Reporting

Resident Reporting

Standard 115.351 requires that **agencies** provide multiple ways for **residents** to report **sexual abuse** and **harassment**, and at least one way for **residents** to report to an entity that is not part of the **agency**. The standard also requires that **agencies** provide contact information to **residents** detained solely for civil immigration purposes for relevant consular officials and for officials at the Department of Homeland Security. **Residents** must be provided with the tools necessary to make a written report. Finally, **staff** must have a method to privately report **sexual abuse** and **harassment** of **residents**, and **staff** must accept and promptly document reports that are made verbally, in writing, anonymously, and from third parties.

The DOJ provides guidance to **agencies** that addresses: (1) the types of entities that constitute "a public or private entity or office that is not part of the **agency**"; (2) the contractual arrangements recommended with the outside entity; (3) best practice in this area; and (4) the role required of the outside entity (pp. 101-103). Further, the DOJ provides explanation for the requirement of a "private" reporting method (p. 103).

Residents with Disabilities and Residents who are Limited English Proficient

Standard 115.316 requires **agencies** to ensure that **residents** with disabilities have an equal opportunity to participate in or benefit from the **agency's** efforts to prevent, detect, and respond to **sexual abuse** and **sexual harassment**. It also requires that **residents** who are limited English proficient have meaningful access to all such **agency** efforts. The standard gives a number of required steps that **agencies** must take in order to meet these requirements. These steps include providing access to appropriate interpreters for both **residents** with disabilities and **residents** who are limited English proficient, and formatting or communicating written materials to **residents** with disabilities.

Finally, the standard requires that the **agency** not rely on **resident** interpreters, **resident** readers, or other types of **resident** assistants, except in limited circumstances where an extended delay in obtaining an effective interpreter could compromise the **resident's** safety, the performance of first-response duties under Standard 115.364, or the investigation of the **resident's** allegations.

The DOJ specifies that this final standard does not, nor is it intended to, go beyond the relevant Federal civil rights laws[1], and that it intends to protect all **residents**, while providing **agencies** with discretion over how to provide the requisite information and interpretation services (p. 63). The DOJ also recommends a number of options to **agencies** attempting to comply with this standard, as well as some recommended resources (pp. 64-67).

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[1] Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. 12101, 12131 *et seq.* (www.ada.gov/pubs/adastatute08.htm); Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794 (http://uscode.house.gov/download/pls/29C16.txt); and Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.* (http://uscode.house.gov/download/pls/42C21.txt).

Exhaustion of Administrative Remedies

Standard 115.352 outlines **agency** requirements for the **resident** administrative grievance procedures. This standard does not apply if an **agency** does not have administrative procedures to address **resident** grievances regarding **sexual abuse**.

The standard provides requirements for grievance procedure timelines, including submission of grievances, the issuing of **agency** decisions, length of **agency** time extensions, when **residents** may consider their requests to be denied at that level, and similar timelines for emergency grievances. It also addresses **residents**' rights to submit grievances alleging **sexual abuse** to someone other than the alleged abuser.

Finally, the standard requires the **agency** to allow third parties (e.g. fellow **residents**, **staff** members, family members, attorneys and outside advocates) to assist **residents** in filing requests for administrative remedies relating to allegations of **sexual abuse**, and to allow third parties to file such requests on behalf of **residents**. The **facility** may require the alleged victim to agree to have the request filed on his or her behalf and, if the request is filed by a third party other than a parent or guardian, to pursue personally any subsequent steps in the administrative remedy process.

The DOJ addresses that a grievance system cannot be the only, or even primary, method for **residents** to report abuse (p. 107).

Third-Party Reporting

Standard 115.354 requires that the **agency** establish a method to receive third-party reports of **sexual abuse** and **sexual harassment**, and publically distribute information on how to report **sexual abuse** and **sexual harassment** on behalf of a **resident**.

The DOJ suggests using the **agency's** websites, postings at the **facility**, and printed pamphlets as options for publically distributing information (p. 115).

Staff and Agency Reporting Duties

Standard 115.361 requires all **staff** to report immediately any of the following: (1) knowledge, suspicion, or information regarding an incident of **sexual abuse** or **sexual harassment** that occurred in a **facility** (whether or not it is part of the **agency**); (2) retaliation against **residents** or **staff** who reported such an incident; and (3) any **staff** neglect or violation of responsibilities that may have contributed to an incident or to retaliation.

"**Staff**" in this standard includes medical and mental health **staff** members and **contractors**, who are also required to inform **residents** of their duty to report to the **agency**, as well as the limitations of confidentiality, at the initiation of services. Additionally, the standard addresses

confidentiality issues, and requires **agencies** to prohibit **staff** from revealing information about **sexual abuse** reports to anyone other than to the extent necessary, as specified in **agency** policy.
Finally, the standard requires **agencies** to report allegations of **sexual abuse** to the alleged victim's parents or legal guardians (unless the **facility** has official documentation showing that parents or legal guardians should not be notified); to the caseworker, if the alleged victim is under the guardianship of the child welfare system; and to the **juvenile's** attorney or other legal representative, if a **juvenile** court retains jurisdiction over the alleged victim. **Facilities** must also report all allegations of **sexual abuse** and **sexual harassment**, including third-party and anonymous reports, to the **facility's** designated investigators.

The DOJ notes that an individual who needs to know certain information relating to a **sexual abuse** report should receive only the information necessary to make treatment, investigation, and other security and management decisions (p. 118).

Agency Protection Duties

Standard 115.362 requires **agencies** to take immediate action to protect a **resident** upon learning that the **resident** is subject to a substantial risk of imminent **sexual abuse**.

Protection Against Retaliation

Standard 115.367 requires **agencies** to establish a policy to protect all **residents** and **staff** members from retaliation if they report **sexual abuse** and **sexual harassment**, or to protect from retaliation those who cooperate with **sexual abuse** or **sexual harassment** investigations. The standard specifies what should be included in the policy and required actions to be taken by the **agency** to protect **residents**, **staff**, and those who report they are in fear of retaliation; and further possible actions the **agency** could take to ensure the protection of such individuals.

The DOJ recognizes that, because of space restraints, some **facilities** will not be able to accommodate housing changes for **resident** protection and may need to employ alternative protection measures (p. 128).

Click here for more suggested guidance regarding reporting allegations.

Resources

- The Project on Addressing Prison Rape. *Fifty State Survey of State Vulnerable Persons Statutes.* (http://www.wcl.american.edu/endsilence/statesurveys.cfm)
- The Project on Addressing Prison Rape. *Fifty State Survey of State Mandatory Reporting Laws.* (http://www.wcl.american.edu/endsilence/statesurveys.cfm)
- Arizona Department of Juvenile Corrections—Posters. (http://www.azdjc.gov/FactsNews/PREA/PREA.asp)
- Louisiana Office of Juvenile Justice—Poster. (http://ojj.la.gov/ojj/files/PREA.pdf)
- Oregon Youth Authority—Posters. (http://www.oregon.gov/OYA/prea/docs/PostersHandout.pdf)