****

Sex Offender Registry Issues and Abuse Prevention

# Prepared by Kendall R. Watkins, Davis, Brown, Koehn, Shors & Roberts, P.C.

The Department’s continues to closely monitor facilities’ compliance with federal certification standards relating to resident abuse. Closely related to this issue, a portion of Iowa’s Sex Offender Registry laws relating to residency restriction, which were contested in federal court for the past two years, went into effect on September 1, 2005.

Registry Law

The registry law provides that a person who has been convicted of a criminal offense against a minor, an aggravated offense, sexual exploitation, an other relevant offense, or a sexually violent offense in this state or in another state, or in a federal, military, tribal, or foreign court, or a person required to register in another state under the state's sex offender registry is required to register with Iowa’s Sex Offender Registry. The state maintains a list of individuals who have registered on its Iowa Sex Offender website:

<https://www.iowasexoffender.gov/search>

Residency Restrictions

The law also places certain residency restrictions for those offenders who have committed a criminal offense against a minor, or an aggravated offense, sexually violent offense, or other relevant offense that involved a minor. Specifically, the law provides that an offender shall not reside within two thousand feet of the real property comprising a public or nonpublic elementary or secondary school or a child care facility. A person who resides within two thousand feet of the real property comprising a public or nonpublic elementary or secondary school, or a child care facility, commits an aggravated misdemeanor. See Iowa Code 692A.2A.

“Residence” is defined broadly to mean “the place where a person sleeps, which may include more than one location, and may be mobile or transitory” [Iowa Code 692A.1(8)]. Thus any resident, including short term skilled residents and respite care residents admitted to a nursing facility, residential care facility, or assisted living program (excluding adult day care programs) will fall within the scope of the Registry laws.

Pursuant to Iowa Code 692A.2A(4), exceptions to the 2,000 foot residency restrictions are recognized when:

1. The person is required to serve a sentence at a jail, prison, juvenile facility, or other correctional institution or facility; or
2. The person is subject to an order of commitment under chapter 229A ; or
3. The person has established a residence prior to July 1, 2002, or a school or child care facility is newly located on or after July 1, 2002; or
4. The person is a minor or a ward under a guardianship.

The exception in subsection (d) does not apply to a resident who is under a power of attorney (either health care or financial). The resident must be under legal guardianship.

Federal Abuse Regulations

Pursuant to F224 [42 C.F.R. §483.13(c)] nursing facilities must develop and implement written policies and procedures that prohibit mistreatment, neglect, and abuse of residents and misappropriation of resident property.

The guidance for surveyors for this regulation indicates that, “Each resident has the right to be free from mistreatment, neglect and misappropriation of property. This includes the facility’s identification of residents whose personal histories render them at risk for abusing other residents.”

Facility Policies

Consistent with good risk management practices, facilities should adopt written policies that provide that all existing and prospective residents be checked through Iowa’s Sex Offender Registry. The check is easy to perform and can be accessed through the following website:

<http://www.iowasexoffender.com/search.php>

Unfortunately, the website does not provide a screen that shows both the search words used and the absence of a located individual. Thus there is no means to print a copy of the registry check verifying the facility’s check of the sex offender registry. The facility should however maintain a checklist verifying that the check was conducted and no names matched the check. The facility should print a copy of any search that results in a positive identification.

A facility that locates a prospective resident on the Registry should conduct additional investigation into the nature of the registry listing before agreeing to admit the resident into the facility. Remember once a resident has been admitted it may difficult to discharge the resident, based on the regulatory restrictions relating to involuntary discharge.

For existing or prospective residents who are listed on the sex offender registry, facilities need to determine:

* 1. if the facility is within 2000 feet of a public or nonpublic elementary or secondary school or a child care facility (your local police department/sheriff’s office should be able to assist in identifying whether your facility is within the restricted boundaries); and
  2. if the resident’s sex offender status results from a criminal offense against a minor, or an aggravated offense, sexually violent offense, or other relevant offense that involved a minor (your local police department/sheriff’s office should be able to assist in identifying whether the conviction falls within the stated definition); and
  3. confirm that none of the exceptions listed in §692A.2A(4) above apply (resident subject to an order of commitment under chapter 229A; resident has established a residence prior to July 1, 2002, or a school or child care facility is newly located on or after July 1, 2002, or the person is a ward under a guardianship).

If all three conditions are met, the facility should notify the resident and responsible party/legal representative that the resident’s continued presence in the facility constitutes a potential violation of the registry laws. The facility should also contact local law enforcement officials to inform them of a possible sex offender registry residency restriction violation.

Even if a resident on the sex offender registry is not subject to the 2000 foot restrictions relating to criminal offenses against minors, the facility still has an obligation to analyze the risk posed by the resident’s placement on the registry in determining the level of supervision and assistance devices required to monitor the resident. Where the criminal conviction involves acts against a minor, the facility should be alert in closely supervising residents when children are present.

Analysis must also be undertaken to assess the resident’s risk for abusing other residents. The treating physician should be informed of a resident’s status on the registry and input solicited as to the physician’s assessment of the resident’s risk for committing abuse.

For example, a resident on the registry who is now bedbound may not pose the same risk or the same supervision requirements as an actively mobile resident. On the other hand, residents on the sex offender registry who now suffer from dementia or other cognition limitations may pose a higher risk, based on loss of inhibition or self-control. Residents determined to be at risk should have the problem identified on the care plan with interventions implemented to address the risk.