

MARYLAND REGISTER

Proposed Action on Regulations

Transmittal Sheet PROPOSED OR REPROPOSED Actions on Regulations	Date Filed with AELR Committee 08/16/2021	TO BE COMPLETED BY DSD Date Filed with Division of State Documents Document Number Date of Publication in MD Register
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1. Desired date of publication in Maryland Register: 9/24/2021

2. COMAR Codification

Title Subtitle Chapter Regulation

10 01 18 02-08

3. Name of Promulgating Authority

Department of Health and Mental Hygiene

4. Name of Regulations Coordinator Telephone Number
Jake Whitaker 410-767-6499

Mailing Address

201 West Preston Street

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5. Name of Person to Call About this Document Telephone No.
Kathleen Ellis 410-767-1867

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6. Check applicable items:

New Regulations

Amendments to Existing Regulations

Date when existing text was downloaded from COMAR online: May 12, 2021.

- Repeal of Existing Regulations
- Recodification
- Incorporation by Reference of Documents Requiring DSD Approval
- Reproposal of Substantively Different Text:

: Md. R
(vol.) (issue) (page nos) (date)

Under Maryland Register docket no.: --P.

7. Is there emergency text which is identical to this proposal:

- Yes No

8. Incorporation by Reference

- Check if applicable: Incorporation by Reference (IBR) approval form(s) attached and 18 copies of documents proposed for incorporation submitted to DSD. (Submit 18 paper copies of IBR document to DSD and one copy to AELR.)

9. Public Body - Open Meeting

- OPTIONAL - If promulgating authority is a public body, check to include a sentence in the Notice of Proposed Action that proposed action was considered at an open meeting held pursuant to General Provisions Article, §3-302(c), Annotated Code of Maryland.

- OPTIONAL - If promulgating authority is a public body, check to include a paragraph that final action will be considered at an open meeting.

10. Children's Environmental Health and Protection

- Check if the system should send a copy of the proposal to the Children's Environmental Health and Protection Advisory Council.

11. Certificate of Authorized Officer

I certify that the attached document is in compliance with the Administrative Procedure Act. I also certify that the attached text has been approved for legality by Kathleen Ellis, Assistant Attorney General, (telephone #410-767-1867) on May 12, 2021. A written copy of the approval is on file at this agency.

Name of Authorized Officer

Dennis R. Schrader

Title

Secretary of Health

Telephone No.

410-767-6500

Date

August 12, 2021

Title 10
DEPARTMENT OF HEALTH AND MENTAL HYGIENE
Subtitle 01 PROCEDURES

10.01.18 Sexual Abuse Awareness and Prevention Training

Authority: Health-General Article, §§2-104, 7.5-205, 7-1002, and 10-705, Annotated Code of Maryland

Notice of Proposed Action

[]

The Secretary of Health proposes to amend Regulations .02, .03, .04, and .05, adopt new Regulations .06 and .07, and amend and recodify Regulation .06 to be Regulation .08 under COMAR 10.01.18 Sexual Abuse Awareness and Prevention Training.

Statement of Purpose

The purpose of this action is to incorporate in regulation the policies and procedures adopted pursuant to the settlement agreement in Doe v. Department of Health & Mental Hygiene, Case No. 14-03906-WMN (D. Md. Oct. 12, 2016).

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Jason Caplan, Director, Office of Regulation and Policy Coordination, Maryland Department of Health, 201 West Preston Street, Room 512, Baltimore, MD 21201, or call 410-767-6499 TTY: 800-735-2258, or email to mdh.regs@maryland.gov, or fax to 410-767-6483. Comments will be accepted through . A public hearing has not been scheduled.

Economic Impact Statement Part C

- A. Fiscal Year in which regulations will become effective: FY 2022
- B. Does the budget for the fiscal year in which regulations become effective contain funds to implement the regulations?
- C. If 'yes', state whether general, special (exact name), or federal funds will be used:

D. If 'no', identify the source(s) of funds necessary for implementation of these regulations:

E. If these regulations have no economic impact under Part A, indicate reason briefly:

The regulations have no economic impact because they simply codify the policies and procedures already in place to implement the provisions of the settlement agreement identified above.

F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.

The regulations have no economic impact on small businesses because they simply codify the policies and procedures already in place to implement the provisions of the settlement agreement identified above and because they apply only to certain State facilities.

G. Small Business Worksheet:

Attached Document:

Title 10

MARYLAND DEPARTMENT OF HEALTH

Subtitle 01 PROCEDURES

10.01.18 Sexual Abuse Awareness and Prevention Training

Authority: Health-General Article, §§2-104, 7.5-205, 7-1002, and 10-705, Annotated Code of Maryland

.02 Definitions.

A. (text unchanged)

B. Terms Defined.

[(1) Abusive Sexual Act.

(a) "Abusive sexual act" means any sexual act, as defined in §B(8) of this regulation, that is made or threatened to be made without consent of the individual who is the recipient of the action.

(b) "Abusive sexual act" includes sexual harassment, sexual assault, and any other sexual action prohibited by State or federal law.

(2) "Covered program" means any of the following facilities and programs:

- (a) State facility — psychiatric, licensed under COMAR 10.07.01;
- (b) Forensic residential centers (FRCs), licensed under COMAR 10.07.13;
- (c) Intermediate care facilities for individuals with intellectual disabilities, licensed under COMAR 10.07.20;
- (d) State-operated residential treatment centers for emotionally disturbed children and adolescents, licensed under COMAR 10.07.04;
- (e) Vocational and day services programs, licensed by the Developmental Disability Administration (DDA) under COMAR 10.22.07;
- (f) Psychiatric rehabilitation programs for adults, licensed by the Behavioral Health Administration (BHA) under COMAR 10.21.21;
- (g) Residential rehabilitation programs licensed by BHA under COMAR 10.21.22;
- (h) Mental health vocational programs licensed by BHA under COMAR 10.21.28; and
- (i) Psychiatric rehabilitation programs for minors licensed by BHA under COMAR 10.21.29.]

(1) "Admission" means the process by which an individual is accepted as a resident or patient in a State facility and includes the physical act of the individual entering the State facility.

(2) "Central Coordinator" means an individual or individuals designated by the Deputy Secretary for the unit of the Department responsible for the operations of each State facility to:

- (a) Oversee development of policies and materials;
- (b) Monitor compliance; and
- (c) Identify and make recommendations for improving a State facility's prevention and detection of, and response to, inappropriate sexual behavior in State facilities.

(3) "Covered program" means any of the following facilities and programs:

- (a) A State facility as defined in §B(22) of this regulation;
- (b) Non-State operated residential treatment centers for emotionally disturbed children and adolescents, licensed under COMAR 10.07.04;

(c) Vocational and day services programs, licensed by the Developmental Disabilities Administration under COMAR 10.22.02 and 10.22.07;

(d) The following programs licensed by the Behavioral Health Administration:

- (i) Psychiatric rehabilitation programs for adults licensed under COMAR 10.63.03.09;
- (ii) Residential rehabilitation programs licensed under COMAR 10.63.04.05;
- (iii) Supported Employment Programs licensed under COMAR 10.63.03.16; and
- (iv) Psychiatric rehabilitation programs for minors licensed under COMAR 10.63.03.10.

(4) "Department" means the Maryland Department of Health.

(5) "External Law Enforcement Agency."

(a) "External law enforcement agency" means the Department of State Police or a police agency of a county or municipal corporation.

(b) "External law enforcement agency" does not include the police force of the Maryland Department of Health.

[(3)] (6) "Inappropriate sexual behavior" means:

(a) [Any sexual act.] Sexual abuse as defined in §B(17) of this regulation[, between any staff member and any individual receiving services from the covered program]; and

(b) Any [abusive] sexual act, as defined in [§B(1)] §B(18) of this regulation, between [any individual served by the covered program and any other individual, including another individual served by the program] a staff member of a covered program and an individual receiving services at the covered program.

(7) "Individual" means a person receiving services or treatment at a State facility.

(8) "Initial plan of care" means the first plan of care created for an individual by the treatment team and is created at the first treatment team meeting.

[(4)] (9)—[(6)] (11) (text unchanged)

(12) "Plan of care" means a written document addressing the needs of the individual receiving services from a covered program, and the covered program's plan for provision of services and treatment to meet those needs, developed in accordance with applicable State and federal laws and regulations.

[(7)] (13) (text unchanged)

(14) "Protection plan" means a document created to address the individual's needs, with respect to the individual's:

(a) Risk of being subjected to the perpetrator of inappropriate sexual behavior at the facility; and

(b) Treatment team's plan for mitigating the individual's risk.

(15) "Risk assessment screen" means a uniform tool, developed by the Department, used by a facility to:

(a) Screen an individual for a history of being subjected to, or perpetrating, inappropriate sexual behavior, and related trauma; and

(b) Assess an individual's risk of being subjected to, or perpetrating, inappropriate sexual behavior while at the facility.

(16) Reasonable Safety Precautions.

(a) "Reasonable safety precautions" means an established set of measures, procedures, and protocols taken in order to maintain the safety of individuals upon admission to the State facility.

(b) Reasonable safety precautions may include but are not limited to:

- (i) Unit restriction, including dining on the unit;
- (ii) Increased nursing contacts or more frequent observation by nurses;
- (iii) Restrictions on activities;
- (iv) Increased staffing assigned to the individual; and
- (v) Similar or additional measures implemented.

(c) The type of reasonable safety precautions implemented and the reason for the reasonable safety precautions shall be documented in the individual's records.

[(8)] "Sexual act" means any of the following, if it is performed for the purpose of arousing sexual thoughts or feelings, or sexual dominance or power, and not for purposes related to the provision of care:

(a) Intentional physical contact, either directly or through clothing, between the genitals, finger or fingers, hand or hands, or mouth of one individual and the genitals, groin, inner thigh, buttocks, anus, breast, or mouth of another;

- (b) Intentional physical contact between the tongue or mouth of one individual and any part of the body of another individual;
- (c) Attempt to make physical contact between the genitals, finger or fingers, hand or hands, or mouth of one individual and the genitals, groin, inner thigh, buttocks, anus, breast, or mouth of another individual;
- (d) Attempt to make physical contact between the tongue or mouth of one individual and any part of the body of another individual;
- (e) The following nonphysical contacts:
 - (i) The intentional exposure by an individual to another of the individual's naked genitals, groin, inner thigh, buttocks, anus, or breast;
 - (ii) The intentional exposure by an individual to another of photographs of an individual's naked genitals, groin, inner thigh, buttocks, anus, or breast;
 - (iii) The intentional observation by an individual of another individual's naked genitals, groin, inner thigh, buttocks, anus, or breast;
 - (iv) Verbal or written description of, questions or suggestions regarding, or requests for any of the physical contacts described in §B(8)(a) and (b) of this regulation;
 - (v) Photographing, drawing, transmitting an image of, or recording the naked body or body parts of another individual;
 - (vi) Intentionally exposing an individual to photographs, pictures, drawings, diagrams, or other graphic depictions of naked body or body parts of an individual; and
 - (vii) Intentionally causing another individual to make or attempt any of the physical contacts described in §B(8)(a) and (b) of this regulation; and
- (f) Other intentional acts directed to another individual and performed for the purpose of arousing sexual thoughts or feelings and not for purposes related to the provision of care.]

(17) "Sexual abuse" means any sexual act, as defined in §B(18) of this regulation, that is made or threatened to be made without the consent of an individual who is the recipient of the action, or without the consent of an individual solicited to take the action, which occurs on the premises of a covered program or at any off-premises activity sponsored by the covered program.

- (a) "Sexual abuse" includes sexual harassment and sexual assault.
- (b) Sexual abuse does not include an action taken reasonably related to the provision of care, treatment, or services to an individual including:
 - (i) The performance of an accepted medical or behavioral procedure pursuant to and in accordance with orders of an appropriately qualified licensed health care professional; and
 - (ii) An action taken by a staff member that complies with applicable laws and policies on the use of physical intervention.

(18) "Sexual act" means any of the following, if it can reasonably be construed to be for sexual arousal or gratification, or for the abuse of either party, not for an accepted medical or behavioral purpose:

- (a) An act in which an object or part of an individual's body penetrates, however slightly, into another individual's genital opening or anus;
- (b) Intentional physical contact, or an attempt to make physical contact, either directly or through clothing, between the genitals, finger or fingers, hand or hands, or mouth of one individual and the genitals, groin, inner thigh, buttocks, anus, breast, or mouth of another individual;
- (c) Intentional physical contact, or an attempt to make physical contact, between the tongue or mouth of one individual and any part of the body of another individual;
- (d) The following nonphysical contacts:
 - (i) The intentional exposure by an individual to another of the individual's naked genitals, groin, inner thigh, buttocks, anus, or breast;
 - (ii) The intentional exposure by an individual to another of photographs of an individual's naked genitals, groin, inner thigh, buttocks, anus, or breast;
 - (iii) The intentional observation by an individual of another individual's naked genitals, groin, inner thigh, buttocks, anus, or breast;
 - (iv) Verbal or written description of, questions or suggestions regarding, or requests for any of the physical contacts described in §B(18)(a)–(c) of this regulation;
 - (v) Photographing, drawing, transmitting an image of, saving an image of, or recording the naked body or body parts of another individual;
 - (vi) Intentionally exposing an individual to photographs, pictures, drawings, diagrams, or other graphic depictions of naked body or body parts of an individual; and
 - (vii) Intentionally causing another individual to make or attempt any of the physical contacts described in §B(18)(a)–(c) of this regulation; and
- (e) Other intentional acts directed to another individual and performed for the purpose of arousing sexual thoughts or feelings and not for purposes related to the provision of care.

(19) "Sexual assault" means any of the following:

- (a) A sexual offense as defined in Criminal Law Article, Title 3, Annotated Code of Maryland; and

(b) Any other sexual act that is a crime under State or federal law.

(20) "Sexual harassment" means intimidation, bullying, or coercion of a sexual nature or unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that tends to create a hostile or offensive environment.

[9] (21) (text unchanged)

(22) "State facility" means the following institutions operated by the Department:

(a) A psychiatric hospital, licensed pursuant to COMAR 10.07.01;

(b) An intermediate care facility for individuals with developmental disabilities licensed pursuant to COMAR 10.07.20;

(c) A forensic residential center, licensed pursuant to COMAR 10.07.13; and

(d) Regional Institutes for Children and Adolescents licensed and operated pursuant to COMAR 10.07.04 and COMAR 10.21.06.

(23) "Treatment team" means the group of individuals at the covered program who, in accordance with applicable State and federal law and regulations, are responsible for the development and implementation of a plan of care for an individual receiving services from the covered program.

.03 Covered Program Policies.

A. A covered program shall ensure that the covered program has adopted and enforces policies that:

(1) Are approved in the course of licensing the program;

(2) Prohibit inappropriate sexual behavior that occurs:

(a) Anywhere, between a staff member and an individual served by the covered program; and

(b) On the premises of the covered program or at any off-premises activity sponsored by the covered program, between:

(i) Individuals served by the covered program; or

(ii) An individual served by the covered program and another individual;

(3) Require reporting of inappropriate sexual behavior, regardless of where it occurs; and

(4) Provide for training of staff members and individuals receiving services on the:

(a) Meaning of "inappropriate sexual behavior"; and

(b) Policies required by this chapter, including all reporting requirements.

B. Staff training conducted in accordance with this chapter shall be:

(1) Completed during new employee orientation;

(2) Updated on an annual basis; and

(3) Documented in the staff members' personnel training files.

C. Training conducted in accordance with this chapter for individuals receiving services shall be:

(1) Offered in language and terms, and using methods, appropriate to the ability of the individual being served to understand;

(2) Provided to an individual served by a covered program in two stages, as follows:

(a) Key facts regarding identifying inappropriate sexual behavior and how to report it shall be provided within 5 days after initiation of services to the individual; and

(b) Comprehensive training as set out in this regulation shall be provided to the individual as soon as practical but no later than 6 months after initiation of services to the individual;

(3) Updated on an annual basis; and

(4) Documented in the individual's plan.]

A. *This regulation applies to the following covered programs as defined in Regulation .02 of this chapter:*

(1) State facilities;

(2) Vocational and day service programs;

(3) Psychiatric rehabilitation programs for adults and minors;

(4) Residential rehabilitation programs; and

(5) Supported employment programs.

B. *A covered program shall ensure that the covered program adopts and enforces policies that:*

(1) *Prohibit inappropriate sexual behavior that occurs while an individual is receiving services from a covered program:*

(a) Between a staff member and an individual served by the covered program; and

(b) On the premises of the covered program or at any off-premises activity sponsored by the covered program, between:

(i) Individuals served by the covered program; or

(ii) An individual served by the covered program and another individual or individuals;

(2) Require reporting of inappropriate sexual behavior in accordance with the requirements of Regulations .05 and .06 of this chapter; and

(3) Provide for training of staff members and individuals receiving services in accordance with Regulation .04 of this chapter.

.04 Training Requirements.

A. This regulation applies to the following covered programs as defined in Regulation .02 of this chapter:

- (1) *State facilities;*
- (2) *Vocational and day service programs;*
- (3) *Psychiatric rehabilitation programs for adults and minors;*
- (4) *Residential rehabilitation programs; and*
- (5) *Supported employment programs.*

[A.] B. A covered program shall include awareness and prevention training on inappropriate sexual behavior as part of the established orientation process for:

- (1) *[Program staff, including volunteers and students] Staff members; and*
- (2) *Individuals receiving services from the covered program.*

[B. The inappropriate sexual behavior awareness and prevention training module may be provided by the covered program or its contractor.

C. The inappropriate sexual behavior awareness and prevention training module shall:

- (1) *Be pre-approved by the Director of the Developmental Disabilities Administration, or of the Director of the Behavioral Health Administration, or their designees, as applicable;*
- (2) *Include, but not be limited to:*
 - (a) *An overview of inappropriate sexual behavior, including:*
 - (i) *Types and definitions of inappropriate sexual behavior; and*
 - (ii) *Trauma of inappropriate sexual behavior and its long-range effects;*
 - (b) *Types and characteristics of inappropriate sexual behavior, including:*
 - (i) *Signs and symptoms of inappropriate sexual behavior;*
 - (ii) *Mandated reporting procedures regarding inappropriate sexual behavior; and*
 - (iv) *Confidentiality of information as it applies to inappropriate sexual behavior;*
 - (c) *Individuals' rights and responsibilities with regard to inappropriate sexual behavior;*
 - (d) *Crisis intervention, as appropriate;*
 - (e) *Referral resources and methods; and*
 - (f) *An element of peer training, unless disapproved by an individual's treatment team for reasons that are documented in the individual's treatment plan; and*
- (3) *Be tailored to the individual's abilities.]*

C. The inappropriate sexual behavior awareness and prevention training module:

- (1) *May be provided by the covered program or its contractor; and*
- (2) *Shall be pre-approved by the Developmental Disabilities Administration or Behavioral Health Administration, as applicable.*

D. Staff member training conducted in accordance with this regulation shall:

- (1) *Include, but not be limited to:*
 - (a) *An overview of inappropriate sexual behavior, including:*
 - (i) *Types and definitions of inappropriate sexual behavior; and*
 - (ii) *Trauma of inappropriate sexual behavior and its long-range effects;*
 - (b) *Types and characteristics of inappropriate sexual behavior, including signs and symptoms of inappropriate sexual behavior;*
 - (c) *Risk screening, protection plans, and prevention and detection measures for State facilities in accordance with Regulation .07 of this chapter;*
 - (d) *Mandated reporting procedures, including the requirements of Regulations .05 and .06 of this chapter, regarding inappropriate sexual behavior; and*
 - (e) *Confidentiality of information as it applies to inappropriate sexual behavior;*
- (2) *Be completed during new employee orientation;*
- (3) *Be updated on an annual basis; and*
- (4) *Be documented in the staff members' personnel training files.*

E. Training for Individuals.

- (1) *Training conducted in accordance with this regulation for individuals receiving services shall:*
 - (a) *Be offered in language and terms, and using methods, appropriate to the ability of the individual being served to understand;*
 - (b) *Include an element of peer training, unless disapproved by an individual's treatment team for reasons that are documented in the individual's records;*
 - (c) *Be tailored to the individual's abilities;*
 - (d) *Be provided to an individual served by a covered program in two stages, as follows:*
 - (i) *Key facts regarding identifying inappropriate sexual behavior and how to report it shall be provided within 5 days after initiation of services to the individual; and*
 - (ii) *Comprehensive training as set out in this regulation shall be provided to the individual as soon as practical but no later than 6 months after initiation of services to the individual;*
 - (e) *Be updated on an annual basis; and*
 - (f) *Be Documented in the individual's Plan of Care.*

(2) Training conducted in accordance with this regulation for individuals receiving services shall include, but not be limited to:

- (a) The individuals' rights and responsibilities with regard to inappropriate sexual behavior, including the right to be free from retaliation and further harm for reporting inappropriate sexual behavior;
- (b) Identifying and reporting inappropriate sexual behavior;
- (c) Crisis intervention, as appropriate; and
- (d) Referral resources and methods.

.05 Mandatory Reporting Requirements.

A. This regulation applies to the following covered programs as defined in Regulation .02 of this chapter:

- (1) Non-State operated residential treatment centers for emotionally disturbed children and adolescents;
- (2) Vocational and day service programs;
- (3) Psychiatric rehabilitation programs for adults and minors;
- (4) Residential rehabilitation programs; and
- (5) Supported employment programs.

[A.] B. A covered program shall comply with the reporting requirements of:

- (1) (text unchanged)
- (2) COMAR 07.02.07.04; [and]
- (3) This [chapter.] regulation; and

(4) Any other applicable law or regulation requiring the reporting of inappropriate sexual behavior.

[B.] C. Any staff member who observes, receives a complaint regarding, or otherwise has reason to believe that an individual has been subjected to[,] inappropriate sexual behavior shall file a report with the program director promptly, but in no circumstances more than 1 working day, after becoming aware of the situation.

[C.] D. Upon the receipt of a report made under [§B] §C of this regulation, the program director shall:

- (1) (text unchanged)
- (2) Report the incident within 1 working day after receiving the report to:
 - (a)—(b) (text unchanged)
 - (c) The State's [Designated Protection and Advocacy System] designated protection and advocacy agency.
- (3) (text unchanged)

[D.] E. (text unchanged)

[E.] F. Promptly after completing an investigation of a report of inappropriate sexual behavior, the [Program Director] program director shall report the results of the investigation to:

- (1) The Behavioral Health Administration or the Developmental Disabilities Administration[, or both, as applicable;] in accordance with applicable reporting procedures required by the Department;
- (2) (text unchanged)
- (3) The State's [Designated Protection and Advocacy System] designated protection advocacy agency; and
- (4) If the results indicate a violation of criminal law, law enforcement authorities.]
(4) The appropriate law enforcement authorities if the results of the covered program's investigation indicate a violation of the law may have occurred, but the allegations were not initially reported pursuant to §D(3) of this regulation because the allegations, as initially reported, did not involve inappropriate sexual behavior that may violate the law.

.06 Reporting Requirements for State Facilities.

A. This regulation applies to State facilities.

B. For purposes of this regulation, "discovery" means staff observes, receives a complaint from an individual or other source, or otherwise has reason to believe that inappropriate sexual behavior has occurred.

C. A State facility shall comply with the reporting requirements of:

- (1) COMAR 07.02.16.04;
- (2) COMAR 07.02.07.04;
- (3) This chapter; and

(4) Any other applicable law or regulation requiring the reporting of inappropriate sexual behavior.

D. Policies and Training.

(1) The facility shall adopt and enforce written policies and procedures for the reporting and investigation of inappropriate sexual behavior in accordance with the requirements set forth in this regulation and Regulation .03 of this chapter.

(2) The facility shall provide training to staff members, upon hire and annually thereafter, regarding facility policies and procedures governing the prevention, reporting, and investigation of allegations of inappropriate sexual behavior in accordance with this regulation and Regulation .04 of this chapter, including:

- (a) Understanding the provisions of the Memorandum of Understanding;
- (b) Transporting individuals for medical care or to a SAFE exam, including how to support the individual during transportation and actions that may be taken to avoid the use of restraint;
- (c) Preservation of evidence; and

(d) Counseling alleged victims, including regarding emergency contraception, prophylaxes for HIV or other sexually transmitted infections, and follow-up medical care or appointments.

E. Reporting and Investigation of Inappropriate Sexual Behavior.

(1) Facility staff members shall notify the administrative head of the facility, or the designee, of an allegation of inappropriate sexual behavior, immediately, but no later than 24 hours, from staff's discovery of the allegation.

(2) The notification required in §E(1) of this regulation shall be made on the form or in the manner designated by the Department.

(3) Upon receipt of the notification in §E(1) of this regulation, the administrative head of the facility, or their designee, shall, within 24 hours of staff's discovery of the allegation, provide written notice of the allegation to the:

- (a) Office of Health Care Quality;
- (b) Central coordinator;
- (c) State-designated protection and advocacy agency;
- (d) Treatment teams of the individuals involved in the allegation; and
- (e) Appropriate law enforcement agency as set forth in §F of this regulation.

(4) If the administrative head of the facility or the central coordinator has a conflict of interest in receiving the notification, facility staff members shall report the incident to another individual designated by the facility in the event of such conflict of interest.

F. Notification to Law Enforcement.

(1) The facility shall notify the appropriate external law enforcement agency, within 24 hours of discovery by the facility, of:

(a) An allegation of sexual assault occurring on the facility premises or at any off-premises activity sponsored by the facility between individuals served by the facility or an individual served by the facility and another individual; or

(b) An allegation of inappropriate sexual behavior between a staff member and an individual served by the State facility, regardless of the location of the incident.

(2) Except as provided in §F(1)(b) of this regulation, allegations of inappropriate sexual behavior that are not criminal shall be reported to the Department's police force for further investigation.

(3) The Department's police force shall refer the allegations to the administrative head of the facility for further investigation as appropriate.

(4) An individual shall be permitted to report an allegation of inappropriate sexual behavior that is not criminal to an external law enforcement agency or complete a statement of charges with the district court commissioner.

G. Regional Institutes for Children and Adolescents.

(1) Allegations of inappropriate sexual behavior on the premises of a Regional Institute for Children and Adolescents that are not criminal shall be referred to the administrative head of the Regional Institute for Children and Adolescents for further investigation.

(2) Allegations of sexual assault and inappropriate sexual behavior between an individual and a staff member shall be reported under §F(1) of this regulation.

(3) The Regional Institute for Children and Adolescents shall report allegations of inappropriate sexual behavior to Child Protective Services pursuant to COMAR 07.02.07.

(4) The Department police force shall not investigate a report of inappropriate sexual behavior made to an external law enforcement agency in accordance with §F(1) of this regulation unless the external law enforcement agency declines to investigate the report or requests the assistance of the Department police force.

(5) Upon the receipt of the notification made under §E of this regulation, the treatment team or teams of the alleged victim and alleged perpetrator, if applicable, shall:

(a) Review, and if appropriate, update the risk assessment screens and protection plans of the individuals involved in the allegation in accordance with Regulation .07G of this chapter;

(b) Review, and if appropriate, revise the plans of care of the individuals involved in the allegation in accordance with Regulation .07G of this chapter;

(c) Notify the central coordinator of the results of the treatment team's review and assessment under this subsection;

(d) Take other appropriate action to ensure:

(i) The safety, privacy, and emotional support of the individual or individuals involved; and

(ii) That any medically appropriate and necessary care is provided to the individual or individuals involved; and

(e) Document the reported allegations and the results of any investigation of the allegations in the record of the individuals involved.

(6) The facility and Department police shall investigate allegations of inappropriate sexual behavior in accordance with the following requirements:

(a) A facility staff member or Department police officer may not participate in, or conduct, an investigation of an allegation of inappropriate sexual behavior if that staff member or officer, or the staff member's immediate family member, was involved in the incident or incidents underlying the allegation; and

(b) The facility shall comply with applicable laws and regulations governing the confidentiality of an individual's information.

(7) Promptly after completing an investigation of a report of inappropriate sexual behavior, the facility shall report the results of the facility's investigation to the:

- (a) Appropriate unit of the Department as required by applicable statutes or regulations;
- (b) Office of Health Care Quality; and
- (c) State's designated protection and advocacy agency.

. Annual Report.

(1) The central coordinator shall report annually to the Deputy Secretary for the unit within the Department which oversees the operations of each State facility on the following:

(a) Development of policies and materials to implement the requirements of Regulations .06 and .07 of this chapter;

(b) Suggested revisions to the uniform assessment and reporting forms required in Regulations .06 and .07 of this chapter;

(c) Compliance with the assessment and reporting requirements of Regulations .06 and .07 of this chapter;

(d) Compliance with the training requirements of Regulations .06 and .07 of this chapter;

(e) Identification of barriers to compliance with the requirements of Regulations .06 and .07 of this chapter;

and

(f) Recommendations to improve prevention, detection, and response by State facilities to inappropriate sexual behavior.

(2) A copy of the report shall be provided to the State designated protection and advocacy agency.

.07 Additional Requirements for State Facilities.

A. This regulation applies to State facilities.

B. Screening and Prevention Policies.

(1) The facility shall adopt and enforce written policies and procedures for ensuring the facility screens for, and takes reasonable steps to mitigate, an individual's risk of being subjected to, or the perpetrator of, inappropriate sexual behavior in accordance with the requirements set forth in this chapter.

(2) The facility shall provide training to staff members, upon hire and annually thereafter, regarding:

(a) The policies and procedures governing the risk screening, protection plans, and

(b) Detection and prevention of inappropriate sexual behavior in accordance with this chapter.

(3) The Department shall utilize a uniform risk assessment screening tool.

C. Required Processes Upon Admission to Facility.

(1) As soon as practicable, but no later than 3 business days after the individual's admission, the facility shall make reasonable efforts to collect the individual's medical and treatment records in accordance with §H of this regulation.

(2) The facility shall implement reasonable safety precautions upon the individual's admission.

(3) Within 48 hours of the individual's admission, clinical staff shall:

(a) Complete a risk assessment screen of the resident, in accordance with §D of this regulation;

(b) Complete a suicide risk assessment; and

(c) If necessary, modify the reasonable safety precautions to mitigate the risks identified in the risk assessment screen.

(4) Within 5 days after the individual's admission, the treatment team shall meet to:

(a) Review and, if appropriate, update the risk assessment screen;

(b) Determine if a protection plan is necessary, based upon review of the risk assessment screen and, if so, develop a protection plan, in accordance with §E of this regulation; and

(c) Develop the initial plan of care in accordance with §F of this regulation.

D. Risk Assessment Screen.

(1) To complete the risk assessment screen, clinical staff shall:

(a) Use the form required by the Department;

(b) Interview the individual; and

(c) Document the individual's responses regarding:

(i) The individual's history of trauma and other issues relevant to the individual's risk of being subjected to, or the perpetrator of, inappropriate sexual behavior in the facility;

(ii) Whether the individual feels safe in the facility, including why or why not; and

(iii) What the individual believes would make them feel safe in the facility.

(2) If the individual cannot be interviewed, the clinical staff shall document the reason on the risk assessment screen form.

E. Protection Plan.

(1) The treatment team shall develop a protection plan if the treatment team determines that it is necessary to mitigate the risk identified in the risk assessment screen.

(2) The protection plan shall be completed on the form required by the Department.

(3) If a protection plan is determined to not be necessary to mitigate the risk identified in the risk assessment screen, the rationale shall be documented in the risk assessment screen.

(4) If an individual in a State facility has a behavior plan that includes the elements required in a protection plan, the behavior plan shall satisfy the requirements of this regulation and shall be labelled as a behavior and protection plan.

F. Plan of Care.

(1) When developing the initial plan of care, the treatment team shall:

(a) Review and, if appropriate, update the risk assessment screen based upon the information available to the treatment team; and

(b) Include a protection plan, if appropriate, pursuant to §E of this regulation;

(2) The initial and all subsequent plans of care shall:

(a) Incorporate the risk assessment screen and, if applicable, the protection plan;

(b) Include consideration of the effect of trauma on the individual; and

(c) Be authorized by a physician, psychiatrist, or other appropriately qualified person under applicable legal and operational standards.

(3) The plan of care shall be reviewed at least every 3 months and whenever an individual's risk assessment screen is updated.

G. Review and Update of Risk Assessment Screens and Protection Plans.

(1) The treatment team shall review the risk assessment screen, and update if necessary, every 3 months as part of the plan of care review.

(2) The risk assessment may be reviewed more frequently if warranted by any new allegation of inappropriate sexual behavior or if additional information regarding risk factors is received by the treatment team.

(3) The plan of care shall be reviewed when the risk assessment is updated.

(4) The protection plan shall be reviewed and updated as needed or whenever the risk assessment is updated and when the plan of care is reviewed.

(5) When reviewing the protection plan, the treatment team shall consider:

(a) Effectiveness of strategies to reduce risk;

(b) Whether new or modified strategies are warranted; and

(c) The individual's desires regarding the protection plan.

H. Medical and Other Records.

(1) The facility shall designate the staff member or members responsible for collecting the individual's medical records in accordance with this subsection.

(2) The facility shall make reasonable and documented efforts to collect medical records from the individual's prior and current health care providers in accordance with this subsection, including:

(a) Discharge summaries from all hospitals where the individual received treatment in the 3 years before the individual's admission to the facility; and

(b) Somatic and other health assessments performed in the 3 years before the individual's admission to the facility.

(3) The facility shall make reasonable and documented efforts to collect any other significant records identified by the facility that the treatment team determines are clinically necessary to develop and implement the individual's plan of care.

(4) Facilities shall make reasonable and documented efforts to collect information from the following sources related to the individual's risk for being a victim or perpetrator of inappropriate sexual behavior, provision of trauma related care or treatment, or the individual's reduced decision-making capacity, as authorized by law:

(a) Other State facilities;

(b) Local jails or detention centers and facilities operated by the Department of Public Safety and

Correctional Services;

(c) The Department of Juvenile Services;

(d) Local Departments of Social Services, to identify other sources;

(e) Private hospitals and clinics; and

(f) Any persons known to the Department to have knowledge to identify other sources, including sources indicated on the responses to the risk assessment screen.

(5) Facilities shall access records in electronic databases whenever possible and as such data bases become available.

(6) The facility shall comply with applicable laws and regulations governing the confidentiality and release of medical and other personal information pursuant to applicable State and federal laws and regulations.

[.06].08 Internal Complaint Process.

A. This regulation applies to the following covered programs as defined in Regulation .02 of this chapter:

(1) Vocational and day service programs;

(2) Psychiatric rehabilitation programs for adults and minors;

(3) Residential rehabilitation programs; and

(4) Supported employment programs;

[A.] B. A covered program shall:

(1) Adopt and maintain an internal complaint process as defined in [this chapter] *Regulation .02 of this chapter*;

(2) Provide a copy of the covered program's written internal complaint process to each individual receiving services from the covered program:

(a) (text unchanged)

(b) At any time upon an individual's request; [and]

(3) Prominently display, in accessible, centralized locations, the covered program's internal complaint process[.];

(4) *Develop and maintain a form to use to make a complaint of inappropriate sexual behavior; and*

(5) *Have available a staff member who is not involved in the alleged inappropriate sexual behavior to assist the individual in completing the complaint form.*

[B.] A covered program shall:

(1) Develop and maintain a form to use to report inappropriate sexual behavior; and

(2) Have available a staff member who is not involved in the alleged inappropriate sexual behavior to assist in completing the reporting form.]

B. State facilities shall comply with the procedures set forth in COMAR 10.21.14.

C. The internal complaint process shall:

(1)—(3) (text unchanged)

[4) Require that the review and investigation of a complaint of inappropriate sexual behavior be initiated immediately by the covered program after the program manager's receipt of the complaint, unless a State or local law enforcement unit or a child protection services unit has been notified of and is investigating the incident, in which case the program may not initiate an internal investigation until the external investigating unit has completed its investigation or has determined that its investigation would no longer be adversely affected by the internal investigation;]

[5)] (4) Require that the *covered program*'s investigation of a complaint of inappropriate sexual behavior be completed within 7 calendar days after the investigation is initiated;

[6)] (5)—[(10)] (9) (text unchanged)

D. (text unchanged)

DENNIS R. SCHRADER

Secretary of Health