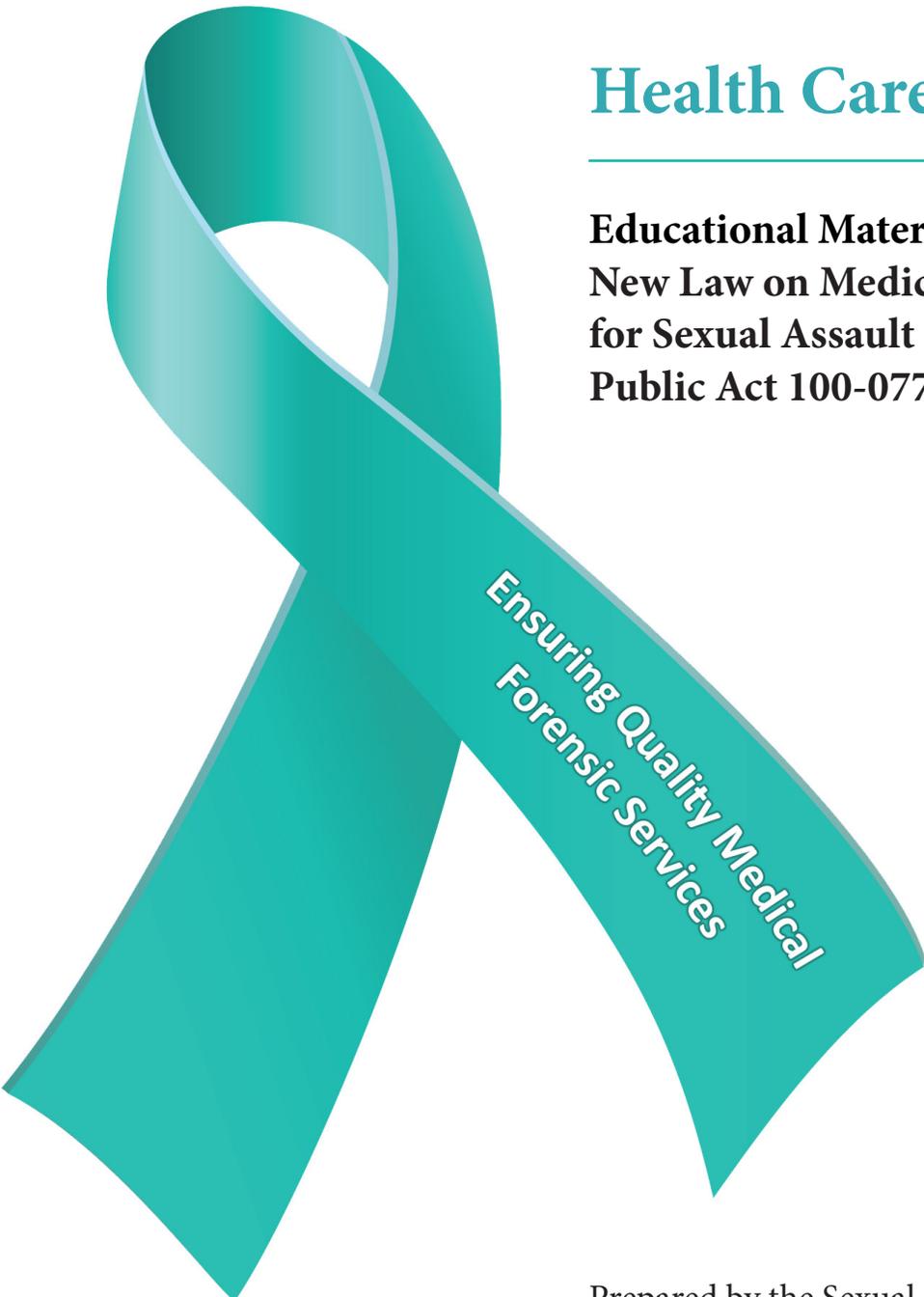


Health Care Providers

**Educational Materials Regarding
New Law on Medical Forensic Services
for Sexual Assault Survivors
Public Act 100-0775**



Ensuring Quality Medical
Forensic Services

Prepared by the Sexual Assault Medical Forensic
Services Implementation Task Force



**Educational Materials for Health Care Providers
Regarding New Law on Medical Forensic Services for Sexual Assault Survivors**

Prepared by the Sexual Assault Medical Forensic Services Implementation Task Force

Public Act 100-0775 expands the Sexual Assault Survivors Emergency Treatment Act (SASETA) to ensure that all survivors of sexual assault and sexual abuse are treated in a timely manner by health care professionals who are specially trained to conduct medical forensic examinations of sexual assault and sexual abuse survivors. The Act is the product of a yearlong collaboration among the Illinois Department of Public Health (IDPH), the Office of the Attorney General, child abuse pediatricians, sexual assault nurse examiners, and other medical providers, rape crisis advocates, children’s advocacy centers, hospitals, state’s attorney’s offices, and state agencies.

Public Act 100-0775 also established the Sexual Assault Medical Forensic Services Implementation Task Force (Implementation Task Force) and set forth numerous goals to accomplish before December 31, 2023. One of the goals is “to develop and distribute educational information regarding the implementation of this Act to hospitals, health care providers, rape crisis centers, children’s advocacy centers [and] State’s Attorney’s offices[.]” [410 ILCS 70/9.5(c)(5)]

This document contains the educational information for health care providers prepared by the Implementation Task Force to satisfy this statutory mandate. Educational information for others may be found on the website of the Office of the Attorney General at <http://www.illinoisattorneygeneral.gov/victims/saimplementationtaskforce.html>.

Please note this document is not a complete summary of Public Act 100-0775. The full text of the new law can be found at <http://ilga.gov/legislation/publicacts/100/PDF/100-0775.pdf>.

The full text of SASETA can be found at <http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=1531&ChapterID=35&Print=True>.

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Scope of the New Law

The amendments to SASETA apply to all sexual assault survivors who (1) present with a complaint of sexual assault that occurred within a minimum of the last 7 days or (2) 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. This is considered an acute disclosure. Treatment provided within 7 days is commonly referred to as acute medical forensic services. Treatment provided after 7 days is commonly referred to as non-acute medical services.

When a sexual assault survivor presents for acute medical forensic services, the sexual assault survivor shall be offered evidence collection using the Illinois State Police Sexual Assault Evidence Collection Kit. The provider of medical forensic services must give the survivor appropriate oral and written information created by the Office of the Attorney General concerning evidence-based guidelines for the appropriateness of evidence collection depending on the sexual development of the sexual assault survivor, the type of sexual assault, and the timing of the sexual assault. Evidence collection is encouraged for prepubescent sexual assault survivors who present to a hospital or approved pediatric health care facility with a complaint of sexual assault within 96 hours after the sexual assault.

Definitions

“Hospital” means a hospital licensed under the Hospital Licensing Act or operated under the University of Illinois Hospital Act, any outpatient center included in the hospital's sexual assault treatment plan where hospital employees provide medical forensic services, and an out-of-state hospital that has consented to the jurisdiction of the Department [of Public Health] under Section 2.06 [of SASETA].

“Medical forensic services” are defined as health care delivered to patients within or under the care and supervision of personnel working in a designated emergency department of a hospital or an approved pediatric health care facility. "Medical forensic services" 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 collection 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. Medical forensic services are specifically set forth in Section 5(a-5) of SASETA. [410 ILCS 70/5(a-5)]

“Rape Crisis Counselor” or Rape Crisis Advocate” means a medical advocate trained and supervised in accordance with Illinois Coalition Against Sexual Assault Policies and Procedures and Illinois statute 735 ILCS 5/8-802.1 “Confidentiality of Statements Made to Rape Crisis Personnel” who is available, on-call, 24-hours per day, seven days per week, to provide in-person crisis intervention counseling, medical advocacy services and victim assistance to those presenting

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as or determined to be survivors of sexual assault and abuse at a hospital emergency room or Approved Pediatric Health Care Facility. The terms may also apply to a legal advocate who provides services related to court proceedings, such as civil proceedings relating to domestic violence orders of protection or civil no contact orders and criminal cases.

“Sexual assault” means: (1) an act of sexual conduct; as used in this paragraph, "sexual conduct" has the meaning provided under Section 11-0.1 of the Criminal Code of 2012; or (2) any act of sexual penetration; as used in this paragraph, "sexual penetration" has the meaning provided under Section 11-0.1 of the Criminal Code of 2012 and includes, without limitation, acts prohibited under Sections 11-1.20 through 11-1.60 of the Criminal Code of 2012.

“Sexual assault survivor” means a person who presents for medical forensic hospital emergency services in relation to injuries or trauma resulting from a sexual assault.

“Pediatric sexual assault survivor” means a person under the age of 13 who presents for medical forensic services in relation to injuries or trauma resulting from a sexual assault.

“Prepubescent sexual assault survivor” means a female who is under the age of 18 years and has not had a first menstrual cycle or a male who is under the age of 18 years and has not started to develop secondary sex characteristics who presents for medical forensic services in relation to injuries or trauma resulting from a sexual assault.

“Transfer services” means the appropriate medical screening examination and necessary stabilizing treatment prior to the transfer of a sexual assault survivor to a hospital or an approved pediatric health care facility that provides medical forensic services to sexual assault survivors pursuant to a sexual assault treatment plan or areawide sexual assault treatment plan.

[410 ILCS 70/1a]

Unless otherwise noted, the provisions discussed below go into effect on January 1, 2019. [410 ILCS 70/99]

Places Where Medical Forensic Services and Examinations May Be Performed

Acute Medical forensic examinations may only be performed in four places:

1. Treatment Hospital. A licensed hospital that has a treatment plan approved by the Illinois Department of Public Health (IDPH) to provide medical forensic services to sexual assault survivors of all ages 24 hours a day 7 days a week. [410 ILCS 70/2(a)]
2. Treatment Hospital with Approved Pediatric Transfer. A licensed hospital that has a treatment plan approved by IDPH to provide medical forensic services to sexual assault survivors 13 years or older and to transfer pediatric patients to a Treatment Hospital or an Approved Pediatric Health Care Facility 24 hours a day, 7 days a week. [410 ILCS 70/2(a)]

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3. Approved Pediatric Health Care Facility. A health care facility, other than a hospital, with an Areawide Treatment Plan approved by IDPH to provide medical forensic services to pediatric sexual assault survivors during hours of operation. [410 ILCS 70/2(b)]
4. Out-of-State Hospital. An out-of-state hospital, designated as a trauma center by IDPH that consents to the jurisdiction of IDPH under SASETA and is part of an Areawide Treatment Plan, that has been approved by IDPH, with one or more licensed Illinois hospitals to provide medical forensic services to sexual assault survivors 24 hours a day, 7 days a week. [410 ILCS 70/2.06]

THESE ARE THE ONLY MEDICAL FACILITIES THAT ARE AUTHORIZED BY LAW TO PERFORM ACUTE MEDICAL FORENSIC SERVICES.

Non-acute medical forensic services may be performed at any health care facility.

Law enforcement officers and others should immediately refer sexual assault survivors with a complaint of sexual assault within the last 7 days or who have disclosed past sexual assault by a specific individual and were in the care of that individual within the last 7 days immediately to a hospital for acute medical forensic services.

Qualified Medical Provider Requirement

A Qualified Medical Provider (QMP) must provide medical forensic services at an Approved Pediatric Health Care Facility. [410 ILCS 70/2(b)]

Beginning no later than January 1, 2022, a QMP must provide the medical forensic services at Treatment Hospitals and Treatment Hospitals with Approved Pediatric Transfer (APT). [410 ILCS 70/5(a)]

A QMP is a board-certified or board-eligible child abuse pediatrician, sexual assault forensic examiner (SAFE) or sexual assault nurse examiner (SANE), who has access to photo documentation tools and participates in peer review.

- A board-certified or board-eligible child abuse pediatrician is a physician certified by the American Board of Pediatrics in child abuse pediatrics or a physician who has completed the requirements set forth by the American Board of Pediatrics to take the examination for certification in child abuse pediatrics.
- A SAFE is a physician or physician assistant who has completed training that meets or is substantially similar to the Sexual Assault Nurse Examiner Education Guidelines established by the International Association of Forensic Nurses for either Pediatric/Adolescent survivors, Adult/Adolescent survivors or Pediatric/Adolescent/Adult survivors.

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- The Illinois Department of Public Health, in consultation with the Office of the Attorney General, must adopt administrative rules by January 1, 2020 establishing a process for physicians and physician assistants to provide documentation of training and clinical experience that meets or is substantially similar to the Sexual Assault Nurse Examiner Education Guidelines established by the International Association of Forensic Nurses in order to qualify as a sexual assault forensic examiner. [410 ILCS 70/2.05(c)]
- A SANE is an advanced practice registered nurse or registered professional nurse who has completed a sexual assault nurse examiner training program that meets the Sexual Assault Nurse Examiner Education Guidelines established by the International Association of Forensic Nurses for either Pediatric/Adolescent survivors, Adult/Adolescent survivors or Pediatric/Adolescent/Adult survivors.
 - A SANE in Illinois who has completed the didactic and clinical components for Adult/Adolescent or Pediatric/Adolescent sexual assault survivors may conduct a medical forensic examination using the Illinois State Police Sexual Assault Evidence Collection Kit without the presence or participation of a physician for that specific population. [410 ILCS 70/5(a-5)(1-5)(B)]
 - A SANE is not required to be nationally certified by the International Association of Forensic Nurses Commission for Forensic Nursing Certification, however, the Implementation Task Force encourages SANEs to become nationally certified to ensure the highest level of care for Illinois sexual assault survivors.
 - For additional information regarding the Sexual Assault Nurse Examiner Education Guidelines and SANE Certification, please see the “Sexual Assault Nurse Examiner Program” section on page 12.

[410 ILCS 70/1a]

Medical Forensic Services

Section 5 of SASETA sets forth the following minimum services which must be offered to sexual assault survivors seeking medical forensic services by Treatment Hospitals, Treatment Hospitals with Approved Pediatric Transfer, Approved Pediatric Health Care Facilities, and Out-of-State Hospitals participating in an Area Wide Treatment Plan. P.A. 100-0775 amends Section 5 to revise some of the current provisions and adds additional provisions. P.A. 100-1087 also adds two new requirements. (*New Requirement)

- Provide medical forensic services without delay, in a private, age- or developmentally-appropriate space.*

- Offer to complete the Illinois Sexual Assault Evidence Collection Kit for any sexual assault survivor who presents within 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 the last 7 days.
- Provide appropriate oral and written information concerning the possibility of infection, sexually transmitted infection, including an evaluation of the sexual assault survivor's risk of contracting human immunodeficiency virus (HIV) from sexual assault and pregnancy resulting from sexual assault.
- Provide appropriate oral and written information concerning accepted medical procedures, laboratory tests, medication, and possible contraindications of such medication available for the prevention or treatment of infection or disease resulting from sexual assault.
- Provide an amount of medication, including HIV prophylaxis, for treatment at the hospital or Approved Pediatric Health Care Facility (APHCF) and after discharge as is deemed appropriate by the attending physician, an advanced practice registered nurse, or a physician assistant in accordance with the Centers for Disease Control and Prevention guidelines and consistent with the hospital's or APHCF's current approved protocol for sexual assault survivors.
- Beginning July 1, 2019, offer photo documentation of the sexual assault survivor's injuries, anatomy involved in the assault, or other visible evidence on the sexual assault survivor's body to supplement the medical forensic history and written documentation of physical findings and evidence.*
- Provide written and oral instructions indicating the need for follow-up examinations and laboratory tests after the sexual assault to determine the presence or absence of sexually transmitted infection.
- Make a referral for appropriate counseling.
- Provide written information regarding services provided by a children's advocacy center and rape crisis center, if applicable. Information for dissemination to be provided to hospitals by the appropriate centers.*
- Offer medical advocacy services provided by a rape crisis counselor whose communications are protected under Section 8-802.1 of the Code of Civil Procedure, if there is a memorandum of understanding between the hospital and a rape crisis center.*
- With the consent of the sexual assault survivor, a rape crisis counselor shall remain in the exam room during the medical forensic examination. The sexual assault survivor also has the right to have a support person present during the examination.* (P.A. 100-1087)
- Provide access to a shower at no cost, after a medical evidentiary or physical examination, unless showering facilities are unavailable.* (P.A. 100-1087)

[410 ILCS 70/5(a) and 5(a-5)]

Information for Survivors about Evidence Collection

The law mandates that certain information must be provided directly to a sexual assault survivor and non-offending parent or legal guardian. The information must be provided in-person by the Qualified Medical Provider (QMP) or health care professional providing medical forensic services when offering to complete the Illinois Sexual Assault Evidence Collection Kit. Beginning January 1, 2022, this information must be provided by the QMP providing medical forensic services.

The mandated information includes:

- Appropriate oral and written information concerning evidence-based guidelines for the appropriateness of evidence collection depending on the sexual development of the sexual assault survivor, the type of sexual assault, and the timing of the sexual assault.
- Information that evidence collection is encouraged for prepubescent sexual assault survivors who present to a hospital or approved pediatric health care facility with a complaint of sexual assault within a minimum of 96 hours after the sexual assault.

[410 ILCS 70/5(a-5)(1.5)]

The Sexual Assault Nurse Examiner Program, in consultation with Qualified Medical Providers, will create uniform materials that all Treatment Hospitals, Treatment Hospitals with Approved Pediatric Transfer, and Approved Pediatric Health Care Facilities (APHCFs) are required to give patients and non-offending parents or legal guardians, if applicable, regarding the medical forensic examination procedure, laws regarding consenting to medical forensic services, and the benefits and risks of evidence collection, including recommended time frames for evidence collection pursuant to evidence-based research. [410 ILCS 70/10]

Photo Documentation

On or before July 1, 2019, Qualified Medical Providers and health care providers performing medical forensic examinations at facilities with approved sexual assault treatment plans must offer photo documentation of the examination to the sexual assault survivor and obtain the survivor's consent to take photos. Photo documentation does not replace written documentation of the injury and is part of the patient's medical record. [410 ILCS 70/5(a-5)(5)]

“Photo documentation” means digital photographs or colposcope videos stored and backed-up securely in the original file format. [410 ILCS 70/1a]

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

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of 1987, or in an investigation under the Abused and Neglected Child Reporting Act. [410 ILCS 70/5.1]

The Implementation Task Force has developed a sample Forensic Photography Policy, including optional consent form, equipment options and storage options, for Treatment Hospitals, Treatment Hospitals with Approved Pediatric Transfer, and Approved Pediatric Health Care Facilities.

The sample policy may be found on the Attorney General's website at

http://www.illinoisattorneygeneral.gov/victims/saimplementationtaskforce/photo_documentation_and_sample_digital_photography_policy.pdf.

Consent for Medical Forensic Services and Testing of Sexual Assault Evidence

Medical Forensic Exam and Evidence Collection

- Any person who is a sexual assault survivor who seeks medical forensic services or follow-up healthcare shall be provided services without the consent of any parent, guardian, custodian, surrogate, or agent. [410 ILCS 70/5(b)] If the sexual assault survivor consents to the exam, the healthcare professional will still ask the survivor if it is okay to proceed with each step of the exam. The patient can stop the exam at any time or decline any portion of the exam.
- If a sexual assault survivor is unable to consent to medical forensic services, the services may be provided under the Consent by Minors to Medical Procedures Act [410 ILCS 210/1 *et seq.*], the Health Care Surrogate Act [755 ILCS 40/5 *et seq.*], or other applicable State and federal laws. [410 ILCS 70/5(b)]
- If a parent or guardian consents to a medical forensic exam for a child or other person, the healthcare professional will still seek the sexual assault survivor's assent to perform each part of the exam. Assent is the expressed willingness of the survivor to participate in an activity. An exam will not be forced upon a sexual assault survivor and a survivor should not be physically restrained or medicated in order for the exam to be performed.

Photo Documentation / Photographic Evidence

- A sexual assault survivor age 13 years old or older has the option to consent to or decline the collection of photographic evidence as part of the medical forensic examination. This is reflected on the Illinois State Police Patient Consent: Collect and Test Evidence or Collect and Hold Evidence form, which is part of the Illinois Sexual Assault Evidence Collection Kit. If the sexual assault survivor is under 13 years old, consent may be obtained from a parent or guardian. [77 Ill. Adm. Code 545.60(c)(2)]
- A sexual assault survivor may verbally withdraw consent for photographs and images to be taken at any time. The withdrawal of consent may apply to the rest of the examination

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or to a portion of the examination. If consent is withdrawn, the health care professional should document in the patient's medical record that consent was withdrawn and specify the scope of the consent withdrawal (e.g. the remainder of the examination, photos of the genitalia, or photos of a specific injury).

- If a sexual assault survivor is unable to consent to photographic evidence, the collection of photographic evidence may be provided under the Consent by Minors to Medical Procedures Act [410 ILCS 210/1 *et seq.*], the Health Care Surrogate Act [755 ILCS 40/5 *et. seq.*], or other applicable State and federal laws. [410 ILCS 70/5(b)]

Reporting to Law Enforcement / Testing of Sexual Assault Evidence

- A sexual assault survivor who consents to medical forensic services is not required to report the sexual assault or sexual abuse to law enforcement. However, a sexual assault survivor may choose to speak with a law enforcement officer or to allow Qualified Medical Providers and other health care providers to provide information to law enforcement regarding the sexual assault. [725 ILCS 203/20(b), (e)]
- Once a medical forensic exam is completed, a survivor has two options with respect to the testing of the evidence collecting during the exam. The first option is to release the evidence to a law enforcement agency for forensic testing by a crime lab. The second option is the release the evidence to law enforcement for storage. A survivor shall have 10 years from the completion of the exam or 10 years from the age of 18 years, whichever is longer, to sign a written consent to release the sexual assault evidence to law enforcement for testing. [725 ILCS 203/30]
- A sexual assault survivor 13 years of age or older may sign the written consent to release the evidence for testing. [410 ILCS 70/6.5(a)(1)]
- If the sexual assault survivor is a minor who is under 13 years of age, the written consent to release the sexual assault evidence for testing may be signed by a parent, guardian, investigating law enforcement officer, or Department of Children and Family Services. [410 ILCS 70/6.5(a)(2)]
- If the survivor is an adult who has a guardian of the person, a health care surrogate, or an agent acting under a health care power of attorney, the consent of the guardian, surrogate, or agent is not required to release evidence for testing and information concerning the sexual assault or sexual abuse. If the adult is unable to provide consent for the release of evidence for testing and information and a guardian, surrogate, or agent under a health care power of attorney is unavailable or unwilling to release the information, then an investigating law enforcement officer may authorize the release for testing. [410 ILCS 70/6.5(a)(3)]

- If a sexual assault survivor is unable to sign the consent to report to law enforcement or to release the evidence for testing, consent to report to law enforcement or to release the evidence for testing may be obtained from law enforcement, the Department of Children and Family Services, under the Consent by Minors to Medical Procedures Act [410 ILCS 210/1 *et seq.*], the Health Care Surrogate Act [755 ILCS 40/5 *et seq.*], or other applicable State and federal laws. [410 ILCS 70/5(b)]

Patient Medical Records Pertaining to Medical Forensic Services

Creation and Storage

- Records shall be maintained by the Treatment Hospital, Treatment Hospital with Approved Pediatric Transfer (APT), the Out-of-State Hospital or Approved Pediatric Health Care Facility (APHCF) as part of the patient's medical record and must include results of examinations and tests, the Illinois State Police Medical Forensic Documentation Forms, the Illinois State Police Patient Discharge Materials, and the Illinois State Police Patient Consent: Collect and Test Evidence or Collect and Hold Evidence Form and, if indicated, the Illinois State Police Consent to Toxicology Form.
- Photo documentation taken during a medical forensic examination must be maintained by the Treatment Hospital, Treatment Hospital with APT, the Out-of-State Hospital or APHCF as part of the patient's medical record. Photo documentation must be stored and backed up securely in its original file format in accordance with facility protocol.

Retention

- Records and photo documentation of sexual assault survivors 18 years of age or older must be retained by the Treatment Hospital, Treatment Hospital with APT, or Out-of-State Hospital, APHCF for a period of 20 years after the date the record was created.
- Records and photo documentation of sexual assault survivors under the age of 18 must be retained by the Treatment Hospital, Treatment Hospital with APT, Out-of-State Hospital, or APHCF for a period of 60 years after the sexual assault survivor reaches the age of 18 (i.e. until the date the survivor reaches or would have reached the age of 78).

Dissemination

- Records of medical forensic services may only be disseminated in accordance with 6.5 of SASETA and other State and federal law. A Treatment Hospital, Treatment Hospital with APT, or APHCF must not release information about the sexual assault to law enforcement unless the survivor consents to the release or law enforcement has a court order.
- Photo documentation of the sexual assault survivor's injuries, anatomy involved in the assault, or other visible evidence on the sexual assault survivor's body may be used for peer

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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 in an investigation under the Abused and Neglected Child Reporting Act.

[410 ILCS 70/5(a-5), 5.1. and 6.5]

The Implementation Task Force recommends health care providers consult with State’s Attorney Offices in their service area when requests or subpoenas for access to or copies of photo documentation are received to ensure that the sexual assault survivor’s privacy is protected to the greatest extent possible and that the prosecutor has sufficient access to photo documentation to hold the offender accountable.

Follow-Up Healthcare and Vouchers

“Sexual assault services voucher” is defined as a document generated by a hospital or Approved Pediatric Health Care Facility (APHCF) at the time the sexual assault survivor receives outpatient medical forensic services that may be used to seek payment for any ambulance services, medical forensic services, laboratory services, pharmacy services, and follow-up healthcare provided as a result of the sexual assault.

“Follow-up healthcare” is defined as health care services related to a sexual assault, including laboratory services and pharmacy services, rendered within 90 days of the initial visit for medical forensic services. Follow-up healthcare services include, but are not limited to, the following:

- A physical examination
- Laboratory tests to determine the presence or absence of sexually transmitted infection
- Appropriate medications, including HIV prophylaxis, in accordance with the Centers for Disease Control and Prevention's guidelines

A sexual assault survivor who presents a sexual assault services voucher (“voucher”) for follow-up health care services may not be directly billed for the follow-up services. A hospital, APHCF, health care professional, laboratory, or pharmacy that provides follow-up healthcare to a sexual assault survivor must comply with the billing requirements in Sections 7 and 7.5 of SASETA as outlined below.

[410 ILCS 70/1a and 5.5(a)]

Directly Billing a Survivor is Expressly Prohibited

Section 7.5(a) of SASETA expressly prohibits a hospital, an Approved Pediatric Health Care Facility (APHCF), health care professional, ambulance provider, laboratory, or pharmacy that provides medical forensic services, transportation, follow-up healthcare, or medication to a sexual assault survivor from charging or submitting a bill for any portion of the costs of the services to

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the sexual assault survivor, including any insurance deductible, co-pay, co-insurance, denial of claim by an insurer, spenddown, or any other out-of-pocket expense. These providers are also prohibited from engaging in any debt collection activities with respect to a sexual assault survivor or sending any portion of the bill to a collection agency. [410 ILCS 70/7.5(a)]

Hospitals and other providers are not prohibited from directly billing a sexual assault survivor for inpatient services. [410 ILCS 70/7.5(b)]

The Office of the Attorney General may seek civil monetary penalties for violations of Section 7.5 of SASETA.

- The penalty for willfully engaging in prohibited conduct or engaging in prohibited conduct involving a pattern or practice may be up to \$500.
- The penalty for sending a bill to a collection agency may be up to \$500 for each day the bill is with the collection agency.

Civil monetary penalties are deposited into the Violent Crime Victims Assistance Fund.

[410 ILCS 70/8(b)]

Billing Procedure for Medical Forensic and Follow-Up Healthcare Services

A sexual assault survivor cannot be billed for medical forensic services or for follow-up healthcare; however, providers can bill other entities such as private insurance and public and private health coverage programs. Section 7(a) of SASETA sets out the billing procedure in detail.

- Patient is eligible to receive benefits under the medical assistance program under Article V of the Illinois Public Aid Code. The bill should be submitted to the Department of Healthcare and Family Services or appropriate Medicaid managed care organization and the provider must accept the amount paid as full payment.
- Patient is eligible to receive health care benefits under a policy of insurance, or public or private health coverage program. The provider should timely bill insurance and/or the program(s). Any portion of the bill that is not paid by these programs may be sent with a copy of the sexual assault services voucher (if applicable) to the Illinois Sexual Assault Emergency Treatment Program under the Department of Healthcare and Family Services in accordance with 89 Ill. Adm. Code 148.510. The amount paid by these entities shall be accepted as full payment.
- Patient is not eligible to receive health care benefits under a government program, policy of insurance, or public or private health coverage program. The provider should timely submit a request for reimbursement with a copy of the sexual assault services voucher (if applicable) to the Illinois Sexual Assault Emergency Treatment Program under the

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Department of Healthcare and Family Services in accordance with 89 Ill. Adm. Code 148.510. The amount paid shall be accepted as full payment.

[410 ILCS 70/7(a)]

Treatment Hospitals, Treatment Hospitals with Approved Pediatric Transfer, Out-of-State Hospitals and Approved Pediatric Health Care Facilities (APHCF) are required to provide a written notice regarding billing to sexual assault survivors. At a minimum, the written notice must include:

- A statement that the sexual assault survivor cannot be directly billed by any ambulance provider providing transportation services, or by any hospital, APHCF, health care professional, laboratory, or pharmacy for the services the sexual assault survivor received as an outpatient at the hospital or APHCF;
- A statement that a sexual assault survivor who is admitted to a hospital may be billed for inpatient services provided by a hospital, health care professional, laboratory, or pharmacy;
- A statement that prior to leaving the hospital emergency department or APHCF, the hospital or APHCF will give the sexual assault survivor a sexual assault services voucher for follow-up healthcare if the sexual assault survivor is eligible to receive a sexual assault services voucher;
- The definition of "follow-up healthcare" as set forth in Section 1a of SASETA;
- A phone number the sexual assault survivor may call should the sexual assault survivor receive a bill from the hospital or APHCF for medical forensic services; and
- The toll-free phone number of the Office of the Illinois Attorney General, Crime Victim Services Division [1-800-228-3368 (voice); 1-877-398-1130 (TTY)], which the sexual assault survivor may call should the sexual assault survivor receive a bill from an ambulance provider, APHCF, a health care professional, a laboratory, or a pharmacy.

[410 ILCS 70/7.5(c)]

Billing Protocol Requirement

Section 7.5(d) requires the following service providers to develop a billing protocol to ensure that sexual assault survivors are not charged or sent a bill for medical forensic services or for follow-up healthcare:

- Approved Pediatric Health Care Facilities (APHCFs)

- Qualified Medical Providers (QMPs) who (a) provide medical forensic services, (b) are not employees of hospitals or APHCFs and (c) bill separately from the hospital or APHCF. (This can include child abuse pediatricians, SAFEs or SANEs.)
- Health care professionals who (a) provide medical forensic services, (b) are not employees of hospitals or APHCFs and (c) bill separately from the hospital or APHCF. (This can include emergency room physicians, radiologists, trauma surgeons, etc.)

Treatment Hospitals, Treatment Hospitals with Approved Pediatric Transfer, Out-of-State Hospitals and health care professionals (a) who are employed by a hospital or hospital affiliate and (b) who do not bill separately from the hospital are not required to develop a billing protocol.

At a minimum, the billing protocol must include:

- 1) A description of training for persons who prepare bills for medical forensic services;
- 2) A written acknowledgment signed by a person who has completed the training that the person will not bill survivors of sexual assault;
- 3) Prohibitions on submitting any bill for any portion of medical forensic services provided to a survivor of sexual assault to a collection agency;
- 4) Prohibitions on taking any action that would adversely affect the credit of the survivor of sexual assault;
- 5) The termination of all collection activities if the protocol is violated; and the actions to be taken if a bill is sent to a collection agency or the failure to pay is reported to any credit reporting agency.

An APHCF billing protocol must be submitted to the Crime Victim Services Division of the Office of the Attorney General (OAG) for approval within 60 days of the Illinois Department of Public Health's approval of a sexual assault treatment plan.

QMPs and health care professionals who bill as a single entity, such as an LLC, may submit a single protocol. The due dates for submission are:

- QMPs and health care professionals who were providing services on March 1, 2016, were required to submit a protocol by March 1, 2016.
- QMPs and health care professional who commence the provision of medical forensic services after March 1, 2016, are required to submit a protocol within 60 days of the commencement of services.

[410 ILCS 70/7.5(d)]

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The OAG will approve a protocol if it determines that implementation of the protocol would result in no sexual assault survivor being charged or sent a bill for services. If the OAG determines that implementation of the protocol could result in billing the sexual assault survivor or other prohibited conduct, the OAG will provide a written statement of deficiencies. The APHCF, QMP or health care professional will have 30 days to correct the deficiencies and submit a revised protocol. [410 ILCS 70/7.5(d)]

The APHCF, QMP or health care professional must implement the billing protocol upon approval by the Crime Victim Services Division.

The Crime Victim Services Division of the OAG has prepared additional materials about the protocol requirement and two sample templates for billing protocols. The sample templates can be found on the OAG’s website at

<http://www.illinoisattorneygeneral.gov/victims/New%20Law%20for%20ER%20Physicians%20Billing%20SA%20Survivors.pdf>.

The OAG may seek civil monetary penalties for untimely submitted billing protocols. The amount of the penalty may be up to \$100 per day from the due date to the date the protocol is submitted. Civil monetary penalties are deposited into the Violent Crime Victims Assistance Fund. [410 ILCS 70/8(b)]

**Training Requirements for
Treatment Hospital and Treatment Hospital with Approved Pediatric Transfer
Emergency Department Clinical Staff**

Applicability. Clinical staff includes attending physicians, physician assistants, advanced practice registered nurses and registered professional nurses providing clinical services in the emergency department. It excludes resident physicians and clinical staff who meet the definition of a Qualified Medical Provider (QMP).

Duration and Frequency of Sexual Assault Training

Dates	Duration of Training	Frequency of Training
Beginning January 1, 2019 until July 1, 2020	2 hours	Once
After July 1, 2020	2 hours	Every 2 years

Note: Once a hospital has 24/7 availability of a QMP within 90 minutes of a sexual assault survivor’s arrival at the hospital, all clinical staff, regardless of whether they have received an initial 2 hours of training, begin the schedule of 2 hours of sexual assault training every 2 years.

Example:

- From January 1, 2019 – August 1, 2019, HOSPITAL trains 25% of its clinical staff.
- As of August 2, 2019, HOSPITAL has 24/7 availability of a QMP within 90 minutes of a sexual assault survivor's arrival at the hospital.
- The 75% of clinical staff that did not receive sexual assault training must now receive 2 hours of training by August 2, 2021, instead of by July 1, 2020.
- Note: August 2, 2019 begins the two year training window for all clinical staff. All clinical staff must receive 2 hours of training between August 2, 2019 and August 2, 2021.

Content. The training must include but is not limited to information on the provision of medical forensic services, use of the Illinois Sexual Assault Evidence Collection Kit, sexual assault 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.

Training Options. The sexual assault training may be provided in person or online. Online training to be made available by the Office of the Attorney General by March 1, 2019 pursuant to Section 10(b) of SASETA, may be used (but is not required) to meet this requirement, in part. Hospitals will need to add the hospital's sexual assault-related policies and procedures to the training. [410 ILCS 70/2(a)]

Sexual Assault Nurse Examiner Program

Public Act 100-0775 formally establishes the Sexual Assault Nurse Examiner (SANE) Program in the Office of the Attorney General (OAG). The SANE Program is tasked with the following:

- Create, in consultation with Qualified Medical Providers, uniform materials that all Treatment Hospitals, Treatment Hospitals with Approved Pediatric Transfer and Approved Pediatric Health Care Facilities are required to give patients and non-offending parents or legal guardians, if applicable, regarding the medical forensic exam procedure, laws regarding consenting to medical forensic services, and the benefits and risks of evidence collection, including recommended time frames for evidence collection pursuant to evidence-based research. These materials will be posted on the OAG's website.
- By March 1, 2019, develop and make available to hospitals 2 hours of online training for emergency department clinical staff to meet the training requirement in Section 2(a) of SASETA; Continuing Education Units (CEUs) and Continuing Medical Education (CMEs) shall be provided for the training.

- Provide didactic and clinical SANE training opportunities that meet the Sexual Assault Nurse Examiner Education Guidelines established by the International Association of Forensic Nurses.
- Maintain a list of sexual assault nurse examiners who have completed didactic and clinical training requirements consistent with the Sexual Assault Nurse Examiner Education Guidelines established by the International Association of Forensic Nurses.

[410 ILCS 70/10]

Sexual Assault Nurse Examiner Education Guidelines

The Sexual Assault Nurse Examiner Education Guidelines established by the International Association of Forensic Nurses (IAFN) help the sexual assault nurse examiner meet the medical forensic needs of those who have been affected by sexual violence, including individual patients, families, communities and systems.

- Registered nurses who perform medical forensic evaluations must receive additional and specific didactic and clinical preparation to care for adult, adolescent and pediatric patients. These guidelines specify the minimum level of instruction required to ensure competent practice.
- Clinicians should attend a didactic training that yields a minimum of 40 continuing nursing education contact hours from an accredited provider of nursing education. Separate didactic coursework exists for the Adult/Adolescent patient and the Pediatric/Adolescent patient. Clinicians may also attend a combination Adult/Adolescent and Pediatric/Adolescent training that yields a minimum of 64 continuing nursing education contact hours from an accredited provider of nursing education.
- Upon completion of the didactic coursework, clinicians must also complete clinical components, including simulated clinical experiences that are in addition to the didactic coursework and not calculated as part of the 40-hour didactic course. The Office of the Attorney General has a clinical training log specific to Adult/Adolescent and Pediatric/Adolescent training requirements. Information about the didactic training opportunities and the clinical logs may be found on the OAG's website: <http://www.illinoisattorneygeneral.gov/victims/sane.html>

SANE Certification

The SANE Program in the Office of the Attorney General does not provide SANE Certification. The Commission for Forensic Nursing Certification (CFNC), as part of the IAFN, currently offers two professional credentials: the Sexual Assault Nurse Examiner-Adult/Adolescent (SANE-A®) and the Sexual Assault Nurse Examiner-Pediatric (SANE-P®). Both credentials are recognized by the American Nurses Credentialing Center's (ANCC) Magnet Program®. National certification is

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not required to practice as a SANE in Illinois. It is recommended that a clinician practice as a SANE for 3 years or 300 clinical hours before applying to sit for the National Certification Exam. Information on national certification may be found on the IAFN website at <https://www.forensicnurses.org/page/CertOpportunities>.

The Implementation Task Force encourages SANEs to become nationally certified to ensure the highest level of care for Illinois sexual assault survivors.

Administrative Rules for SASETA

Section 6.1 of SASETA mandates that the Illinois Department of Public Health (IDPH) prescribe minimum standards and promulgate rules and regulations implementing SASETA. [410 ILCS 70/6.1] The current rules are found in Title 77 Part 545 of the Illinois Administrative Code. IDPH will be adopting emergency rules, as well as amendments to the existing rules to address the provisions of P.A. 100-0775 and P.A. 100-1087. All hospitals and Approved Pediatric Health Care Facilities must comply with both the statute and the rules.

Relevant Provisions of Public Act 100-1087

Public Act 100-1087, also effective January 1, 2019, contains changes to the laws which directly relate to survivors of sexual assault.

Sexual Assault Survivor's Use of Alcohol, Cannabis and Controlled Substances

At the time of first contact with law enforcement, a sexual assault survivor shall be advised that "...sexual assault forensic evidence collected will not be used to prosecute the victim for any offense related to the use of alcohol, cannabis, or a controlled substance." [725 ILCS 203/25(c-5)]

A person reporting that he or she has been sexually assaulted or a person reporting a sexual assault of another person or requesting emergency medical assistance or medical forensic services for another person who had been sexually assaulted may not be charged based solely on the commission of an offense that

- 1) involves alcohol and violates subsection (d) or (e) of Section 20 of the Liquor Control Act of 1934; or
- 2) is a Class 4 felony possession of a controlled, counterfeit, or look-alike substance or a controlled substance analog, provided the amount of the substance falls under specified amounts in statute.

[See 235 ILCS 5/6-20(I-5) and 720 ILCS 570/415 for additional requirements/limitations.]

All higher education institutions (colleges and universities) must revise their comprehensive policies concerning sexual violence, domestic violence, dating violence, and stalking consistent

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with governing federal and state law to include an amnesty provision for possession or consumption of alcohol or controlled substances.

[Preventing Sexual Violence in Higher Education Act, 110 ILCS 155/10(10)]

Rights Before, During and After a Medical Forensic Examination

A sexual assault survivor has the right to retain an attorney who may be present during all stages of any interview, investigation, or other interaction with representatives of the criminal justice system. The treatment of the sexual assault survivor should not be affected or altered in any way as a result of the survivor's decision to exercise this right. [725 ILCS 120/4(d)]

A sexual assault survivor 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 survivor also has the right to have an additional person present for support during any medical evidentiary or physical examination. A sexual assault survivor retains these rights even if the survivor has waived these rights in a previous examination. [725 ILCS 120/4.6]

A hospital or Approved Pediatric Health Care Facility providing medical forensic services to a sexual assault survivor must provide the survivor access to a shower at no cost, after a medical evidentiary or physical examination unless showering facilities are unavailable. [410 ILCS 70/5(a)(3.5)]

A sexual assault survivor has a right, upon request, to a free copy of the police report as soon as practicable, but in no event, more than 5 days after the request. [725 ILCS 120/4(b-5)]

Consent to Test Sexual Assault Evidence

A sexual assault survivor has 10 years from the completion of an Illinois State Police Sexual Assault Evidence Collection Kit, or 10 years from the date a minor sexual assault survivor turns 18 years of age, whichever is longer, to sign a written consent to release the sexual assault evidence to law enforcement for testing. [725 ILCS 203/30(d)]

Statute of Limitations

Existing law allows a prosecution for criminal sexual assault, aggravated criminal sexual assault, or aggravated criminal sexual abuse to be commenced within 10 years of the commission of the offense if the sexual assault survivor reported the offense to law enforcement authorities within 3 years after the commission of the offense.

Public Act 100-1087 provides that the consent of a sexual assault survivor to the collection of evidence using an Illinois State Police Sexual Assault Evidence Collection Kit under the SASETA shall constitute reporting for purposes of this extension to the statute of limitations. [720 ILCS 5/3-6(i)]

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Relevant Provision of P.A. 100-0080

P.A. 100-0800, effective August 11, 2017, amended the statute of limitations for various sexual offenses involving minor victims. Section 5/3-6(j) of the Criminal Code of 2012 now provide that a prosecution for criminal sexual assault, aggravated criminal sexual assault, predatory criminal sexual assault of a child, aggravated criminal sexual abuse, or felony criminal sexual abuse may be commenced at any time when the victim is under 18 years of age at the time of the offense. [720 ILCS 5/3-6(j)]

SASETA IMPLEMENTATION TIMELINE

SASETA Provision	Date	Assistance to be Made Available
Sexual Assault Treatment and Transfer Plans for the Illinois Department of Public Health: Transfer Hospitals, Treatment Hospitals, Treatment Hospitals with Approved Pediatric Transfer, and Approved Pediatric Health Care Facilities	New or updated plans to be submitted to IDPH after 1/2/2019.	<ul style="list-style-type: none"> Task Force: Educational Materials for Hospitals and Approved Pediatric Health Care Facilities IDPH: IDPH Plan Forms will be available at http://www.dph.illinois.gov/forms-publications IDPH: Emergency Administrative Rules to be published in January 2019
Areawide Treatment Plans	Areawide Treatment Plans to be submitted to IDPH after 1/2/2019.	<ul style="list-style-type: none"> Task Force: Will form Committees to facilitate the development of Areawide Treatment Plans among hospitals and pediatric health care facilities.
Transferring of Pediatric Sexual Assault Survivors	Only after Areawide Treatment Plan is approved by IDPH.	<ul style="list-style-type: none"> Task Force: Will form Committees to facilitate the development of Areawide Treatment Plans among hospitals and pediatric health care facilities.
Transferring of Sexual Assault Survivors to Out-of-State Hospitals	Only after Areawide Treatment Plan is approved by IDPH.	<ul style="list-style-type: none"> Task Force: Will form Committees to facilitate the development of Areawide Treatment Plans among hospitals and pediatric health care facilities.
Medical Forensic Services:		
Provide medical forensic services without delay, in a private, age- or developmentally-appropriate space.	1/1/2019	
After a medical evidentiary or physical examination, provide access to a shower at no cost, unless showering facilities are unavailable. (PA 100-1087)	1/1/2019	
Provide written information regarding services provided by a children's advocacy center and rape crisis center, if applicable.	1/1/2019	<ul style="list-style-type: none"> Rape Crisis Centers and Children's Advocacy Centers: Will provide written information to Hospitals and APHCFs in Center's service area.

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<p>Offer medical advocacy services provided by a rape crisis counselor, if there is a memorandum of understanding (MOU) between the hospital and a rape crisis center. With the consent of the sexual assault survivor, a rape crisis counselor shall remain in the exam room during the medical forensic examination.</p>	<p>1/1/2019</p>	<ul style="list-style-type: none"> Task Force: Sample Memorandum of Understanding for Use by Rape Crisis Centers and Hospitals or Approved Pediatric Health Care Facilities
<p>Medical Forensic Services: Offer Photo Documentation to Sexual Assault Survivor</p>	<p>7/1/2019</p>	<ul style="list-style-type: none"> Task Force: Sample photography policy, including an optional consent form, equipment recommendations and storage options available at Photo Documentation and Sample Digital Photography Policy
<p>Retention of Patient Medical Records Pertaining to Medical Forensic Services</p>	<p>1/1/2019</p>	<ul style="list-style-type: none"> Task Force: Educational Materials for Hospitals and Approved Pediatric Health Care Facilities
<p>Directly Billing a Survivor is Expressly Prohibited: APHCFs and entities not previously providing medical forensic services</p>	<p>1/1/2019</p>	<ul style="list-style-type: none"> Task Force: Educational Materials for Hospitals and Approved Pediatric Health Care Facilities
<p>Billing Protocol Requirement: APHCFs and entities that bill separate from the hospital</p>	<p>APHCFs – Submit protocol to OAG within 60 days of approval of facility’s sexual assault treatment plan by IDPH.</p> <p>QMPs and other health care professionals who are not employees of hospitals or APHCFs and who bill separately – Submit protocol to OAG within 60 days of the commencement of medical forensic services.</p>	<ul style="list-style-type: none"> Task Force: Educational Materials for Hospitals and Approved Pediatric Health Care Facilities OAG: Sample Template Billing Protocol Healthcare Professionals and Physicians OAG: A Guide for Ambulance, Laboratory, and Follow-Up Healthcare Services
<p>Submission of Data to the Illinois Department of Public Health required every 6 months</p>	<p>First submission due 7/1/2019.</p>	<ul style="list-style-type: none"> Task Force: Educational Materials for Hospitals and Approved Pediatric Health Care Facilities

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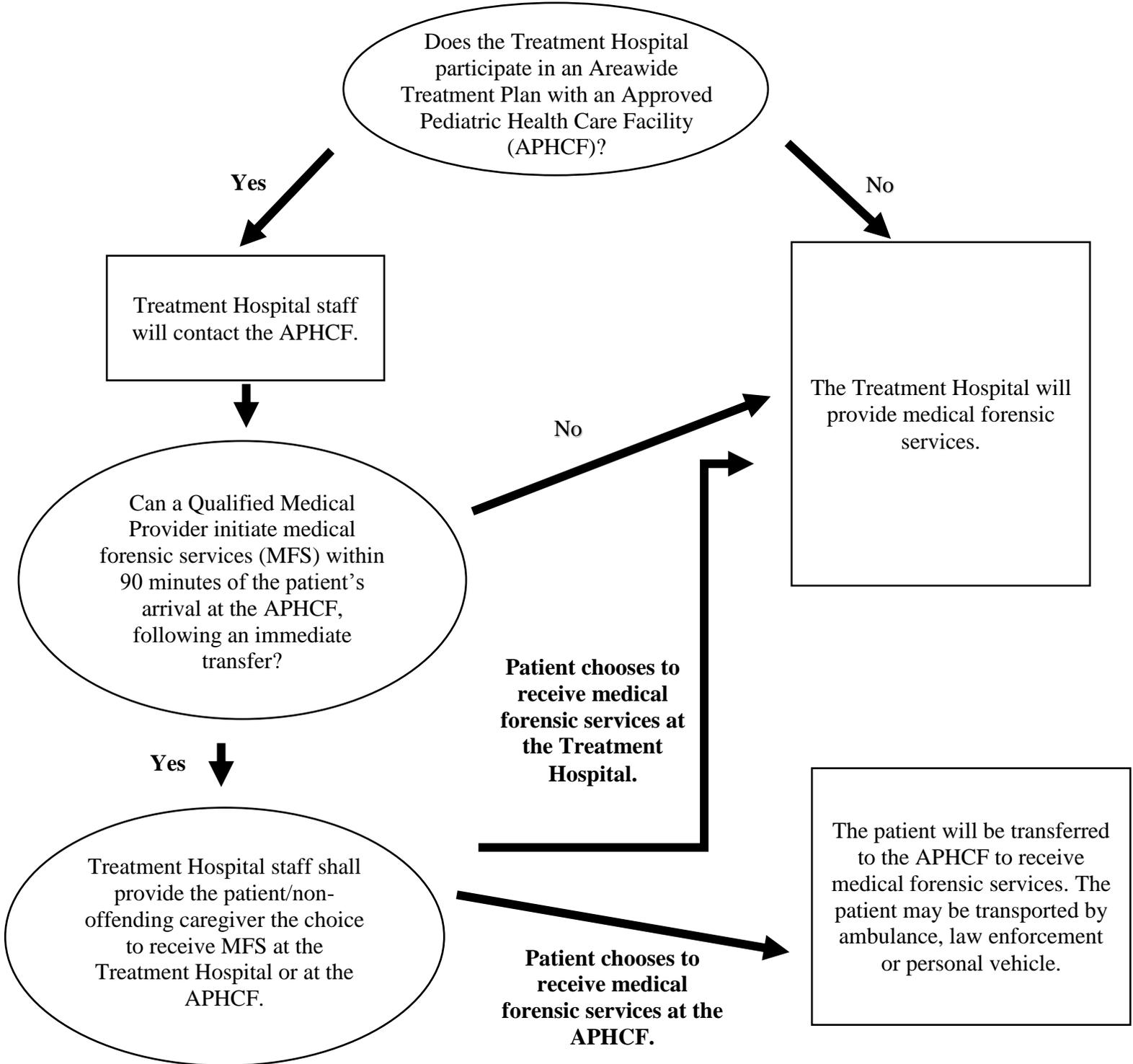
	<p>A Treatment Hospital should begin collecting data on January 1, 2019.</p> <p>A Treatment Hospital with APT or an APHCF should begin collecting data once its sexual assault treatment plan is approved by IDPH.</p>	<ul style="list-style-type: none"> • IDPH: Excel Template will be available at http://www.dph.illinois.gov/forms-publications
Sexual Assault Training Requirements for Emergency Department Clinical Staff	Initial 2 hours of training by 7/1/2020.	<ul style="list-style-type: none"> • Task Force: Educational Materials for Hospitals and Approved Pediatric Health Care Facilities • OAG: A 2-hour training that may be (but is not required to be) used to satisfy this requirement, in part, will be made available to hospitals by 3/1/2019.
Qualified Medical Provider Requirement	<p>APHCFs – 1/1/2019</p> <p>Treatment Hospitals, Treatment Hospitals with APT, and Out-of-State Hospitals – 1/1/2022</p>	<ul style="list-style-type: none"> • Task Force: Will form Committee to facilitate the development of on-call systems of QMPs and assist hospitals with the development of plans to employ or contract with QMPs as required by Section 5(a-7) of SASETA. • Note: It takes approximately 1 year become a SANE.

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FLOWCHART A

**SEXUAL ASSAULT SURVIVOR UNDER THE AGE OF 13 ARRIVES
AT A TREATMENT HOSPITAL**

with a complaint of sexual assault within the last 7 days or has disclosed past sexual assault by a specific individual and was in the care of that individual within the last 7 days.



FLOWCHART B

SEXUAL ASSAULT SURVIVOR UNDER THE AGE OF 13 ARRIVES AT A TREATMENT HOSPITAL WITH APPROVED PEDIATRIC TRANSFER (APT) OR TRANSFER HOSPITAL with a complaint of sexual assault within the last 7 days or has disclosed past sexual assault by a specific individual and was in the care of that individual within the last 7 days.

Does the Treatment Hospital with APT's or Transfer Hospital's approved plan include an Approved Pediatric Health Care Facility (APHCF)?

Yes

No

Can a Qualified Medical Provider (QMP) initiate medical forensic services within 90 minutes of the patient's arrival at the APHCF, following an immediate transfer?

No

The patient will be transferred to a Treatment Hospital designated in the Treatment Hospital with APT's or Transfer Hospital's approved plan in order to receive medical forensic services. The patient may be transported by ambulance, law enforcement or personal vehicle. The patient may not be transferred again after arriving at the Treatment Hospital.

Patient chooses to receive medical forensic services at the Treatment Hospital.

Yes

Treatment Hospital with APT staff or Transfer Hospital staff shall provide the patient/non-offending caregiver the choice to receive medical forensic services at the Treatment Hospital or at the APHCF.

Patient chooses to receive medical forensic services at the APHCF.

The patient will be transferred to the APHCF to receive medical forensic services. The patient may be transported by ambulance, law enforcement or personal vehicle.

SEXUAL ASSAULT MEDICAL FORENSIC SERVICES IMPLEMENTATION
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