



Illinois Health and Hospital Association

New Hospital Requirements in Sexual Assault Treatment Legislation

June 19, 2018

MEMORANDUM

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House Bill 5245 unanimously passed both Houses of the Illinois General Assembly and is awaiting the Governor's signature. Amending the Sexual Assault Survivors Emergency Treatment Act (SASETA) and originally introduced last year with a focus to only expand sexual assault treatment locations to pediatric healthcare facilities, the legislation later became a significant rewrite of SASETA with numerous new requirements on treatment hospitals. IHA opposed the legislation but worked closely with the Office of Attorney General (OAG) to negotiate significant improvements to assist hospitals in compliance. IHA's opposition was mainly due to great concern over the short timeframe available to staff emergency departments with the specifically-trained staff as mandated in the bill. *IHA will assist members with education and resources to meet the new requirements and work with the OAG to ensure appropriate training opportunities are available.*

The following highlights major components of the legislation, but hospitals are encouraged to review the entire Act (see [enrolled text here](#)) as there are numerous changes and nuances. Clinical staff, in particular, will want to review the definitions and changes to Section 5. Minimum Requirements.

Treatment and Transfer Hospitals

All hospitals currently need to either provide treatment or transfer services to all sexual assault survivors presenting to the hospital. HB 5245 creates a third category: treatment hospital with approved pediatric transfer which allows treatment of survivors age 13 years or older but transfer of survivors younger than age 13. Hospitals wishing to transfer pediatric survivors must submit an area wide treatment plan to the Illinois Department of Public Health (IDPH) for approval that includes a written agreement with a treatment hospital that will provide the treatment to the pediatric survivors to be transferred. Such a plan may also include transfer to a pediatric healthcare facility, defined as a clinic or physician's office that provides medical services to pediatric patients. There are specific requirements pertaining to pediatric health care facilities

participation in sexual assault treatment outlined in the Act including consent to jurisdiction and oversight by IDPH. For the rest of this memo, “treatment hospital” includes a treatment hospital with approved pediatric transfer.

Treatment hospital is defined as a hospital with a sexual assault treatment plan approved by IDPH to provide medical forensic services to all survivors who present with a complaint of sexual assault within a minimum of the last 7 days or who have disclosed past sexual assault by a specific individual and were in the care of that individual within a minimum of the last 7 days.

The Act imposes new restrictions on a hospital’s ability to be a transfer hospital. IDPH may not approve a transfer plan if a transfer would unduly burden the survivor, and in counties with less than 1 million population, unless there is a treatment hospital within a 20-mile radius of a 4-year public university (not including community colleges). Originally the draft legislation would have prohibited any hospital from being a transfer hospital unless there was a treatment hospital within some mileage radius. Transfer hospitals must have a written agreement with a treatment hospital that will treat all transfers.

Out-of-State Transfers

The Act specifically allows transfer of survivors to out-of-state trauma hospitals for medical forensic services if the out-of-state hospital has submitted an area wide treatment plan approved by IDPH, agrees to abide by SASETA, uses the Illinois Evidence Collection Kit, ensures staff cooperation with Illinois law enforcement and subpoenas and provides appropriate transportation back to the transfer or treatment hospital the patient was transferred from. The introduced bill would have prohibited all transfers to an out-of-state hospital. This provision will sunset on January 1, 2024 and a report is due January 1, 2023 on the impact of out-of-state transfers and availability of Illinois treatment hospitals.

Staffing Mandate

By January 1, 2022, all treatment hospitals must have “qualified medical providers” to initiate treatment within 90 minutes to a sexual assault survivor presenting in the ED. Qualified medical providers are defined as: board-certified or board-eligible child abuse pediatricians, sexual assault nurse examiners (SANEs) or sexual assault forensic examiners (SAFEs - physicians or physician assistants who have completed training substantially similar to SANEs).

IDPH shall develop rules by January 1, 2020 establishing a process for physicians and physician assistants (PAs) to provide documentation of training and clinical experience that is substantially similar to the SANE guidelines to qualify as a SAFE. IHA was able to include this as a potential bridge for some rural hospitals until they are able to staff with SANEs.

The OAG will establish the Sexual Assault Nurse Examiner Program which shall maintain a list of SANEs. Given the historically few trainings provided, IHA was able to insert language specifying that

the Program will provide both classroom and clinical training opportunities in sufficient numbers and geographical locations across the state to assist hospitals with training the necessary number of SANEs to comply with the Act.

Ongoing Training of ED Staff

Beginning January 1, 2019, treatment hospitals must ensure that attending physicians, physician assistants, advanced practice nurses and registered nurses, who are not qualified medical providers but providing clinical services in the ED, receive a minimum of 2 hours of sexual assault training by July 1, 2020 or until it meets the staffing mandate for qualified medical providers. After July 1, 2020, or once a hospital meets the staffing mandate, each treatment hospital shall ensure these healthcare professionals receive a minimum of 2 hours of continuing education on responding to sexual assault survivors every 2 years. The protocol for the training shall be included in the hospital's sexual assault treatment plan and shall include information on the provision of medical forensic services, use of the Evidence Collection Kit, epidemiology, neurobiology of trauma, drug-facilitated sexual assault, child sexual abuse, Illinois sexual assault-related laws and the hospital's sexual assault-related policies and procedures. Originally, the requirement would have applied to all ED clinical staff including residents and would have required 4 hours of training annually until 2023, then 2 hours annually thereafter.

Originally hospitals were to have provided the training, but the final legislation requires that by March 1, 2019, the OAG will develop 2 hours of on-line training that can be used by hospitals to comply with the training requirement. In addition, strong language was added that this training will count toward the continuing medical education and continuing education requirements for these health professionals.

Photo Documentation and Medical Records

Beginning July 1, 2019, treatment hospitals must utilize photo documentation of the survivor's injuries, anatomy involved in the assault or other visible evidence of the survivor's body to supplement the medical forensic history. Such photo documentation shall be maintained as part of the medical record and shall be stored and backed up securely in its original file format in accordance with facility protocol with limited access to the images. The protocol should be included in the sexual assault treatment plan. Photo documentation may be used for peer review, expert second opinion or in a criminal proceeding against a person accused of sexual assault, a proceeding under the Juvenile Court Act of 1987 or an investigation under the Abused and Neglected Child Reporting Act. Any dissemination shall be in accordance with State and federal law.

Records of medical forensic services, including results of exams and tests, and various Illinois State Police forms (Documentation, Discharge Materials and Patient Consent), shall be maintained as part of the patient's electronic medical record. Records, including photo documentation, for survivors under age 18 shall be retained for 60 years after the survivor reaches age 18 and for those older than 18, shall be retained for 20 years after the record was created. Originally, the bill would have required photos to be

retained forever and never destroyed; an additional six months was obtained in the legislation for hospitals to prepare for this new requirement.

Rape Crisis Center Memorandum of Understanding

Every treatment hospital must have a memorandum of understanding (rather than a written agreement as originally introduced) with a rape crisis center for medical advocacy services, if these services are available to the hospital. During floor debate the sponsor made clear that such available services do not require payment to the rape crisis center. The rape crisis counselor, with the consent of the survivor, shall remain in the room during the medical forensic exam.

Reporting

Every treatment hospital every six months (originally drafted as quarterly) shall submit the following information to IDPH which will be available on its website:

- Number of sexual assault patients
- Number of Sexual Assault Evidence Collection Kits
 - Offered to survivors
 - Completed
 - Declined

Treatment hospitals must include in their treatment plan procedures for complying with mandatory reporting requirements pursuant to the Abused and Neglected Child Reporting Act, the Abused and Neglected Long Term Care Facility Residents Reporting Act, the Adult Protective Services Act and the Criminal Identification Act.

Follow-up Care Voucher

Treatment hospitals will need to include in its treatment plan a protocol for issuing the follow-up care vouchers including:

- Identification of employee positions responsible for issuing the vouchers
- Identification of employee positions with access to the Medical Electronic Data Interchange (MEDI) or successor system
- Pediatric health care facilities have additional requirements

Other treatment requirements

There is a new definition of Medical Forensic Services which “includes but is not limited to, taking a medical history, performing photo documentation, performing a physical and anogenital examination, assessing the patient for evidence collection, collecting evidence in accordance with a statewide sexual assault evidence program administered by the Department of State Police using the Illinois State Police Sexual Assault Evidence Collection Kit, if appropriate, assessing the patient for drug-facilitated or alcohol-facilitated sexual

assault, providing an evaluation of and care for sexually transmitted infection and human immunodeficiency virus (HIV), pregnancy risk evaluation and care, and discharge and follow-up healthcare planning.”

Treatment hospitals must provide medical forensic services without delay, in a *private, age-appropriate or developmentally-appropriate space*. There is no specific definition but OAG staff indicated this means to provide an exam space separate from the congestion and intensity of the main ED treatment bays.

Treatment hospitals are required to provide an *offer* to complete a Sexual Assault Evidence Collection Kit for any survivor who presents within a minimum of the last 7 days of the assault or who has disclosed past sex assault by a specific individual and was in the care of that individual within a minimum of the last 7 days. There is a statement in the Act that evidence collection is encouraged for prepubescent survivors (defined as under age 18 and has not had a first menstrual cycle (female) or (male) has not started to develop secondary sex characteristics) who present within a minimum of 96 hours after the sexual assault.

Pediatric Health Care Facilities

Pediatric health care facilities wishing to treat pediatric sexual assault survivors are subject to requirements outlined throughout the Act. Pediatric sexual assault survivors presenting at a transfer or treatment hospital with approved pediatric transfer shall be transferred and may be transferred to a pediatric health care facility designated in the hospital's area wide treatment plan if treatment can be initiated within 90 minutes of arrival at the pediatric health care facility. If treatment cannot be initiated within the 90 minutes of arrival at the pediatric health care facility or there is no pediatric health care facility designated in the hospital's approved plan, the patient will be transferred to the treatment hospital designated in the hospital's plan. That treatment hospital shall provide the medical forensic services and may not transfer the patient to another facility. The pediatric survivor may be transported by ambulance, law enforcement or personal vehicle.

If a pediatric survivor presents to a treatment hospital that has a designated pediatric healthcare facility in its area wide treatment plan and if services can be initiated within 90 minutes of the patient's arrival at that facility the patient has the option to be transferred to the pediatric healthcare facility.

IDPH Requirements

IDPH also has new requirements including that IDPH personnel who conduct the on-site compliance review must have 4 hours of sexual assault training that includes forensic evidence collection and Illinois sexual assault laws and rules. IDPH has long had the requirement to provide reports every January 1 to the General Assembly with a list of hospitals that had submitted plans, whether they were in compliance with the Act, hospitals that had failed to submit an acceptable plan of correction, and those that had an on-site review. This report time period will now be changed to July 1, 2019 and annually thereafter with some expanded reporting and particular information pertaining to pediatric care facilities.

Sexual Assault Medical Forensic Services Implementation Task Force

The Act creates a Task Force with the first meeting called within 90 days of the law becoming effective, so I

will convene this fall. Comprised of 27 members representing legislators, state agencies and other stakeholders including 6 representatives appointed by IHA (was originally only 3), the Task Force's goals are:

- Facilitate development of area wide treatment plans among hospitals
- Facilitate development of on-call systems
- Identify photography and storage options
- Develop a model written rape crisis center agreement
- Develop and distribute education information
- Examine the role of telemedicine and develop recommendations
- Seek inclusion of SANE training in Illinois nursing programs and American College of Emergency Physicians sexual assault training in emergency physician programs
- Submit a report to GA by January 1, 2023 on impact of transfers to out-of-state hospitals and available treatment hospitals in Illinois

Sexual Assault Nurse Examiner Program

A sexual assault nurse examiner program is created within the Office of the Attorney General. The program maintain a list of SANEs that have completed the classroom and clinical requirements consistent with the SANE Guidelines established by the International Association of Forensic Nurses.

The program shall create uniform materials that all treatment hospitals are required to give patients and non-offending parents or legal guardians, if applicable, regarding consenting to medical forensic services, the benefits and risks of evidence collection, including recommended time frames for evidence collection pursuant to evidence-based research. These materials will be made available on the OAG's website.

By March 1, 2019, the program shall develop 2 hours of on-line sexual assault training for emergency department clinical staff to meet the training requirements contained in the Act. Notwithstanding any other law regarding ongoing licensure requirements, the training shall count toward CME and CE credits for healthcare professionals and the OAG is considered a state agency for physician and nursing continuing education.

Effective Date

Unless otherwise noted, new requirements are effective January 1, 2019.