



# PREA Standards Comparison

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**Reviewing the Changes in the  
New Attorney General Standards**



## Presenters

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# Purpose

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- Highlight changes in standards
- Assist agencies/facilities in developing comments
- Interpretation will come from DOJ documents
- April 4 deadline for submission of comments
- Comment at [www.regulations.gov](http://www.regulations.gov),  
Docket ID: DOJ-OAG-2011-0002



# PREVENTION PLANNING



## § 115.311 Zero-Tolerance of Sexual Abuse; PREA Coordinator

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- Corresponds to NPREC Standard PP-1
- **Modification:** Includes sexual harassment in zero-policy statement
- **Addition:** Agency must outline its approach to preventing, detecting, and responding to sexual abuse and sexual harassment in policy
- **Addition:** PREA Coordinator must be an upper level staff and operate agency wide
  - If agency has >1000 residents, the PREA Coordinator must be a full-time position; each facility must have a PREA Coordinator
  - If the agency has >1000 residents, each facility must be assigned its own PREA Coordinator (full or part-time)



## DOJ Question

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- Should DOJ modify the full-time coordinator requirement to allow additional flexibility, such as by requiring only that PREA be the coordinator's primary responsibility, or by allowing the coordinator also to work on other related issues, such as inmate safety more generally?



## § 115.312 Contracting With Facilities for the Confinement of Residents

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- Corresponds to NPREC Standard PP-2
- **Modification:** New standard only applies to new contracts or contract renewals, but not to existing contracts.
  - New contracts or renewals must include an obligation to adopt or comply with the PREA standards
- **Addition:** All new contracts or contract renewals must include agency contract monitoring to ensure that the contractor is complying with PREA standards
- **DOJ Question:** Should DOJ provide greater guidance as to how agencies should conduct contract monitoring and, if so, what guidance should be provided?



# 115.313 Supervision and Monitoring

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- Corresponds to NPREC Standards PP-3 and PP-7
- Sweeping changes
- **Addition:** Considerations that agencies must take into account when determining staffing levels and video monitoring systems:
  - Physical layout of the building
  - Resident population
  - Other relevant factors
- **Addition:** Plan for conduct of staffing and video monitoring in circumstances where adequate levels are not attained



# 115.313 Supervision and Monitoring

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- **Modification:** Each year, the facility shall assess and determine whether adjustments are needed to:
  - Staffing levels
  - Prevailing staffing patterns; and
  - The agency's deployment of video monitoring systems and other technologies
- **Addition:** Intermediate or higher-level supervisors must conduct and document unannounced rounds on both night and day shifts.



# DOJ Questions

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- Should the standard require that facilities actually provide a certain level of staffing? If so, how?
- If a staffing level such as “adequacy” were mandated, how would compliance be measured?
- Various states have regulations that require agencies to set or abide by minimum staffing requirements. To what extent, if any, should the standard take into account such State regulations?



## DOJ Questions

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- Some States mandate specific staff-to-resident ratios for certain types of juvenile facilities. Should the standard mandate specific ratios for juvenile facilities?
- If a level of staffing were mandated, should the standard allow agencies a longer time frame, such as a specified number of years, in order to reach that level? If so, what time frame would be appropriate?



## DOJ Questions

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- Should the standard require the establishment of priority posts, and if so, how should such a requirement be structured and assessed?
- To what extent can staffing deficiencies be addressed by redistributing existing staffing requirements? Should the standard include additional language to encourage such redistribution?



## DOJ Questions

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- If DOJ does not mandate the provision of a certain level of staffing, are there other ways to supplement or replace the Department's proposed standard in order to foster appropriate staffing?
- Should DOJ mandate the use of technology to supplement sexual abuse prevention, detection, and response efforts?
- With regard to mandated supervisory rounds, should the standard mandate a minimum frequency for the conduct of such rounds and if so, what should it be?



## § 115.314 Limits to Cross-Gender Viewing and Searches

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- Corresponds to NPREC standard PP-4
- **Modification:** Allows for non-emergency cross-gender strip and body cavity searches when performed by medical practitioners and emergency strip and body cavity searches by nonmedical nonmedical staff.
- All cross-gender strip and body cavity searches must be documented.
- **Modification:** Requires policy and procedure to place strictions on nonmedical staff viewing a resident's breasts, buttocks, or genitalia, except in the case of emergency, by accident, or when such viewing is incidental to routine room checks



## § 115.314 Limits to Cross-Gender Viewing and Searches

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- **Addition:** All cross-gender pat-down searches must be documented and justified.
- **Addition:** Agency shall train security staff in how to conduct cross-gender pat-down searches and searches of transgender residents:
  - In a professional and respectful manner
  - In the least intrusive manner possible
  - Consistent with security needs



## DOJ Question

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- Should the final rule contain any additional measures regarding oversight and supervision to ensure that pat-down searches, whether cross-gender or same-gender, are conducted professionally?



## § 115.315 Accommodating Residents with Special Needs

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- Corresponds to NPREC Standard PP-5
- Changes are not substantive
- **DOJ Question:** Should the final rule include a requirement that inmates with disabilities and LEP inmates be able to communicate with staff throughout the entire investigation and response process? If such a requirement is included, how should agencies ensure communication throughout the process?



## § 115.316 Hiring and Promotion Decisions

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- Corresponds to NPREC Standard PP-6
- **Addition:** Agency shall not hire or promote anyone civilly or administratively adjudicated to have engaged in sexual abuse
- **Removal:** Requirement for conducting background checks on staff being promoted
- **Addition:** Must conduct criminal background checks of current employees at least every 5 years or have in place a system for otherwise capturing such information
- **Modification:** Agency must ask all applicants and employees about previous misconduct in both hiring and promotions in written applications, interviews and self-evaluations
- **Addition:** Omissions, or the provision of false information, shall be grounds for termination
- **Addition:** Unless prohibited by law, the agency shall provide information on substantiated allegations of sexual abuse upon receiving a request from an institutional employer



## § 115.317 Upgrades to Facilities and Technologies

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- New standard
- Requires agencies to consider impact of design of facilities, expansion and modifications on agency's ability to protect residents from sexual abuse
- When installing or updating monitoring technology, the agency must consider how the new technology will enhance agency's ability to protect residents from sexual abuse
- **Note:** Does not require the use of monitoring technology (cost)



# RESPONSIVE PLANNING



## § 115.321 Evidence Protocol and Forensic Medical Exams

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- Corresponds to NPREC Standard RP-1
- **Modification:** Allows agencies to provide victims with a qualified staff member in addition to a victim advocate from a community-based organization that provides services to sexual abuse victims.
- **Addition:** If the agency itself is **not** responsible for investigating allegations of sexual abuse, the agency shall inform the investigating entity of the requirements of the standard.



## § 115.321 Evidence Protocol and Forensic Medical Exams

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- **Addition:** Specifies that this standard also applies to
  - Any State entity outside of the agency that is responsible for investigating allegations of sexual abuse in institutional settings; and
  - Any Department of Justice component that is responsible for investigating allegations of sexual abuse in institutional settings.
- **Addition:** Definition of a qualified staff member as an individual who is employed by a facility and has received education concerning sexual assault and forensic examination issues in general.



## § 115.322 Agreements with Outside Public Entities and Community Service Providers

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- Corresponds to NPREC Standard RP-2
- **Modification:** Agencies do not have to have an MOU with an outside entity to receive and forward reports of sexual abuse if the agency has an internal entity that can receive these reports and that meets certain requirements.
- **DOJ Question:** Should this standard expressly mandate that agencies attempt to enter into memoranda of understanding that provide specific assistance for LEP inmates?



## § 115.323 Policies to ensure investigations of allegations

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- New standard
  - Note: This standard does contain language regarding the agencies duty to investigate allegations of sexual abuse, which was contained in NPREC Standard IN-1
- Requires a policy in place to ensure that allegations of sexual abuse are investigated by an agency with the legal authority to do so
- Policy shall be published to website



## § 115.323 Policies to ensure investigations of allegations

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- If a separate entity is responsible for the investigations, the website publication will describe the responsibilities of both the agency and the investigating entity
- Any State entity or Department of Justice component responsible for conducting investigations (criminal or administrative) shall have a policy governing the conduct of the investigations



## Removed NPREC Standards

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- DOJ removed NPREC Standards RP-3 (Agreements with Outside Law Enforcement Agencies) and RP-4 (Agreements with the Prosecuting Authority) altogether



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# TRAINING AND EDUCATION



## § 115.331 Employee Training

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- Corresponds to NPREC Standard TR-1
- **Addition:** Lists additional training subjects for staff:
  - How to detect and respond to signs of threatened and actual sexual abuse
  - how to avoid inappropriate relationships with residents
  - Relevant laws related to mandatory reporting
- **Addition:** Requires that training be tailored to the unique needs and attributes of residents



## § 115.331 Employee Training

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- **Modification:** Current employees must now receive this training within one year of the effective date of the PREA standards
- **Modification:** Agency must provide annual refresher information
- **Modification:** The agency shall document (via employee signature or electronic verification) that employees understand the training they received



## § 115.332 Volunteer and Contractor Training

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- Corresponds to NPREC Standard TR-2
- The changes to this standard are not substantive in nature.



## § 115.333 Resident Education

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- Corresponds to NPREC Standard TR-3
- **Addition:** Requires that the agency educate residents on sexual abuse prevention and response policies within 30 days after intake, regardless of whether the resident is a new intake or a transfer
- **Addition:** Current residents must be educated within one year of the effective date of the PREA standards
- **Addition:** Requirement that key information is readily available or visible on posters, handbooks or through other written formats



## § 115.334 Specialized Training: Investigations

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- Corresponds to NPREC Standard TR-4
- **Modification:** In addition to general training, agency investigators must receive training in conducting investigations in confinement settings, to the extent the agency itself conducts sexual abuse investigations
- **Addition:** Training that is provided under this standard must be provided to investigators of any State or DOJ component that investigates sexual abuse in confinement settings



## § 115.335 Specialized Training: Medical and Mental Health Care

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- Corresponds to NPREC Standard TR-5
- **Addition:** If agency medical staff conduct forensic examinations, they must receive appropriate training in conducting such examinations



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# **ASSESSMENT AND PLACEMENT OF RESIDENTS**



## § 115.341 Obtaining Information About Residents

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- Corresponds to NPREC Standard AP-1
- **Addition:** Assessment shall be conducted using an objective screening instrument, blank copies of which shall be made available to the public upon request
- **Modification:** The DOJ standard removed the requirement that only medical and mental health practitioners are permitted to discuss sexual orientation, gender identity, prior sexual victimization, history of engaging in sexual abuse, mental health status, and mental or physical disabilities.



## DOJ Question

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- Should the final rule provide greater guidance regarding the required scope of the intake screening and if so, how?



## § 115.342 Placement of Residents in Housing, Bed, Program, Education and Work Assignments

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- Corresponds to NPREC Standard AP-2
- **Modification:** The agency shall use all information obtained about the resident during the intake process and subsequently to make placement decisions for each resident based upon the objective screening instrument with the goal of keeping all residents safe and free from sexual abuse.



## § 115.342 Placement of Residents in Housing, Bed, Program, Education and Work Assignments

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- **Addition:** Lesbian, gay, bisexual, transgender or intersex residents shall not be assigned solely on the basis of such identification or status.
- **Addition:** The agency shall make individualized determinations about whether a transgender resident should be housed with males or with females.



# REPORTING



## § 115.351 Resident Reporting

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- Corresponds to NPREC Standard RE-1
- **Addition:** The facility shall provide residents with access to tools necessary to make a written report
- **Addition:** The agency shall provide a method for staff to privately report sexual abuse and sexual harassment of residents
- **DOJ Question:** Should the final rule mandate that agencies provide inmates with the option of making a restricted report to an outside public entity that would not trigger an investigation (similar to DoD)? To what extent, if any, would such an option conflict with applicable State or local law?



## § 115.352 Exhaustion of Administrative Remedies

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- Corresponds to NPREC Standard RE-2
- **Modification:**
  - The agency must provide a resident a minimum of 20 days following the occurrence of an alleged incident of sexual abuse to file a grievance
  - The agency shall grant an extension of no less than 90 days from the deadline for filing the grievance when the resident provides documentation that filing a grievance within the normal time limit was impractical. Such an extension can be afforded retroactively.



## § 115.352 Exhaustion of Administrative Remedies

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- The agency shall issue a final agency decision on the merits of a grievance within 90 days of the filing (not including time consumed by residents in appealing any adverse ruling)
- An agency may claim an extension of time to respond of up to 70 days if the normal time period of response is insufficient
- The agency shall notify the resident in writing of any extension and provide a date by which the decision will be made



## § 115.352 Exhaustion of Administrative Remedies

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- Whenever an agency is notified of an allegation, other than by another resident, it shall consider it as a grievance submitted on behalf of the alleged resident victim
- The agency shall inform the alleged victim that a grievance has been submitted on his or her behalf and process it under the agency's normal procedures unless the alleged victim expressly requests that it not be processed
  - The agency shall document any such request.
  - The agency may require the alleged victim to personally pursue any subsequent steps in the administrative remedy process
- The agency shall establish procedures to allow the parent or legal guardian to file a grievance and subsequent appeals on behalf of the resident



## § 115.352 Exhaustion of Administrative Remedies

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- An agency shall establish procedures for filing an emergency grievance when a resident is subject to a substantial risk of imminent sexual abuse
- The agency will establish procedures dictating that an initial response will be provided to these emergency grievances within 48 hours, and a final agency decision within 5 days
- Agency must provide written explanation if there is no emergency, can provide discipline if the youth purposefully filed an emergency grievance when no emergency exists



## DOJ Question

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- Because the DOJ standard addressing administrative remedies differs significantly from the NPREC standard, DOJ specifically encourages comments on all aspects of this proposed standard.



## § 115.353 Resident Access to Outside Support Services and Legal Representation

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- Corresponds to NPREC Standard RE-3
- **Modification:** Facility shall provide reasonable and confidential access (previously: unimpeded) to their attorney and other legal representation and reasonable access to parents/legal guardians



## § 115.354 Third-Party Reporting

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- Corresponds to NPREC Standard RE-4
- **Removal:** Requirement to notify 3<sup>rd</sup> Party reporters and the alleged victim of the outcome of an investigation is removed.
  - Note: See §115.361, section f and §115.371, section a for further requirements for third-party reports.



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# **OFFICIAL RESPONSE FOLLOWING A RESIDENT REPORT**



## § 115.361 Staff and Agency Reporting Duties

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- Corresponds to NPREC Standard OR-1
- **Addition:** If juvenile court retains jurisdiction, facility head or designee should report to the court within 14 days of allegation, unless additional time is needed
- **Addition:** The facility shall report all allegations of sexual abuse, including third party and anonymous reports, to the facility's designated investigators



## § 115.362 Reporting to Other Confinement Facilities

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- Corresponds to NPREC Standard OR-2
- **Modification:** A report that is received about alleged abuse that occurred at another facility must be forwarded to that facility or agency within 14 days of receiving the allegation.



## § 115.363 Staff First Responder Duties

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- Corresponds to NPREC Standard OR-3
- **Modification:** Language revision regarding first responder action. NPREC Standard required staff “instruct” youth not to take any actions that could destroy physical evidence. New standard uses “request”.



## § 115.364 Coordinated Response

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- Corresponds to NPREC Standard OR-4
- **Removal:** The facility shall coordinate actions taken in response to an incident of sexual abuse among staff first responders, medical and mental health practitioners, investigators, and facility leadership. (Note: victim advocates no longer included)
- **Removal:** No longer specifies what this coordinated response should ensure.



## DOJ Question

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- Does Standard 115.364 provide sufficient guidance as to how compliance would be measured? If not, how should it be revised?



## § 115.365 Agency Protection Against Retaliation

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- Corresponds to NPREC Standard OR-5
- **Addition:** The agency shall continue such monitoring beyond 90 days if the initial monitoring indicates a continuing need.
- **Addition:** The agency shall not enter into or renew any collective bargaining agreement or other agreement that limits the agency's ability to remove alleged staff abusers from contact with residents pending an investigation.
- **DOJ Question:** Should the standard be further refined to provide additional guidance regarding when continuing monitoring is warranted, or is the current language sufficient?



## § 115.366 Post allegation protective custody

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- **No equivalent NPREC Standard**
- Any use of segregated housing to protect a resident who is alleged to have suffered sexual abuse shall be subject to the requirements of § 115.342



# INVESTIGATIONS



## § 115.371 Criminal and Administrative Agency Investigations

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- Corresponds to NPREC Standards IN-1, IN-2
- Agency duty to investigate all sexual abuse allegations (NPREC Standard IN-1) is subsumed under DOJ Standard 115.323
- Agency requirement to notify residents of investigation outcomes is subsumed under DOJ Standard 115.373
- **Removal:** Requirement from IN-1 that outside complainants are to be informed of the results of an investigation
- Other elements of NPREC Standard IN-1 are contained in 115.371
- **Removal:** Discussion of time frames from IN-2



## § 115.371 Criminal and Administrative Agency Investigations

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- **Addition:** Requirement for the agency to retain investigative records for as long as the alleged abuser is incarcerated or employed, plus 5 years
- **Addition:** Applicability of investigative requirements to state investigative entities and DOJ investigative components



## § 115.372 Evidentiary Standard for Administrative Investigations

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- Corresponds to NPREC standard IN-3
- **Modification:** The agency shall impose no standard higher than a preponderance of the evidence in determining whether allegations of sexual abuse are substantiated.



## § 115.373 Reporting to residents

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- Corresponds to parts of NPREC Standard IN-1
- The agency must inform the victim of the investigation outcome
- If the agency did not conduct the investigation, it shall request the relevant information from the investigative agency in order to inform the resident



## § 115.373 Reporting to residents

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- **Addition:** Following a resident's allegation against a staff member, the agency shall inform the resident whenever:
  - The staff member is no longer posted within the resident's unit or is no longer employed at the agency
  - The agency learns that the staff member has been indicted or convicted with a charge related to sexual abuse within the facility
- **Addition:** This does not apply to allegations that have been determined to be unfounded



# DISCIPLINE



## § 115.376 Disciplinary Sanctions for Staff

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- Corresponds to NPREC Standard DI-1
- **Addition:** Sanctions shall be commensurate with
  - The circumstances of the acts committed
  - Staff member's disciplinary history
  - Sanctions imposed for comparable offenses by other staff with similar histories
- **Modification:** Incidents to be reported to law enforcement agencies and relevant licensing bodies include:
  - All terminations
  - Resignations by staff who would have been terminated if not for their resignation

**UNLESS** the act was clearly not criminal



## § 115.377 Disciplinary Sanctions for Residents

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- Corresponds to NPREC Standard DI-2
- **Addition:** If the facility offers interventions designed to address underlying motivations for the abuse (therapy, counseling, etc.), the facility should consider whether to require the resident to participate as a condition of access to programming or other benefits
- **Addition:** The agency may discipline a resident for sexual contact with staff only if the staff member did not consent to such contact
- **Addition:** A report of sexual abuse made in good faith based upon a reasonable belief that the alleged conduct occurred shall not constitute falsely reporting or lying, even if an investigation does not substantiate the allegation
- **Addition:** Any prohibition on resident-on-resident sexual activity shall not consider consensual sexual activity to constitute sexual abuse



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# MEDICAL AND MENTAL CARE



## § 115.381 Medical and Mental Health Screenings; history of sexual abuse

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- Corresponds to NPREC Standard MM-1
- **Modification:** Intake staff is not required to be medical or MH practitioner
- **Modification:** If a resident discloses prior victimization or abusiveness, facility must offer a follow-up with medical or mental health practitioner within 14 days of the screening
- **Modification:** Screening questions only must include prior sexual victimization and (unless intake precedes adjudication) prior sexual abusiveness
  - **Questions regarding** sexual orientation, gender identity, mental health status, mental or physical disabilities were removed from intake screening requirements



## § 115.381 Medical and Mental Health Screenings; history of sexual abuse

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- **Modification:** Any information related to sexual victimization or abusiveness that occurred in an institutional setting will be strictly limited to medical and mental health practitioners and other staff, as required by agency policy and Federal/State/local law, to inform necessary decisions (subject to mandatory reporting laws)



## § 115.382 Access to Emergency Medical and Mental Health Services

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- Corresponds to NPREC Standard MM-2
- **Addition:** Resident victims of sexual abuse while incarcerated shall be offered timely information about and access to all pregnancy-related medical services that are lawful in the community and sexually transmitted infections prophylaxis, where appropriate



## § 115.383 Ongoing Medical and Mental Health Care for Sexual Abuse Victims and Abusers

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- Corresponds to NPREC Standard MM-3
- **Modification:** The facility shall conduct a mental health evaluation of all known resident abusers within 60 days of learning of such abuse history and offer treatment when deemed appropriate by qualified mental health practitioners.
- **Addition:** Resident victims of sexually abusive vaginal penetration while incarcerated shall be offered pregnancy tests
- **Addition:** If pregnancy results, such victims shall receive timely information about and access to all pregnancy-related medical services that are lawful in the community



## DOJ Question

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- Does the standard that requires known inmate abusers to receive a mental health evaluation within 60 days of learning the abuse has occurred provide adequate guidance regarding the scope of treatment that subsequently must be offered to such abusers? If not, how should it be revised?



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# **DATA COLLECTION AND REVIEW**



## § 115.386 Sexual Abuse Incident Reviews

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- Corresponds to NPREC Standard DC-1
- **Modification:** Standard does not require an after-action review of a sexual assault allegation when the allegation is unfounded.
- **Modification:** Standard adds a requirement that the review team:
  - examine the area in the facility where the incident allegedly occurred to assess whether physical barriers in the area may enable abuse
  - Assess the adequacy of staffing levels in that area during different shifts
  - Assess whether monitoring technology should be deployed or augmented to supplement supervision by staff
- **Modification:** Prepare a report of its findings and any recommendations for improvement and submit such report to the facility head and PREA coordinator, if any.



## § 115.387 Data Collection

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- Corresponds to NPREC Standard DC-2
- **Addition:** Upon request, the agency will provide all such data from the previous year to the DOJ no later than June 30



## § 115.388 Data Review for Correction

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- Corresponds to NPREC Standard DC-3
- **Deletion:** The report must no longer be submitted to the appropriate legislative body



## § 115.389 Data Storage, Publication and Destruction

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- Corresponds to NPREC Standard DC-4
- No substantive changes to this standard



# AUDITS



## § 115.393 Audits of Standards

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- Corresponds to NPREC Standard AU-1
- **Deletion:** Specification of regularity of audits (NPREC: 3 years)
  - Note: A.G. office is requesting feedback on this topic
- **Addition:** An audit is considered independent if conducted by
  - A correctional monitoring body that is not part of the agency but that is part of, or authorized by, the relevant State or local government
  - An auditing entity that is within the agency but separate from its normal chain of normal chain of command (such as inspector general or ombudsperson)
  - Other outside individuals with relevant experience



## § 115.393 Audits of Standards

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- **Addition:** No audit may be conducted by an auditor who has received financial compensation from the agency within 3 years of the audit
- **Addition:** All auditors shall be certified by the DOJ, and re-certified every 3 years



## § 115.393 Audits of Standards

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- **Addition:** DOJ shall prescribe the minimum qualifications for auditors, and the methods governing the conduct of audits, including:
  - Provisions for reasonable inspections of facilities
  - Review of documents
  - Interviews of staff and residents
- **Deletion:** Agencies must ensure that only the final report is made available to the public, corrective plans are no longer required)



## DOJ Question

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- Should audits be conducted at set intervals, or should audits be conducted only for cause, based upon a reason to believe that a particular facility or agency is materially out of compliance with the standards? If the latter, how should such a for-cause determination be structured?



## DOJ Question

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- If audits are conducted for cause, what entity should be authorized to determine that there is a reason to believe an audit is appropriate, and then to call for an audit to be conducted? What would be the appropriate standard to trigger such an audit requirement?



## DOJ Question

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- Should all facilities be audited or should random sampling be allowed for some or all categories of facilities in order to reduce burdens while ensuring that all facilities could be subject to an audit?
- Is there a better approach to audits other than the approaches discussed above?



## DOJ Question

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- To what extent, if any, should agencies be able to combine a PREA audit with an audit performed by an accrediting body or with other types of audits?
- To what extent, if any, should the wording of any of the substantive standards be revised in order to facilitate a determination of whether a jurisdiction is in compliance with that standard?



## DOJ Question

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- How should “full compliance” be defined in keeping with the considerations set forth in the above discussion?
- To what extent, if any, should audits bear on determining whether a State is in full compliance with PREA?



## Additional Suggested Standard

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- Should the final rule include a standard that governs the placement of juveniles in adult facilities?
- If so, what should the standard require, and how should it interact with the current JJDPa requirements and penalties?



## Resources

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- PREA Standards Comparison Tool: Juvenile Facilities, located at [www.mossgroup.us](http://www.mossgroup.us)
- PREA Standards Comparison, Project on Addressing Prison Rape, Washington College of Law, located at [www.wcl.american.edu/nic](http://www.wcl.american.edu/nic)