.

b. The putative purpose of this timely reporting requirement is to facilitate the investigation and prosecution of these types of crimes by appropriate law enforcement officials. The U.S. Assistant Attorney General advises that "[34 U.S.C. § 20341] is best read to impose a reporting obligation on all persons who, while engaged in the covered professions and activities on Federal lands or in Federal facilities, learn of facts that give reason to suspect that child abuse has occurred, regardless of where the abuse might have occurred or where the suspected victim is cared for or resides." See U.S. Department of Justice, Office of Legal Counsel, Assistant Attorney General's Memorandum for Will A. Gunn General Counsel, United States Department of Veterans Affairs, dated May 29, 2012 [*Re: Duty to Report Suspected Child Abuse Under 42 U.S.C. § 13031*]. That is, a covered professional is required to report suspected child abuse discovered while engaged in the covered activities (i.e., professions or occupations specified in section 13031(b)) on Federal lands or in Federal facilities. This is not to be interpreted as limiting the reporting requirement to cases of suspected child abuse occurring or taking place on Federal lands or in Federal facilities. "Covered professionals" subject to this requirement include "hospital personnel," "persons performing a healing role," and "social workers." 34 U.S.C. § 20341(b)(1), (3).

c. 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.” 28 C.F.R. § 81.2. In other words, Federal law requires the reporting of suspected acts of child abuse to entities designated by state law to receive such reports.

d. Again, the Federal child abuse reporting law is intended to facilitate the investigation and timely prosecution of such crimes, as the Federal prosecution of child abuse crimes is subject to a specified statute of limitations. 18 U.S.C. § 3283. A covered professional’s failure to make a timely report can result in the imposition of significant criminal penalties. See 18 U.S.C. § 2258. Any questions regarding the scope of the Federal reporting requirement (for suspected child abuse) should be directed to your Office of Chief Counsel in the District (Chief Counsel) who, if necessary, can seek any needed clarification from the local Assistant United States Attorney. (Note that it is the Department of Justice, not VA, which has ultimate responsibility for interpretation and enforcement of this Federal reporting law). **NOTE:** Visit <https://www.va.gov/OGC/DistrictOffices.asp> to locate contact information for your Office of Chief Counsel District.

## 2. STATE ABUSE AND NEGLECT REPORTING LAWS

a. State reporting laws generally pertain to abuse suffered by specified (vulnerable) populations and do not require global reporting of assaults, etc. For the same policy reasons, states have similar reporting laws for certain cadres of professionals who, while acting within their official or professional capacity, learn of or reasonably suspect that a child or an adult is, or has been, the subject of abuse or neglect. In general they are required to report that information as soon as possible to the appropriate local or state law enforcement agency in accordance with state law. These reports are typically directed to state and local law enforcement agencies/department tasked with responsibility for the advocacy, protection, and/or health of such individuals. Those entities then investigate the reports and, if confirmed, refer the reports onward for appropriate prosecution.

b. A state cannot ordinarily compel a VA facility or its employees acting within the scope of their VA employment to comply with state law. Further, the Privacy Act at 5 U.S.C. § 552a, the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule at 45 C.F.R. Parts 160 and 164, and 38 U.S.C. §§ 5701 and 7332 govern the disclosure of VA patient information; reporting may not occur unless the requirements of these statutes, as applicable, are followed. Work with your Office of Chief Counsel in the District to determine if a particular case of suspected abuse or neglect of a child or adult is one that is subject to mandatory state reporting requirements and if so whether VA has legal authority to disclose the pertinent information to the state. **NOTE:** Visit <https://www.va.gov/OGC/DistrictOffices.asp> to locate contact information for your Office of Chief Counsel District. Chief Counsels can also advise on how the state reporting laws define covered professionals and other key terms, such as child, adult, abuse, and neglect. As to the latter, adults covered by state reporting laws are characteristically those who are aged, incapacitated, dependent, disabled, ill (particularly from mental health conditions), recipients of certain health care or custodial services, victims of domestic abuse, and the like. In other words, these laws are aimed implicitly at

protecting adults who are most vulnerable to abuse and neglect by others and are likely unable to report such incidents to the proper authorities themselves.

c. In addition to Federal information law concerns and requirements, VHA recognizes that a VA provider's compliance with state reporting laws may be a condition of the provider's state licensure or certification requirements. This can place that VA provider in a difficult position with their state licensing board. In light of these facts, VHA has decided that, as a matter of policy, VHA providers, with exceptions for military sexual trauma (see paragraph 3 of this Appendix) and abortion counseling and services (see paragraph 4 of this Appendix), are required to comply with state abuse and neglect reporting laws and procedures provided that all such disclosures are done consistent with Federal law and in the manner described in paragraphs 5 and 6 of this directive. If required by applicable state law, such reports must also include reports of domestic violence/intimate partner violence (DV/IPV) and sexual assaults by non-VA healthcare providers. (Note that other mechanisms, including a regulatory duty to report for employees, are already in place to address reports of abuse and neglect occurring within the VA system separate from the Federal child abuse reporting mandate discussed above.)

d. Reports of abuse and neglect to states in accordance with Federal and state law may only be done in a manner consistent with Federal information disclosure laws. For purposes of this policy, this means that reports are to be filed pursuant to a standing written request letter from a law enforcement agency (ies); in the event no such letter exists, then the report may only be made with the consent of the individual whose information is to be disclosed to the state. See VHA Directive 1605.01, Privacy and Release of Information, dated August 31, 2016, or subsequent policy, and 38 U.S.C. § 5701(f). In order for a standing written request to be valid, the letter must be prepared by the qualified representative of the state agency that is qualified as a law enforcement authority charged with the protection of the public health or safety. In order to qualify as a law enforcement authority, the state agency 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. VHA facilities should work with the health care facility's Privacy Officer and/or their area Chief Counsels to develop tools to assist them in streamlining and standardizing this reporting activity. Note too that a standing written request letter allows VA to give the name and address of the Veteran who may be the abuser, general information on the individual being abused, and the type of abuse, but a letter pursuant to 5 U.S.C. § 552a(b)(7) is required if the state requests the medical records of the Veteran.

### **3. MILITARY SEXUAL TRAUMA**

a. For purposes of this policy, VHA has decided not to invoke its permissive authority to either allow or require a covered VHA professional to disclose to states information (pursuant to their abuse reporting laws) that a Veteran, while in service, experienced sexual trauma (to include sexual assault) as that term is described and defined in 38 U.S.C. § 1720D(a)(1). VA commonly refers to the type of psychological

trauma caused by this experience as military sexual trauma (MST). Simply put, reports of MST, including sexual assault, are excluded from the scope of this policy. This exclusion should be narrow in effect, however, because most Veterans who present for counseling or treatment of MST-related conditions, or who report such an experience to their VA provider, would typically not fall under the categories of adults covered by state reporting laws, e.g., vulnerable adults unable to make such reports to the proper authorities themselves. Moreover, state laws are not likely to include incidents of abuse falling under the investigative and prosecutorial jurisdiction of Department of Defense (DoD).

b. As for active duty service members (ADSMs), DoD permits those who experience sexual assaults in service to request restricted reporting of that information to their DoD health care providers, thus guaranteeing their chains of command have no access to information about the sexual assaults. To align with DoD's approach in affording ADSMs with the option of requesting restricted reporting of sexual assaults, VHA providers will provide ADSMs receiving MST-related counseling through VA Vet Centers with oral and written information on how to make a report of sexual assault through DoD's safe helpline, which allows for the service member to request and file a restricted report. **NOTE:** *If an ADSM is receiving VA MST-related care or services pursuant to a sharing agreement (38 U.S.C. § 8111), then the terms of the sharing agreement dictate the terms of disclosure of patient information.*

c. Information obtained by VHA professionals performing pre-discharge or Integrated Disability Evaluations of an ADSM at a VA facility that confirms or suggests the ADSM experienced MST, including sexual assault, while in service are likewise excluded from the abuse and neglect reporting requirements established by this policy. Instead, these individuals are to receive oral and written information on how to make a restricted report of sexual assault through DoD's safe helpline.

#### **4. ABORTIONS AND ABORTION COUNSELING**

A State cannot compel a VA medical facility or its employees acting within the scope of their VA employment to comply with a State reporting law that conflicts with Federal law or otherwise impedes Federal operations. Reporting of VA's provision of abortions and abortion counseling is not required where such reporting conflicts with Federal law or otherwise impedes Federal operations.

#### **5. APPLICATION TO VHA PRACTITIONERS**

a. With the exceptions described in paragraphs 3. and 4. of this Appendix, the scope of VA's reporting requirement relevant to state law reporting requirements, as established by this policy, extends to cases identified in the performance of VHA authorized health care activities occurring on VA property, in Federally operated facilities, and off-site, as that term is defined below. The terms of each state's law(s) will define, among other things, the categories of children and adults, and the type of abuse covered by those laws, unless otherwise stated in this directive or Appendix; for instance, VA only recognizes the Federal definition of "child" as stated in this directive.

In all cases, disclosure of any information must be done in a manner consistent with Federal information disclosure laws, i.e., the Privacy Act at 5 U.S.C. § 552a, the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule at 45 C.F.R. Parts 160 and 164, and 38 U.S.C. §§ 5701 and 7332. If required by state law, they must include reports of Domestic Violence (DV)/ Intimate Partner Violence (IPV).

b. The Federal and state reporting requirements for VHA professionals, as discussed above, extend to VHA examiners who perform forensic health examinations, including Compensation and Pension examinations, or disability-related examinations performed in completing forms pursuant to 38 C.F.R. § 17.38(a)(1)(xv).

c. As noted earlier in this appendix, information of MST-related experiences experienced by Veterans will not be reported to the states. Active duty service members receiving MST-related counseling through VA Vet Centers will likewise not be reported to the states; instead, those individuals shall receive oral and written information on how to make a restricted report of sexual assault through DoD's safe helpline.