Policy No.: 12345
Effective Date: Immediately

TITLE: Resident/Tenant Sexual Expression Policy

STATEMENT Of POLICY: It is the goal of ***Sample Facility*** to support residents/tenants in developing maximum self-reliance and independence regarding their sexual choices and promote attitudes of awareness, acceptance, and respect of sexual diversity. ***Sample Facility*'s** policy is based on the directive of the federal Nursing Home Reform Act of 1987 which guarantees residents and all persons residing in Medicaid/Medicare settings the rights to dignity, privacy, freedom, personal property, and expression. To preserve the dignity and ensure the safety of residents/tenants involved in acts of healthy sexual expression, ***Sample Facility*** has developed the following guidelines.

DEFINITIONS: the following definitions should be applied to the provisions outlined in this policy.

Sexual expression: language, gestures, conduct, or activities that indicate a desire for sexual gratification (e.g., hugging, kissing, hand-holding, flirting/teasing, masturbation, touch/stimulation, romantic affection, signs of companionship, pursuing, reading sexually-related or explicit materials).

Healthy sexual expression: a positive and respectful approach to sexuality and sexual relationships, as well as the possibility of pleasurable and safe sexual experiences, free of coercion, discrimination and violence (World Health Organization, 2016).

Consent: Consent may be evidenced through the language, gestures, conduct, activities or other affirmative actions of a resident/tenant who: 1. exhibits cognitive decision-making capacity; or 2. exhibits diminished cognitive decision-making capacity (e.g., neurocognitive disorders such as Dementia/Alzheimer's Disease)

Incapacitated: *"incapacitated"* means a person is disabled or deprived of ability, as follows:
1.*"Mentally incapacitated"* means that a person is temporarily incapable of apprising or controlling the person's own conduct due to the influence of a narcotic, anesthetic, or intoxicating substance.
2.*"Physically helpless"* means that a person is unable to communicate an unwillingness to act because the person is unconscious, asleep, or is otherwise physically limited.
3.*"Physically incapacitated"* means that a person has a bodily impairment or handicap that substantially limits the person's ability to resist or flee (**Iowa Code § 709.1A).**

Interdisciplinary Care Team (ICT): a group of healthcare professionals with diverse roles and a common purpose to achieve optimal health outcomes for residents/tenants. In collaboration with the resident/tenant, the ICT determines the best health outcomes for the resident/tenant and establishes care/service goals. ICT members should be determined by the resident's/tenant's needs. Facility/ALP ICTs typically include the resident/tenant, physician, nurse, social worker, and direct care worker; However, the ICT can be extended as necessary to include family members or

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significant others, physical or occupational therapists, dieticians, speech pathologists, psychologists, or pastoral care.

Reportable Incident: See State and Federal reporting requirements.

Sexual abuse: Any sex act between persons is sexual abuse by either of the persons when the act is performed with the other person in any of the following circumstances: 1. The act is done by force or against the will of the other. If the consent or acquiescence of the other is procured by threats of violence toward any person or if the act is done while the other is under the influence of a drug inducing sleep or is otherwise in a state of unconsciousness, the act is done against the will of the other. 2. Such other person is suffering from a mental defect or incapacity which precludes giving consent, or lacks the mental capacity to know the right and wrong of conduct in sexual matters. 3. Such other person is a child. (**Iowa Code § 709.1)**

POLICY:

I. Cognitive decision-making capacity:

- **a.** This policy applies to individuals who exhibit *intact* cognitive decision-making capacity, as well as those who exhibit *diminished* cognitive decision-making capacity. Because every resident's/tenant's circumstances and level of capacity to consent differs, the facility/ALP must develop highly individualized approaches, rather than a single blanket approach, to assess each sexually related situation. In addition to provisions outlined in Sections below:
  - **i.** *Some* residents/tenants who exhibit *intact* cognitive decision-making capacity may require a cognitive assessment conducted by a physician to confirm consent was and continues to be given. This determination should be made by the resident's/tenant's ICT.
  - **ii.** Residents/tenants who exhibit *diminished* cognitive decision-making capacity (e.g., neurocognitive disorders such as Dementia/Alzheimer's Disease) <u>will</u> require a cognitive assessment conducted by a physician to confirm consent was and continues to be given.
- **b.** Conducting Cognitive Assessments: the decision to assess/reassess should be based upon the individual needs and preferences of each resident/tenant.

II. Resident/Tenant Sexual Rights

a. Residents/tenants have the right to be sexually expressive with other residents/tenants or visitors in accordance with the following conditions:
   i. Each sexually-related occurrence must be legal and consensual, and may not involve the solicitation of others. Sexual expression should be prevented where the potential for the transmission of a sexually transmitted infection exists or where other residents, tenants, staff, and visitors may be negatively affected by the act.
   ii. Residents/tenants should be provided access to spaces and opportunities for privacy, as well as sexually-explicit materials which are legal in nature (e.g., movies, videos,

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magazines, photographs), and electronic equipment necessary to use the materials (e.g., iPad, DVD player).

iii. Residents/tenants have the right to receive information, consultation, education, and/or counseling related to sexual expression.

III. Facility/ALP Responsibilities

a. The facility/ALP should conduct a thoughtful review of situations and accounts of sexual expression among or between residents/tenants or with visitors to determine a solution that best meets the needs of and protects the residents/tenants involved. A description of the outcomes of the investigation should be shared with the resident/tenant as well as the ICT and documented in the residents' care or tenant's service plan.
b. Incidents of abuse or suspected abuse should be self-reported by the facility/ALP to the Iowa Department of Inspections and Appeals and other agencies as required by law.
c. The facility/ALP should continually examine the physical and cultural environment for restrictions to residents'/tenants' privacy or opportunities to be sexually expressive, and adapt the environment where possible to accommodate sexual expression between or among residents/tenants and with visitors (e.g., scheduled alone time for roommates where shared rooms pose privacy issues)
d. The facility/ALP should offer ongoing training, support and resources to staff to equip them with skills and knowledge related to sexual expression, resident/tenant rights, sensitization, boundaries, ethics, proper response strategies, and documentation and reporting procedures.
e. The facility/ALP should review the sexual expression policy with residents/tenants and families (including updates to policy), and continually offer learning opportunities and resources related to sexual expression and residents'/tenants' rights.
f. The facility/ALP should ensure that all staff members have received and reviewed the sexual expression policy (including updates to policy) and establish processes for ensuring that the procedures outlined in the policy are carried out by all facility/ALP staff.

IV. Staff Responsibilities

a. Staff should support and facilitate resident/tenant sexual expression in a safe and respectful manner and intervene only where it is determined that the sexual expression policy is likely to be violated or where the recommendations of the ICT are not carried out.
b. Staff should maintain knowledge of the facility's/ALP's sexual expression policy and uphold the provisions it sets forth.
c. Staff should seek additional information and resources from the facility/ALP where necessary to uphold residents'/tenants' rights and provide proper aid and assistance in addressing and documenting sexually related situations.
d. Staff should immediately report suspected sexual abuse to facility/ALP management.

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e. Staff should remain knowledgeable of sexually related resources, training, materials, and consultation opportunities available to residents/tenants, so that recommendations can be offered where requested.
f. Staff should make residents/tenants aware of opportunities for appropriate use of private space to the extent that it is available.
g. Staff should report to the facility/ALP instances of sexual expression that are not addressed in the existing sexual expression policy, so that updates and/or amendments can be made.

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