Memorandum
Support with New Funding: Expansion of Sexual Assault Forensic Examiner Program (SAFE) (Article VII, HMH, S7507-A/A9507-A, Part O)

The New York American College of Emergency Physicians (New York ACEP) supports expansion of the SAFE program as long as new funding is provided to pay for the statewide growth in the program.

Currently, the SAFE program is limited to specialty-designated hospitals. The proposed State budget requires all hospitals with emergency departments to establish SAFE programs. Hospitals without emergency departments are required to transport victims of sexual assault to a hospital with a SAFE program.

- Hospitals operating a SAFE program are responsible for:
  - maintaining sexual offense evidence and the chain of custody;
  - contacting a rape crisis or victim assistance organization to establish coordination of non-medical services when requested by the victim;
  - offering and making available HIV post-exposure treatments;
  - ensuring sexual assault survivors are not billed for forensic exams and are notified orally and in writing of the option to provide private health insurance information and have the Office of Victims Services reimburse the hospital for the exam;
  - ensuring that the victim, absent exigent circumstances, is met within an hour of arriving at the hospital by a sexual assault forensic examiner who is a specially trained nurse, nurse practitioner, physician assistant, or physician who shall be available on a 24-hour a day basis every day of year;
  - ensuring that the victim, upon consent, is examined in a private room;
  - designating a qualified staff person to exercise administrative and clinical oversight of the treatment of sexual assault patients and developing policies and procedures to guarantee sufficient staffing;
  - ensuring that all emergency department personnel receive training for standards of care for assessment and treatment of victims of sexual assault. Such training must be provided by October 2020, and annually thereafter.

In addition, beginning March 1, 2021, and annually thereafter, hospitals with an emergency department must provide an attestation to the New York State Department of Health that lists the name and contact information of the staff person who has been designated by the hospital to oversee the treatment of sexual assault patients and affirms that the hospital has completed training for standards of care for assessment and treatment of victims of sexual assault.

New York ACEP strongly supports the SAFE program which operates through standards developed by the New York State Department of Health (NYS DOH) to provide timely, compassionate, patient-centered care in a private setting that provides emotional support and reduces further trauma to patients. Under the program, health care practitioners in hospital emergency departments or in nearby separate sexual assault medical/forensic units provide quality medical care to patients who report sexual assault, including evaluation, treatment, referral, and follow-up. In addition, hospitals who participate in the SAFE program ensure the quality of collection, documentation, preservation, and custody of forensic evidence by utilizing a trained New York Sexual Assault Forensic Examiner to perform exams.
Although this proposal will require significant new resources, the Governor’s budget provides no additional funds for implementation. The cost burden will be tremendous for additional staff, training of staff, and in some cases facility renovations to ensure that critically important privacy standards are met. For small emergency departments with few staff, the chain of custody for forensic evidence will be difficult if not impossible to maintain.

New York ACEP is concerned about the requirement that victims must be met by a SAFE examiner within one hour of arriving at the hospital. This could be very difficult for any hospital. In some communities, because these experts are a specialty resource, SAFE examiners may be on call for multiple emergency departments. If they are handling another case at the time that they are called, they would not be able to arrive in one hour. We recommend that an amendment be added to require the SAFE examiner to arrive “within a reasonable time frame.”

It is notable that currently there is a program funded by the Office of Victims Services of the DCJS through St. Peter’s Health Partners that is providing Tele-SAFE resources in rural communities of New York from 2019-2021. We encourage expansion and continuity of this program. New York ACEP recommends that the New York State Legislature provide additional funds to allow ongoing funding of Tele-SAFE programs in underserved areas of the State to enable health care providers to connect with trained SAFE examiners to best serve patients in need. Pennsylvania and Massachusetts have also established telehealth programs, and last year Texas launched one to ensure expert care and collection of forensic evidence that will stand up in court. Tele-SAFE participation should be formally stated to serve the needs of the mandate to have SAFE provider resources available for all hospitals.

New York ACEP recommends that funding be provided to pay for the current requirement that forensic evidence must be held for 20 years.

New York ACEP supports the expansion of the SAFE program with the aforementioned amendments and additional funds to adequately cover the costs of implementing a statewide SAFE program.
all individuals licensed or certified pursuant to title eight of the
education law who provide direct patient care.

3. The commissioner shall make such rules and regulations as may be
necessary and proper to carry out the provisions of this section.

§ 2. This act shall take effect on the one hundred eighty-tenth day after
it shall have become a law. Effective immediately, the addition, amend-
ment and/or repeal of any rule or regulation necessary for the implemen-
tation of this act on its effective date are authorized to be made and
completed on or before such effective date.

PART 0

Section 1. Subdivisions 1, 4-b, and 7 of section 2805-i of the public
health law, subdivision 1 as amended by section 1 of part HH of chapter
57 of the laws of 2018, paragraph (c) of subdivision 1 as amended by
chapter 681 of the laws of 2019, subdivisions 4-b and 7 as added by
chapter 1 of the laws of 2000, subparagraph 1 of paragraph (b) and para-
graph (c) of subdivision 4-b as amended by chapter 292 of the laws of
2008, and subdivision 7 as renumbered by chapter 407 of the laws of
2018, are amended to read as follows:

1. [Every] When an alleged victim of a sexual offense seeks services
from a hospital with an emergency department, such hospital [providing
treatment to alleged victims of a sexual offense] shall be responsible
for:

(a) maintaining sexual offense evidence and the chain of custody as
provided in subdivision two of this section;

(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;
(c) offering and making available appropriate HIV post-exposure treat-
ment therapies; including a full regimen of HIV post-exposure prophylaxis-
is, in cases where it has been determined, in accordance with guidelines
issued by the commissioner, that a significant exposure to HIV has
occurred. With the consent of the victim of a sexual assault, the hospi-
tal emergency room department shall provide or arrange for an appoint-
ment for medical follow-up related to HIV post-exposure prophylaxis and
other care as appropriate, and inform the victim that payment assistance
for such care may be available from the office of victim services pursu-
ant to the provisions of article twenty-two of the executive law; [and]
(d) ensuring sexual assault survivors are not billed for sexual
assault forensic exams and are notified orally and in writing of the
option to decline to provide private health insurance information and
have the office of victim services reimburse the hospital for the exam
pursuant to subdivision thirteen of section six hundred thirty-one of
the executive law[.]
(e) ensuring that the victim, absent exigent circumstances, is met by
a sexual assault forensic examiner within sixty minutes of arriving at
the hospital and that the victim, upon consent, is promptly examined by
such sexual assault forensic examiner in a private room designated for
such examinations;
(1) the term examination means the sexual assault medical forensic
examination, which may include, upon consent of the victim, gathering
information from the victim for the medical forensic history; a medical
examination; coordinating treatment of injuries, documentation of
biological and physical findings, and collection of evidence from the
victim using the sexual offense evidence collection kit; documentation of findings; information, treatment, and referrals for sexually transmitted infections, pregnancy, suicidal ideation, alcohol and substance abuse, and other nonacute medical concerns; and assessment for additional treatment and services.

(2) The sexual assault forensic examiner shall be a nurse practitioner, physician assistant, registered nurse or physician specially trained and certified in forensic examination of sexual offense victims and the preservation of forensic evidence in such cases, pursuant to regulations promulgated by the commissioner. A sexual assault forensic examiner shall be available on a twenty-four hour a day basis every day of the year.

(3) During the examination, 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.

(4) 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:

(f) Designating a qualified staff person to exercise administrative and clinical oversight of the treatment of sexual assault patients who seek care in the hospital's emergency department, and develop policies and procedures to guarantee sufficient staffing to meet the requirements of this section;

(g) Ensuring that all emergency department personnel receive training regarding standards of care for assessment and treatment of victims of
sexual assault. Such training shall be provided by October first, two
thousand twenty and at least annually thereafter:
(h) beginning March first, two thousand twenty-one, and annually ther-
eafter, hospitals with an emergency department shall provide an attesta-
tion to the department, which shall:
(1) detail the number of duly trained and certified sexual assault
forensic examiners available to the hospital, pursuant to paragraph (g)
of this subdivision;
(2) list the name and contact information of the staff person who has
been designated by the hospital to oversee the treatment of sexual
assault patients, pursuant to paragraph (f) of this subdivision; and
(3) affirm that the hospital has completed trainings regarding stand-
dards of care for assessment and treatment of victims of sexual assault,
pursuant to paragraph (g) of this subdivision; and
(i) a hospital without an emergency department shall establish a
protocol for the transfer of sexual assault victims to a hospital with
an emergency department. The protocol must address all patient needs,
including, but not limited to:
(1) requirements to obtain consent from the sexual assault victim for
the transfer;
(2) measures to ensure minimal delay in care;
(3) procedures to prevent loss of evidence; and
(4) protocols for providing care if the sexual assault victim declines
a transfer to a hospital with an emergency department. Such a protocol
may include having a sexual assault forensic examiner come to the hospi-
tal.
[4-b. (a) The commissioner shall, with the consent of the directors of
interested hospitals in the state and in consultation with the commis-
sioner 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 foren-
sic 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 stand-
ards of medical care.

(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 hospi-
tal, who shall be a nurse practitioner, physician assistant, 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 regu-
lations 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 contin-
ued existence of any program in this state through which a trained nurse
practitioner, physician assistant, registered nurse or physician is
providing appropriate forensic examinations and related services to
survivors of sexual assault.]

7. On or before November thirtieth, two thousand [two] twenty-three,
the commissioner shall make a report to the governor, the temporary
president of the senate and the speaker of the assembly concerning the
use and effectiveness of sexual assault forensic [examiner program
established under subdivision four-b of this section] examiners in
providing treatment to alleged victims of a sexual offense, as set forth
in subdivision one of this section. Such report shall include an evalu-
ation of [the efficacy of such program in obtaining useful forensic
evidence in sexual offense cases and assuring] hospitals' ability to
provide quality treatment to [sex] sexual offense victims. [Such report
shall also recommend whether this program should be expanded and shall
estimate the financial cost, if any, of such expansion.]
§ 2. This act shall take effect October 1, 2020; provided, however,
that if chapter 681 of the laws of 2019 shall not have taken effect on
or before such date then the amendments to paragraph (c) of subdivision
one of section 2805-i of the public health law made by section one of
this act shall take effect on the same date and in the same manner as
such chapter. Effective immediately, the addition, amendment and/or
repeal of any rule or regulation necessary for the implementation of
this act on its effective date are authorized to be made and completed
on or before such effective date.

PART P

Section 1. Subdivisions 1 and 4 of section 1119 of the public health
law, as amended by chapter 61 of the laws of 1989, are amended to read
as follows:
1. At the time of submitting a plan for approval as required by this
article, a filing fee computed at the rate of [twelve dollars and fifty
cents] fifty dollars per lot shall be paid to the department or to the
city, county or part-county health district wherein such plans are
filed.
4. Notwithstanding any other provision of this title the commissioner
[of health] is empowered to make administrative arrangements with the
commissioner of environmental conservation for joint or cooperative