

Women's Law Project

2577

MAIN OFFICE
125 South Ninth Street
Suite 300
Philadelphia, PA 19107

T: 215.928.9801 F: 215.928.9848
W: www.womenslawproject.org
E: info@womenslawproject.org

BOARD OF TRUSTEES

Stella M. Tsai (Chair)
David F. Abernethy
Catherine T. Barbieri
Suzanne Sheehan Becker
Gerianne DiPiano
Anna Doering
Patricia A. Dubin
James J. Eisenhower
Nancy O'Mara Ezold
Fran Fattah
Dr. Cecilia Griffin Golden
Vicki W. Kramer
Cheryl Krause
Dorothy Mann
Jay K. Meadway
Joann Mitchell
Lois Eisner Murphy
Kimberly Mutcherson
Kimberly C. Oxholm
Mary F. Platt
Sarah E. Ricks
Lisa Sloan
Robin A. Stuntebeck
Carol E. Tracy (ex-officio)
Lynn Yeakel

EXECUTIVE DIRECTOR

Carol E. Tracy

MANAGING ATTORNEY

Terry L. Fromson

ASSOCIATE DIRECTOR

Dabney Miller

SENIOR STAFF ATTORNEY

Susan Frietsche

DEVELOPMENT DIRECTOR/ STAFF ATTORNEY

Lisa JG Weikel

LAW CLERK

Amal Bass

PROGRAM MANAGER

WomenVote PA
Barbara B. DiTullio

ACCOUNTANT

Grace Knight
Anita Young

OFFICE MANAGER

Debi Morrison

ADMINISTRATIVE ASSISTANTS

Jillian Goldstein~Philadelphia
Stephanie McKnight~Pittsburgh

PROGRAM ASSOCIATE

Sarah Jones

INTAKE ASSISTANT

Tracie Kennerly

WESTERN PENNSYLVANIA OFFICE*

Regional Enterprise Tower
425 Sixth Avenue, Suite 1860
Pittsburgh, PA 15219

T: 412.227.0301 F: 412.227.0417
E: infopitt@womenslawproject.org

November 20, 2006

BY E-MAIL [GRADKE@STATE.PA.US] AND FIRST-CLASS MAIL

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

**RE: PROPOSED RULEMAKING FOR SEXUAL ASSAULT
VICTIM EMERGENCY SERVICES, 36 Pa. Bull. 6403**

Dear Mr. Radke:

The Women's Law Project (WLP), a non-profit women's legal advocacy organization with offices in Philadelphia and Pittsburgh, commends the Department of Health for publishing its proposed rulemaking adding minimum requirements for the physical and psychological treatment of sexual assault survivors by hospitals in Pennsylvania. We offer the following comments to help clarify and strengthen those rules. These comments focus on Section 117.51 (Principle), Section 117.53 (Emergency Contraception), Section 117.58 (Hospitals Not Providing Sexual Assault Emergency Services), and Section 117.57 (Religious and Moral Exemptions).

1. Principle (Section 117.51)

Identification of governmental interest: We recommend that the Department explicitly state within the rule that the Commonwealth has a compelling interest in minimizing the harmful effects of sexual assault and in ensuring victims' safety and health by making it possible for them to avoid sexually transmitted disease and unwanted pregnancy following an assault. We further recommend that the rule state that the Department has determined that generally requiring hospitals to offer emergency contraception to sexual assault survivors is necessary to advance this compelling governmental interest.

INDEPENDENT REGULATORY
REVIEW COMMISSION

2006 NOV 27 AM 11:52

RECEIVED

Scope of rule: One of the most pervasive and damaging manifestations of the subordination of women in American culture is the widespread denial of access to women's reproductive health services. Our recent history is replete with examples: the refusal to provide medical benefits to pregnant women (*Geduldig v. Aiello*, *General Electric v. Gilbert*), the exclusion of pregnant women from hospital-based drug and alcohol treatment programs (*Elaine W. v. Joint Diseases North General Hospital*), organized campaigns of violence and harassment aimed at closing down women's clinics (*Roe v. Operation Rescue*), the exclusion of contraception coverage from otherwise comprehensive employer-based prescription drug plans (*Standridge v. Union Pacific RR.*). Despite reforms such as the enactment of the Pregnancy Discrimination Act, women's reproductive health care is still heavily stigmatized, regarded as optional or "extra" rather than a basic component of health care required by the majority of the population for over half of their lives, or treated as less essential than men's health care. Consequently, it remains a struggle for many women to get access to it in many parts of the Commonwealth. The denial of prompt and appropriate medical attention for sexual assault survivors, the clear majority of whom are women, and the denial of emergency contraception for these survivors,¹ constitute an especially heinous manifestation of this form of sex discrimination.

The Women's Law Project believes that the survivors' need for prompt and compassionate medical attention should be given priority over all conflicting interests and considerations. Yet, the draft rule applies only to those hospitals *choosing* to provide emergency services to sexual assault survivors. While Section 117.58 (Hospitals Not Providing Sexual Assault Emergency Services) appears to seek to accommodate the patient's needs, if she lives in a region of the state in which there is no hospital in close proximity, or none that chooses to serve sexual assault survivors, then the minimum level of urgent care the survivor needs on an emergency basis is effectively denied. This emergency care is often essential to preserve evidence, stabilize the survivor physically and emotionally, and avert pregnancy.

Because the public interest in protecting rape survivors from the aftermath of assault is of overriding importance, we recommend that the regulations be amended so that this minimum level of care be generally required of all hospitals with the proficiency to provide it, including those that do not choose to provide emergency services to sexual assault survivors, unless the Department has determined that an alternate hospital exists within a thirty (30) minute radius at which the necessary emergency services can be obtained.

2. Emergency Contraception (Section 117.53)

This section requires the provision of emergency contraception "in addition to the minimum requirements in § 117.52 (relating to minimum requirements for sexual assault emergency services)." See Section 117.53(a). Because the provision of emergency contraception should be regarded as a minimum requirement for the appropriate treatment of sexual assault survivors, we would recommend reworking this section and section 117.52 to eliminate the false distinction between "minimum requirements" and the provision of emergency contraception, and instead fold emergency contraception into the list of protocols that are part of

¹ Needless to say, 100% of the sexual assault survivors needing emergency contraception are women or girls.

the minimum care a sexual assault survivor should be able to expect to receive from a treating hospital.

3. Hospitals Not Providing Sexual Assault Emergency Services (Section 117.58)

As discussed above, this section exempts any hospital that opts out of providing sexual assault emergency services from the minimum requirements of the rule. Instead, these hospitals would be required to give notice that they do not serve sexual assault survivors and transfer the patient. *See* § 117.58(a) (requiring any hospital that “elects not to provide sexual assault emergency services” to notify the Department, law enforcement agencies, and ambulance services of that fact); § 117.58(b) (requiring opt-out hospitals to notify victim that services are not provided and to transfer victim, at victim’s request, to hospital “in close proximity” that does provide services).

The draft rule does not speak directly or clearly to the circumstance where there is no hospital in close proximity willing to serve sexual assault survivors. In such a circumstance, we recommend that the Department strike the balance in favor of the victim’s rights, and amend the draft rule explicitly to require that any hospital with the proficiency to provide the level of care set forth in Section 117.52(a)(1-9) (Minimum Requirements for Sexual Assault Emergency Services) and Section 117.53 (Emergency Contraception) must do so when there is no ready alternative source of care. Those hospitals that do not have the medical proficiency to provide the basic care enumerated in sections 117.52 and 117.53 should be required to provide the Department with a statement to that effect subject to 18 Pa. C.S.A. § 4904, and notify law enforcement, emergency services, and the general public via the Pennsylvania Bulletin.

4. Religious and Moral Exemptions (Section 117.57)

Section 117.57 allows hospitals to deny emergency contraception to sexual assault survivors upon the hospital’s mere assertion of a religious or moral objection to it. For religious hospitals that claim a right to deny women emergency contraception on the basis of a stated religious or moral belief, Section 117.57 should, at the least, incorporate the safeguards contained in Pennsylvania’s Religious Freedom Protection Act. These safeguards are essential to ensure that services women desperately need are not refused to them capriciously or out of illegal discriminatory animus.

To begin with, a hospital wishing to opt out of providing emergency contraception should be required to make a showing that the exemption is sought on the basis of bona fide religious or moral belief. The hospital desiring to opt out should be required to explain with particularity how the needs of sexual assault survivors will be otherwise met in their community if the hospital is permitted to opt out. The factors to be considered should include whether there are hospitals in close proximity that provide sexual assault services including emergency contraception; whether the hospital has attempted to engage the services of a third party to provide the services onsite from which its staff wishes to opt out; and how the opting-out hospital proposes to respond to sexual assault victims with severe injuries. The draft rules should anticipate the possibility that, depending upon circumstances and consistent with the balancing test set forth in the Religious Freedom Protection Act, the Commonwealth’s

compelling interest in protecting victims may override the hospital's right to opt out of providing or arranging for the provision of appropriate services to sexual assault survivors.

If the hospital is exempted from complying with §117.53(a)(2) and (3), then §117.57(a)(2) must require the hospital to inform the victim immediately upon her arrival at the facility of her right to request "immediate transfer . . . , at no cost, to a hospital in this Commonwealth in close proximity that does provide those services." Since the efficacy of emergency contraception is dependent upon time, Section 117.57(a)(2) must ensure that female survivors of sexual assault do not have their medical care delayed (and thus in many cases effectively denied) by the hospital's decision.

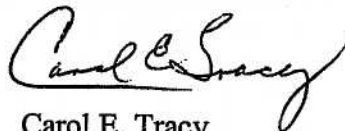
5. Monitoring and Enforcement

The draft rules lack an explicit monitoring and enforcement mechanism. Penalties for noncompliance should be clearly stated within the rules.

On behalf of the sexual assault survivors we have represented, the Women's Law Project thanks the Department for taking this important step toward protecting the health and wellbeing of women who are suffering from the aftermath of terrible crimes. Lest the exception swallow the rule, however, we urge the Department to amend the draft rule to ensure that, where there are conflicting rights, the Commonwealth's compelling interest in protecting sexual assault survivors weigh heavily in favor of ensuring that the survivors' needs are met.

Thank you.

Sincerely,



Carol E. Tracy
Executive Director