

September 12, 2018

Public Act 100-1087 and Public Act 100-0775  
New Hospital Requirements for Sexual Assault Treatment  
Hospital Changes Necessary by January 1, 2019

House Bill 5245 and Senate Bill 3404, which both unanimously passed both Houses of the Illinois General Assembly, have been signed by the Governor and are now [Public Act 100-0775](#) and [Public Act 100-1087](#) respectively. Both amend the Sexual Assault Survivors Emergency Treatment Act (SASETA) with numerous new requirements for treatment hospitals and P.A. 100-1087 amends several other laws pertaining to sexual assault.

There are numerous implementation details that will need to be addressed with the new legislation and IHA has learned that the Illinois Department of Public Health (IDPH) plans to issue emergency rulemaking in early January for the new requirements that are effective January 1, 2019. All hospitals are on a three-year cycle for submission of treatment and transfer plans to IDPH with most being due during 2019, but a few are due November/December 2018 and some in 2020. Hospitals are urged to begin working to develop any new protocol and agreements with other entities as necessary and outlined below. *IHA will work with IDPH to assist members with education and resources to meet the new requirements, including a webinar likely in November, and work with the Office of Attorney General (OAG) to ensure appropriate training opportunities for sexual assault nurse examiners are available.*

Public Act 100-1087

Effective January 1, 2019, the law amends SASETA to require a hospital to provide – with the consent of the sexual assault survivor and as ordered by the physician, advanced practice nurse or physician assistant – after a medical evidentiary or physical examination access to a shower at no cost, unless showering facilities are unavailable. It also amends the required discharge instructions to inform the survivor that the sexual assault evidence will be stored for 10 years (currently 5 years) from completion of the Sexual Assault Evidence Collection Kit or 10 years from the age of 18 years, whichever is longer. Consent to testing of the evidence may occur at any time during the ten-year period for an adult victim or until a minor victim turns 28 year of age.

It also amends the Rights of Crime Victims and Witnesses Act so that the victim has a right to have an advocate present during any medical evidentiary or physical examination, unless no advocate can be summoned in a reasonably timely manner. The victim also has the right to have an additional person present for support during any medical evidentiary or physical examination. These rights are retained even if the victim has waived these rights in a previous examination.

These new requirements are effective January 1, 2019. The patient consent forms will need to be revised to reflect the new ten-year evidence retention period and should be available for download and copy by the end of the year on the Illinois State Police [website](#) (found under Forensics) titled the Patient Consent: Collect and Test Evidence or Collect and Hold Evidence since currently-held kits would not have an updated form.

Other Acts amended by P.A. 100-1087 are: Preventing Sexual Violence in Higher Education Act, the Liquor Control Act of 1934, the Criminal Code of 2012, the Illinois Controlled Substances Act and the Sexual Assault Incident Procedure Act.

Public Act 100-0775

The following highlights major components of the law, but hospitals are encouraged to review it in its entirety 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. P.A. 100-775 creates a third category: treatment hospital with approved pediatric transfer which allows treatment of sexual assault 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 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 law 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 law 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). Transfer hospitals must have a written agreement with a treatment hospital that will treat all transfers.

IDPH has indicated that it cannot issue emergency rules until after the effective date of January 1, 2019. These rules will allow for new forms for the new categories of a treatment hospital with approved pediatric transfer, out-of-state treatment hospitals and pediatric health care facilities. Additionally, the treatment and transfer hospital forms will be revised. Hospitals wishing to transfer pediatric patients must have a written agreement with the receiving hospital and both hospitals will need to submit an area wide treatment plan. *Such hospitals are encouraged to begin developing these written agreements and area wide treatment plans now as new treatment/transfer plans will need to be submitted and approved by IDPH prior to the hospital transferring pediatric patients after the emergency rules are issued in early January 2019.*

IDPH is currently planning that hospitals with *no change* to their treatment or transfer status will need to implement the new requirements effective January 1, 2019, but only submit updated plans when IDPH requests their plan during the three-year review cycle. Most hospitals updated plans will be due during 2019. *IHA will contact those hospitals with plans due in November and December 2018 which will need to submit plans in accordance with the current law, but still implement the new requirements January 1, 2019. Please note that IDPH sends the request for submission of a new treatment or transfer plan addressed to the hospital CEO, so please forward the notice to the appropriate staff to ensure timely submission. Click [here](#) for a list of hospitals with corresponding date of next scheduled plan request.*

#### Area Wide Treatment Plans

Area wide treatment plans will be required for hospitals that wish to transfer pediatric patients to another hospital, for those that wish to transfer pediatric patients to a pediatric health care facility and for those that wish to transfer survivors to an out-of-state trauma center. The plan shall describe the medical forensic services to sexual assault survivors that each participating hospital and any approved pediatric health care facility has agreed to make available. All area wide plans shall be submitted to IDPH for approval prior to becoming effective. IDPH shall approve the plan if it finds that the minimum requirements set forth in Section 5 of the Act and implementation of the plan would provide for appropriate medical forensic services for the people of the area to be served.

#### Out-of-State Transfers

The law 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. 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. The OAG will establish the Sexual Assault Nurse Examiner Program which shall maintain a list of SANEs.

#### 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.

The law 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.

#### Rape Crisis Center Memorandum of Understanding

Every treatment hospital must have a memorandum of understanding 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.

*Most hospitals already have a relationship and utilize local rape crisis centers and hospitals are urged to begin developing the*

required Memorandum of Understanding (MOU) to be in place by January 1, 2019.

#### Reporting

Every treatment hospital every six months 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 tabulated for all survivors and all pediatric survivors:
  - Offered
  - Completed
  - Declined

*All treatment hospitals are advised to begin tracking these statistics starting January 1, 2019 in anticipation of IDPH requesting submission sometime next year.*

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

Among other new definitions, 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 sexual 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 reviews 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. The 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 law creates an Implementation Task Force and the first meeting is scheduled for October 1, 2018. Comprised of 27 members representing legislators, state agencies and other stakeholders, including 6 representatives appointed by IHA, 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 the General Assembly by January 1, 2023 on impact of transfers to out-of-state hospitals and availability of 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 shall maintain a list of SANEs who 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.

For questions, please contact [Sandy Kraiss](#).

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