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Sex Offenders in Your Facility

Recently IHCA has received calls from facilities inquiring about what their rights and obligations are when it comes to sex offenders, both as visitors and residents.

Sex offenders as visitors: While there is no obligation to screen visitors regarding their placement on the sex offender registry, if a facility receives information that a visitor may be on the registry, a prudent facility should check the visitor’s status through the website referenced below.

The ultimate obligation to keep residents safe sometimes conflicts with other state and federal regulations relating to open visitation. Allowing or disallowing sex offenders in a nursing facility or residential care facility often puts management in the proverbial catch- 22 of keeping residents safe while attempting to balance a resident’s rights to communicate and visit with others. 481 Iowa Administrative Code Section 58.47 governs communications of residents including visitors and states the following:

**481—58.47(135C) Communications.** Each resident may communicate, associate, and meet privately with persons of the resident’s choice, unless to do so would infringe upon the rights of other residents, and may send and receive personal mail unopened. (II)

**58.47(1)** Subject to reasonable scheduling restrictions, visiting policies and procedures shall permit residents to receive visits from anyone they wish. Visiting hours shall be posted. (II)

**58.47(2)** Reasonable, regular visiting hours shall not be less than 12 hours per day and shall take into consideration the special circumstances of each visitor. A particular visitor(s) may be restricted by the facility for one of the following reasons:

1. The resident refuses to see the visitor(s). (II)
2. The resident’s physician documents specific reasons why such a visit would be harmful to the resident’s health. (II)
3. The visitor’s behavior is unreasonably disruptive to the functioning of the facility (this judgment must be made by the administrator and the reasons shall be documented and kept on file). (II)

**58.47(3)** Decisions to restrict a visitor are reviewed and reevaluated: each time the medical orders are reviewed by the physician; at least quarterly by the facility’s staff; or at the resident’s request. (II)

**58.47(4)** Space shall be provided for residents to receive visitors in reasonable comfort and privacy. (II)

**58.47(5)** Telephones consistent with ANSI standards (405.1134(c)) shall be available and accessible for residents to make and receive calls with privacy. Residents who need help shall be assisted in using the telephone. (II)

**58.47(6)** Arrangements shall be made to provide assistance to residents who require help in reading or sending mail. (II)

**58.47(7)** Residents shall be permitted to leave the facility and environs at reasonable times unless there are justifiable reasons established in writing by the attending physician, qualified mental retardation professional or facility administrator for refusing permission. (II)

**58.47(8)** Residents shall not have their personal lives regulated beyond reasonable adherence to meal schedules, bedtime hours, and other written policies which may be necessary for the orderly management of the facility and as required by these rules. However, residents shall be encouraged to participate in recreational programs. (II) (*emphasis added*).

Although residents have the right to receive visits from anyone they wish, the facility also has an obligation to ensure safety. Reasonableness is key when it comes to balancing this right with safety. It is likely that the drafters of this regulation did not take into consideration the possibility of a sex offenders visiting a loved one, friend or relative in a nursing facility or residential care facility. Often, times change and a law or regulation may be voided or vague on how a situation must be handled.

Consideration as to nature of the past offense, the classification of the victim, and the length of time since the offense occurred should be taken into account in determining what restrictions, if any, are appropriate.

Where the criminal conviction involves acts against a minor, the facility should be alert in closely supervising visitors when children are present.

Although not formally endorsed by the Department of Inspections and Appeals, facilities have adopted policies to set boundaries on the visitation of sex offenders to their facilities. Such policies have included supervised visitation (during normal visitation hours), prohibition of visitation in certain areas, or restrictions on where visitation may occur, outside of a resident’s room. Anytime there is a potential conflict in regulations - resident safety v. resident rights relating to visitation, safety and well-being of residents may trump a broad right of visitation.

Ken Watkins, IHCA Legal Consultant, Davis Brown Law Firm has previously provided guidance on this matter. See his articles: *Sex Offender Registry Issues and Abuse Prevention* and *Policy: Sex Offender Registry Checks* on the IHCA ICAL at [www.iowahealthcare.org,](http://www.iowahealthcare.org/) Members Only>Regulatory>Regulations. If you have additional questions, you can contact Kelly Meyers, IHCA Director of Regulatory Affiars at kelly@iowahealthcare.org.