

## Appendix A

**New York State Public Health Law; Section 2805-i; “Treatment of sexual offense patients and maintenance of evidence in a sexual offense, including Sections 2805-i (4-b) and 2805-i (5); Establishment of hospital-based Sexual Assault Forensic Examiner Programs”**

**And**

**New York State Public Health Law; Section 2805-p; “Emergency treatment of rape survivors”**

### **2805-i. Treatment of sexual offense victims and maintenance of evidence in a sexual offense.**

1. Every hospital providing treatment to alleged victims of a sexual offense shall be responsible for:
  - 1-a. maintaining sexual offense evidence and the chain of custody as provided in subdivision two of this section.
  - 1-b. contacting a rape crisis or victim assistance organization, if any, providing victim assistance to the geographic area served by that hospital to establish the coordination of non-medical services to sexual offense victims who request such coordination and services.
  - 1-c. offering and making available appropriate HIV post-exposure treatment therapies; including a seven day starter pack of HIV post-exposure prophylaxis, in cases where it has been determined, in accordance with guidelines issued by the commissioner, that a significant exposure to HIV has occurred, and informing the victim that payment assistance for such therapies may be available from the office of victim services pursuant to the provisions of article twenty-two of the executive law. With the consent of the victim of a sexual assault, the hospital emergency room department shall provide or arrange for an appointment for medical follow-up related to HIV post-exposure prophylaxis and other care as appropriate.
2. The sexual offense evidence shall be collected and kept in a locked, separate and secure area for not less than thirty days unless:
  - 2-a. such evidence is not privileged and the police request its surrender before that time, which request shall be complied with; or
  - 2-b. such evidence is privileged and
    - 2-b (i) the alleged sexual offense victim nevertheless gives permission to turn such privileged evidence over to the police before that time, or
    - 2-b (ii) the alleged sexual offense victim signs a statement directing the hospital to not collect and keep such privileged evidence, which direction shall be complied with. The sexual offense evidence shall include, but not be limited to, slides, cotton swabs, clothing and other items. Where appropriate such items must be refrigerated and the clothes and swabs must be dried, stored in paper bags and labeled. Each item of evidence shall be marked and logged with a code number corresponding to the patient's medical record. The alleged sexual offense victim shall be notified that after thirty days, the refrigerated evidence will be discarded in compliance with state and local health codes and the alleged sexual offense victim's clothes will be returned to the alleged sexual offense victim upon request.
3. Upon admittance or commencement of treatment of the alleged sexual offense victim, the hospital shall advise the victim of the availability of the services of a local rape crisis or victim assistance organization, if any, to accompany the victim through the sexual offense examination. If after receiving such advice the sexual offense victim wishes the presence of a rape crisis or victim assistance advocate, the hospital shall contact the appropriate organization and request that one be provided, provided, however, that if in the professional judgment of the treating practitioner a delay in treatment is detrimental to the provision of medical treatment, then examination or treatment need not be delayed pending the arrival of such advocate and further provided that the presence or continued presence of such advocate does not interfere with the provision of necessary medical care to the victim.
4. No hospital or treating practitioner shall be liable in civil damages for failing to comply with the requirements of subdivision one, two or three of this section or acting in good faith to provide

treatment as provided in subdivision three of this section.

4-a. On and after April first, two thousand one, a hospital providing treatment to alleged victims of sexual offenses shall be eligible to receive from the division of criminal justice services, at no cost, sexual offense evidence collection kits.

4-b. (a) The commissioner shall, with the consent of the directors of interested hospitals in the state and in consultation with the commissioner of the division of criminal justice services, designate hospitals in the state as the sites of a twenty-four hour sexual assault forensic examiner program. The hospital sites shall be designated in urban, suburban and rural areas to give as many state residents as possible ready access to the sexual assault forensic examiner program. The commissioner, in consultation with the commissioner of the division of criminal justice services, shall consider the following criteria when designating these sexual assault forensic examiner program sites:

- (1) the location of the hospital;
- (2) the hospital's capacity to provide on-site comprehensive medical services to victims of sexual offenses;
- (3) the capacity of the hospital site to coordinate services for victims of sexual offenses including medical treatment, rape crisis counseling, psychological support, law enforcement assistance and forensic evidence collection;
- (4) the hospital's capacity to provide access to the sexual assault forensic examiner site for disabled victims;
- (5) the hospital's existing services for victims of sexual offenses;
- (6) the capacity of the hospital site to collect uniform data and insure confidentiality of such data; and
- (7) the hospital's compliance with state and federally mandated standards of medical care.

4-b. (b) Each sexual assault forensic examiner program site designated pursuant to this subdivision shall comply with the requirements of subdivisions one, two and three of this section, and shall also provide treatment to the victim as follows:

(1) The victim shall, absent exigent circumstances, be met by a sexual assault forensic examiner within sixty minutes of arriving at the hospital, who shall be a nurse practitioner, registered nurse or physician specially trained in forensic examination of sexual offense victims and the preservation of forensic evidence in such cases and certified as qualified to provide such services pursuant to regulations promulgated by the commissioner. Such program shall assure that such a specially trained forensic examiner is on-call and available on a twenty-four hour a day basis every day of the year.

(2) An examination of the victim shall be performed promptly by such forensic examiner in a private room designated for such examinations. An obstetrician/gynecologist or other appropriate medical doctor shall be readily available to the forensic examiner if there is a need for more specialized medical evaluation or treatment.

(3) Promptly after the examination is completed, the victim shall be permitted to shower, be provided with a change of clothing, and receive follow-up information, counseling, medical treatment and referrals for same.

(c) Nothing in this subdivision shall affect the existence or continued existence of any program in this state through which a trained nurse practitioner, registered nurse or physician is providing appropriate forensic examinations and related services to survivors of sexual assault.

5. The commissioner shall promulgate such rules and regulations as may be necessary and proper to carry out effectively the provisions of this section. Prior to promulgating such rules and regulations, the commissioner shall consult with relevant police agencies, forensic laboratories, rape crisis centers, hospitals, and other such persons as the commissioner deems necessary. Such rules and regulations shall identify the offenses subject to the provisions of this section, provide a specific definition of sexual offense evidence and require each hospital to

contact its local police agency and forensic laboratory to determine their specific needs or requirements.

6. On or before November thirtieth, two thousand two, the commissioner shall make a report to the governor, the temporary president of the senate and the speaker of the assembly concerning the sexual assault forensic examiner program established under subdivision four-b of this section. Such report shall include an evaluation of the efficacy of such program in obtaining useful forensic evidence in sexual offense cases and assuring quality treatment to sex offense victims. Such report shall also recommend whether this program should be expanded and shall estimate the financial cost, if any, of such expansion.

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**S 2805-p. Emergency treatment of rape survivors.**

1. As used in this section:

1-a. "Emergency Contraception" shall mean one or more prescription drugs used separately or in combination to be administered or self-administered by a patient to prevent pregnancy within a medically recommended amount of time after sexual intercourse and dispensed for that purpose in accordance with professional standards of practice and determined by the United States Food and Drug Administration to be safe.

1-b. "Emergency Treatment" shall mean any medical examination or treatment provided by a hospital to a rape survivor following an alleged rape.

1-c. "Rape" shall mean any act defined in Section 130.25, 130.30 or 130.35 of the penal law.

1-d. "Rape Survivor" or "Survivor" shall mean any female person who alleges or is alleged to have been raped and who presents as a patient.

2. Every hospital providing emergency treatment to a rape survivor shall promptly:

2-a. Provide such survivor with written information prepared or approved, pursuant to subdivision three of this section, relating to emergency contraception.

2-b. Orally inform such survivor of the availability of emergency contraception, its use and efficacy; and

2-c. Provide emergency contraception to such survivor, unless contraindicated, upon her request. No hospital may be required to provide emergency contraception to a rape survivor who is pregnant.

3. The Commissioner shall develop, prepare and produce informational materials relating to emergency contraception for distribution to and use in all hospitals in the state, in quantities sufficient to comply with the requirements of this section. The Commissioner may also approve informational materials from medically recognized sources for the purposes of this section. Such informational material shall be in clear and concise language, readily comprehensible, in such varieties and forms as the Commissioner shall deem necessary to inform survivors in English and languages other than English. Such materials shall explain the nature of emergency contraception including its use and efficacy.

4. The Commissioner shall promulgate all such rules and regulations as may be necessary and proper to implement the provisions of this section.

S3. This act shall take effect on the one hundred twentieth day after it shall have become a law; provided that the Commissioner of Health is authorized and directed to promulgate any rules and regulations and develop, produce and distribute any materials necessary to implement the provisions of this act on or before such date.