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INDEPENDENT REGULATORY
REVIEW COMMISSION

Gerald Radke
Director, Bureau of Facility Licensure and Certification
Department of Health
Room 932, Health and Welfare Building
7th and Forster Streets, Harrisburg, PA 17120

RE: Comments regarding Proposed Rulemaking #10 – 182: *Sexual Assault Victim
Emergency Services*

Dear Mr. Radke:

On behalf of Planned Parenthood Pennsylvania Advocates (PPPA), thank you for proposing regulations that strive to ensure a comprehensive statewide standard of care for victims of sexual assault when they come to hospital emergency rooms in Pennsylvania.

The proposed regulation aims to establish necessary, common sense public policy. PPPA appreciates that as part of these comprehensive standards, the Department recognizes that victims of sexual assault must be able to prevent pregnancy as a result of the assault. The American Medical Association, the American College of Obstetrics and Gynecology, and the American College of Emergency Physicians consider provision of emergency contraception in the hospital emergency room the *standard of care* for treating a rape victim.

We believe the primary purpose of these regulations should be to:

- Establish a statewide protocol for emergency service treatment of sexual assault victims that is consistent with medical standards;
- Ensure that all oral and written information provided to the victim is medically accurate;
- Ensure that the state is able to protect the compelling state interest of providing adequate and medically appropriate treatment to all victims of assault without regard to where they live or the number or nature of facilities in communities in which rape victims may seek treatment. A woman should not be discriminated against by any institution that serves the public at large. Indeed, the right of an institution to impose its views on others must be strictly limited.
 - We recognize that “rights” must often be balanced against each other. We believe that the most important rights in question are the rights of individuals and that the rights of institutions do not supersede the rights of persons. Religious institutions that act in a public manner (such as a hospital) should be required to provide standard medical care. Exceptions to these standards should be narrowly tailored to include only those cases where the institution has been granted an exemption from the Department of Health. An exception may be granted when the institution has proven there is a greater compelling state interest to allow the hospital to refuse to comply with the medical standard of care than in providing sexual assault survivors with appropriate medication to avoid pregnancy.

The following are PPPA's specific comments regarding the Department's proposed regulation (our comments follow the language in italics taken directly from the Department's proposed regulation).

Specific comments

§ 117.51 Principle

As outlined in more detail in section 117.53 (a)(2) and 117.57 we feel strongly that even hospitals seeking an exemption from the DOH to provide emergency contraception to a victim be required to provide both written *and* oral information on the availability of emergency contraception, its use, risks and efficacy as defined by the federal Food and Drug Administration. Therefore, the reference to §117.53(a)(2) in this section should be deleted.

And as discussed in more detail in our comments on section 117.58, we find it unconscionable that the Department would allow a hospital to refuse to provide emergency services to victims of sexual assault. Therefore, the last sentence in this section should be deleted.

§ 117.52 Minimum requirements for sexual assault emergency services

PPPA has worked with the PA Coalition Against Rape for many years on the issue of improving standards of care for victims of sexual assault when they present to the hospital emergency room and we support their concern regarding testing for a sexually transmitted disease (STD). Any testing at the time of the forensic exam will only determine if the victim has a pre-existing STD; it is not possible at that time to confirm that the victim contracted an STD as a result of the sexual assault. In addition, past experience has shown that if an STD is detected at the hospital and therefore becomes a part of the medical record, this information could potentially be used against the victim in the legal system. Many sexual assault forensic examiner (SAFE) programs in Pennsylvania already simply prophylax for STDs rather than test for this reason. Therefore (a)(5) should be deleted.

Section (a)(6) should be modified by deleting "blood" prior to tests. Many STDs such as the very prevalent Chlamydia and gonorrhea are not diagnosed via blood tests.

Move text of 117.52(b) to 117.52(c) and insert the following text for 117.52 (b)

"Promptly upon a sexual assault victim's presenting to a hospital that provides sexual assault emergency services, the hospital shall:

- 1) Contact a local rape crisis center or local sexual assault program and
- 2) Afford the victim the opportunity for the victim to consult with the rape crisis center or sexual assault counselor in person and in private while at the hospital.

In thirty years of providing services to sexual assault victims in Pennsylvania, rape crisis center medical advocates report that victims will access services if the advocate is already present in the hospital when services are offered. It is much less likely that a victim will access services if the hospitals offer to contact an advocate rather than providing access to one who is already present.

§ 117.53. Emergency contraception.

(a)(1) Provide the victim with medically and factually accurate written informational materials regarding emergency contraception prepared under § 117.55 (relating to emergency contraception informational materials).

(a)(2) Orally inform the victim of the availability of emergency contraception, its use, risks and efficacy unless the hospital claims an exception in accordance with § 117.57 (relating to religious and moral exemptions).

PPPA firmly believes that in addition to the written information, the regulations require that the oral information provided to the victim be medically and factually accurate. Therefore the FDA should be referenced for purposes of identifying the use, risks and efficacy of emergency contraception. We believe information provided to a victim should also be medically and factually accurate and in order to ensure that, there should be a reference to utilizing the information provided by the FDA as a guide for preparing such materials.

We have serious concerns that a hospital could be exempted from providing oral information to a victim regarding emergency contraception. Hospitals should be required to provide the standard of care to all victims of sexual assault, and we therefore urge that the exception referenced in this subsection (and the exception from providing oral information contained in Section 117.57) be removed from the final regulations.

(a)(3) Offer emergency contraception to the victim and provide emergency contraception onsite upon the victim's request, unless contraindicated or unless the hospital claims an exception in accordance with § 117.57.

(b) Prior to providing emergency contraception to a sexual assault victim as required in subsection (a)(3), a hospital may require the victim to submit to a pregnancy test. A hospital is not required to provide emergency contraception to a pregnant sexual assault victim, but shall provide the victim with information regarding the pregnancy and information relating to appropriate medical care for the pregnancy.

It is important to note that emergency contraception has no effect on an existing pregnancy and therefore requiring a pregnancy test is not necessary from a medical perspective. The World Health Organization's "Medical Eligibility Criteria for Contraceptive Use" include no conditions in which the risks of emergency contraception outweigh the benefits.

The Department – as stated in the "Requirements of the Proposed Rulemaking" - has included this section in response to some concerns. The 1998 *Guidelines for Catholic Hospitals Treating Victims of Sexual Assault* published by the PA Catholic Health Association/PA Catholic Conference includes conducting a pregnancy test on the victim and prohibits Catholic hospitals from providing emergency contraception to a pregnant sexual assault victim.

Therefore, if the Department retains the language allowing these hospitals to require a pregnancy test and not provide emergency contraception to victims who are pregnant, we strongly

recommend that the religious and moral exception language cited in Section 117.57 be removed, and that for those hospitals who exercise such a requirement upon the victim there be no option to seek an exemption from the DOH.

If a victim requests emergency contraception and has a negative result on a standard pregnancy test then she should be able to obtain the drug.

§ 117.54 Prevention of sexually transmitted diseases

Victims should be informed about STDs that are not only significantly prevalent, but also those that are not as prevalent but have major long-term effects such as HIV. The following change broadens the category of STDs and risks for the victim.

(a) Delete “significantly prevalent” and add “including Hepatitis and HIV.”

(b)(1) Delete “and tests that may be conducted.”

(c) Delete “significantly prevalent”

§ 117.55. Emergency contraception informational materials.

(a) A hospital that provides sexual assault emergency services shall ensure that each member of the hospital personnel that provides the services is furnished with medically and factually accurate and objective written informational materials about emergency contraception developed by the hospital under this section.

(b) The hospital shall prepare, produce and distribute the written informational materials. The informational material must meet the following standards:

(1) Be in clear and concise language, readily comprehensible, in such varieties and forms as are deemed necessary to inform victims in English and languages other than English.

(2) Explain the nature of emergency contraception, including its use, risks and efficacy.

(3) Provide sexual assault victims with information on finding locations where emergency contraception may be obtained in the event it is not obtained at the hospital.

PPPA believes that there needs to be uniformity among the informational materials provided and in order to establish the highest medically accurate standards. It would be most appropriate for the Department of Health to develop rules and standards for informational content, produce a sample format and make it available to hospitals via its website and other public postings. In addition the Department should be responsible for approving the materials developed and produced by hospitals.

To ensure that the written informational materials are “medically and factually accurate” as required in § 117.53 (a)(1), § 117.55 (b)(2) should be modified to reference the FDA.

§ 117.55 (b)(3) should be modified to require the hospitals that do not provide emergency contraception to specifically identify and provide in writing the hospitals, medical facilities and pharmacies in the local area where the victim can obtain emergency contraception. This is important so that the hospital, which is often the first point of contact for sexual assault victims, does not place the burden back on the victim to procure medication which can help her prevent pregnancy from the assault.

§ 117.57. Religious and moral exemptions.

In accordance with section 902(a) of the act (35 P. S. § 448.902(a)), a hospital is not required to comply with § 117.53(a)(2) and (3) (relating to emergency contraception) if providing those services would be contrary to the stated religious or moral beliefs of the hospital. If the hospital does not provide services under this religious and moral exemption, the hospital shall provide the following services:

(1) Provide individual oral and written notice to the sexual assault victim that those services are not provided at the hospital due to the services being contrary to the stated religious or moral beliefs of the hospital.

(2) Upon request of the victim, arrange for the immediate transfer of the victim, at no cost, to a hospital in this Commonwealth in close proximity that does provide those services.

Providing sexual assault survivors with appropriate medication to avoid pregnancy is a narrowly tailored means of advancing the compelling interest the Commonwealth has in protecting women from the aftermath of rape. If an institution believes that they are entitled to an exemption from the rule, they may apply to the DOH for an exemption, and in their application explain how this compelling state interest would still be serviced, in particular, what alternative ways women in the community could access emergency contraception quickly and at no cost.

As we noted in Section 117.53(b) we also believe that if a hospital imposes a pregnancy test upon the victim and she is not pregnant then the hospital should not seek an exemption under the RFPA.

Additionally, if the Department maintains the information as it is in this current draft, then the exception for providing oral information to the victim in section 117.53 (a)(2) must be removed. Allowing hospitals to withhold information from a victim unacceptably places the burden of adequate care back on the victim.

Therefore the regulations should be amended to read:

“A hospital is not required to comply with section 117.53(a)(3) if granted an exemption by the Department of Health. A hospital may refuse to provide the standard of care by proving that there is compelling state interest to exempt the institution from such practice rather than adhere to the medically accepted standard of care of providing sexual assault survivors with medication

to prevent pregnancy. They must additionally provide the DOH with information on the alternative ways women in the community could access emergency contraception quickly and at no cost. Upon receiving an exemption, the hospital shall provide the following services:

- (1) Provide individual written and oral notice to the sexual assault victim that those services are not provided at the hospital due to compelling state interest to allow the institution to be exempted from the provision of such services.*
- (2) Upon request of the victim, arrange for the immediate transfer of the victim, at no cost, to a PA hospital in close proximity that does provide those services."*

The real question is at what point is the patient's rights and conscience protected when a hospital can refuse medication which is the standard of care nationally, and even deny information concerning such treatment? Shouldn't her rights for appropriate medical treatment come first?

§ 117.58. Hospitals not providing sexual assault emergency services.

(a) If a hospital otherwise governed by this subpart elects not to provide sexual assault emergency services to victims, including a hospital not providing certain emergency contraception services under § 117.57 (relating to religious and moral exemptions), the hospital shall provide the following notifications:

- (1) The hospital shall notify the Department within 30 days of the hospital's decision not to provide sexual assault emergency services. The hospital shall address and send the written notice to the Division of Acute and Ambulatory Care. The Department will publish a list of hospitals in the Pennsylvania Bulletin that have chosen not to provide sexual assault emergency services.*
- (2) The hospital shall notify the law enforcement agencies which may transport or refer a sexual assault victim to the hospital that the hospital has elected not to provide sexual assault emergency services. The written notice to law enforcement agencies shall be sent no later than 30 days after the hospital's decision not to provide those services.*
- (3) The hospital shall notify the ambulance and emergency medical care and transport services which may transport or refer a sexual assault victim to the hospital that the hospital has elected not to provide sexual assault emergency services. The written notice to ambulance and emergency medical transport and care services shall be sent no later than 30 days after the hospital's decision not to provide those services.*

(b) If a hospital does not provide services under this section, the hospital shall do the following:

- (1) Provide individual oral and written notice to the sexual assault victim that those services are not provided at the hospital.*

(2) Upon request of the victim, arrange for the immediate transfer of the victim, at no cost, to a hospital in this Commonwealth in close proximity that does provide those services.

We are deeply and profoundly concerned that the Department would allow an otherwise appropriately staffed and equipped hospital to opt out of providing emergency services to victims of sexual assault. In certain counties, such as Philadelphia, there are hospitals that are designated as particularly adept at treating sexual assault victims, with SANE nursing programs and an ongoing relationship with medical advocates from local rape crisis/sexual assault centers. However, the demographic diversity of the Commonwealth does not lend itself to this kind of specialization throughout the state. Any sexual assault victim should be able to present to any emergency room in Pennsylvania and receive compassionate treatment and care. We strongly oppose any allowance for hospitals to “opt out” of providing emergency services to victims of sexual assault.

The Department wrote “Recognizing that some of the hospitals in this Commonwealth are specialty hospitals with limited services and are not staffed and equipped to provide the services, proposed § 117.58 (relating to hospitals not providing sexual assault emergency services) allows a hospital to self-evaluate its facilities to determine if providing sexual assault emergency services at the hospital would be appropriate. Although ideally it would be of greater benefit to this Commonwealth to have sexual assault emergency services provided in as many locations as possible, there is a greater risk to the victim and the integrity of future criminal prosecution if a sexual assault victim is treated at a hospital without the appropriate staff and equipment. For example, the Department does not expect that hospitals not providing general emergency services, such as rehabilitation hospitals, would or could provide sexual assault emergency services.”

We don’t believe that specialty hospitals such as rehabilitation hospitals should have to provide emergency services to sexual assault victims but this issue would be more appropriately addressed by defining what hospitals are regulated by these proposed rules rather than establishing a protocol for any hospital – including those that provide emergency services – to deny serving a specific class of patients (in this case, victims of sexual assault).

Thank you for taking our comments and concerns into consideration and we stand ready to serve as a resource to assist the Department as it works with all stakeholders to finalize these vitally important regulations.

Sincerely,

Susan Gobreski
President and CEO
Planned Parenthood PA Advocates

Cc: Governor Ed Rendell
Donna Cooper

Joanne Grossi

Kathy Cooper

From: sari.stevens@pppamail.org
Sent: Tuesday, November 21, 2006 11:52 AM
To: IRRC
Subject: In reference to: 28 PA. CODE CHS. 101 AND 117 - PPPA Comments on proposed regulations for Sexual Assault Victim Emergency Services
Importance: High

Please find Planned Parenthood Pennsylvania Advocates comments on proposed regulations for Sexual Assault Victim Emergency Services.

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