

a residential facility or any staff person providing out of home care who is responsible for the child's welfare under circumstances indicating harm or threatened harm to the child's health or welfare. The term encompasses both acts and omissions on the part of a responsible person.

(1) The term *sexual abuse* includes the following activities under circumstances which indicate that the child's health or welfare is harmed or threatened with harm: The employment, use, persuasion, inducement, enticement, or coercion of any child to engage in, or having a child assist any other person to engage in, any sexually explicit conduct (or any simulation of such conduct) for the purpose of producing any visual depiction of such conduct; or the rape, molestation, prostitution, or other form of sexual exploitation of children, or incest with children. With respect to the definition of sexual abuse, the term "child" or "children" means any individual who has not attained the age of eighteen.

(2)(i) "Negligent treatment or maltreatment" includes failure to provide adequate food, clothing, shelter, or medical care.

(ii) Nothing in this part should be construed as requiring or prohibiting a finding of negligent treatment or maltreatment when a parent practicing his or her religious beliefs does not, for that reason alone, provide medical treatment for a child; provided, however, that if such a finding is prohibited, the prohibition shall not limit the administrative or judicial authority of the State to ensure that medical services are provided to the child when his health requires it.

(3) *Threatened harm to a child's health or welfare* means a substantial risk of harm to the child's health or welfare.

(4) *A person responsible for a child's welfare* includes the child's parent, guardian, foster parent, an employee of a public or private residential home or facility or other person legally responsible under State law for the child's welfare in a residential setting, or any staff person providing out of home care. For purposes of this definition, out-of-home care means child day care, i.e., family day care, group day care, and center-based day care; and, at

State option, any other settings in which children are provided care.

(e) *Commissioner* means the Commissioner of the Administration for Children, Youth and Families of the Department of Health and Human Services.

(f) *Grants* includes grants and cooperative agreements.

(g) *Secretary* means the Secretary of Health and Human Services, or other HHS official or employee to whom the Secretary has delegated the authority specified in this part.

(h) *State* means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

[48 FR 3702, Jan. 26, 1983, as amended at 52 FR 3994, Feb. 6, 1987; 55 FR 27639, July 5, 1990]

### § 1340.3 Applicability of Department-wide regulations.

(a) The following HHS regulations are applicable to all grants made under this part:

- 45 CFR Part 16—Procedures of the Departmental Grant Appeals Board.
- 45 CFR Part 46—Protection of human subjects
- 45 CFR Part 74—Administration of grants
- 45 CFR Part 75—Informal grant appeals procedures
- 45 CFR Part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services—effectuation of title VI of the Civil Rights Act of 1964
- 45 CFR Part 81—Practice and procedure for hearings under part 80
- 45 CFR Part 84—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance.

(b) The following regulations are applicable to all contracts awarded under this part:

- 48 CFR Chapter 1—Federal Acquisition Regulations.
- 48 CFR Chapter 3—Federal Acquisition Regulations—Department of Health and Human Services.

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