



**Testimony on the Implementation of the
Sexual Assault Victim Emergency Services Regulation
Senate Public Health & Welfare Committee
October 14, 2008**

Good morning, Chairman Erickson, Chairman Hughes, committee members and staff. My name is Stacy Mitchell, and I am the Deputy Secretary for Quality Assurance for the Pennsylvania Department of Health. On behalf of acting Secretary of Health, Everette James, thank you for the opportunity to testify today on the development and implementation of the Department's "Sexual Assault Victims Emergency Services" regulation.

On October 21, 2006, following consultation with the Health Policy Board, the Department published a proposed regulation relating to the provision of sexual assault victim emergency services in Pennsylvania hospitals. Although the Department had been working on these regulations as early as 2005, the experiences of one Pennsylvania resident, widely reported in the summer and fall of 2006, highlighted the need to move forward.

The specific incident involved a young woman admitted to a Pennsylvania hospital for treatment following an alleged sexual assault. It was reported that the hospital did not inform the young woman of the risks of pregnancy as a result of the sexual assault, or of the availability of emergency contraception. Further, when the young woman contacted the hospital to obtain emergency contraception, she was informed the physician on duty at the emergency department could not prescribe emergency contraception as a result of the physician's religious and moral objections.

The hospital did not have an established policy or procedure to ensure that the young woman received all information relevant to her care for the alleged sexual assault, or to ensure that she would be offered and receive emergency contraception if she requested it be provided. Consequently, the young woman was required to obtain a prescription for emergency contraception from her personal physician and have the prescription filled in a neighboring county as the pharmacy in her area did not have the medication in stock.

The national rape-related pregnancy rate for victims between the ages of 12 and 45 is 5 percent. Among adult women, it is estimated that over 32,000 pregnancies result from rape each year. According to preliminary data from the Pennsylvania State Police's Uniform Crime Reporting System, there were 3,365 reports of rapes by force in calendar year 2007. It is estimate that an almost equal amount of sexual assaults go unreported to law enforcement, since the number reported to Rape Crisis Centers for the same time period was 6,544. Victims of rapes and other sexual offenses may experience serious health, medical and psychological effects, including sexually transmitted diseases.

Given the number of reported and unreported incidents in Pennsylvania, the Department wanted to ensure that all hospitals in Pennsylvania adopted policies and procedures regarding the provision of information about emergency contraception as well as the administration of medication. In addition, the Department sought to ensure the policies and procedures

established by hospitals for treating sexual assault victims included various minimum requirements related to the overall care of all sexual assault victims, regardless of gender or age. Accordingly, the Department developed a proposed regulation which sought to establish the minimum standard requirements for hospitals that provide sexual assault emergency services, and for the provision of information and treatment relating to those services, including emergency contraception, prevention of sexually transmitted diseases, and other related medical examination and testing.

On September 17, 2007, again following consultation with the Health Policy Board, the final regulation was delivered to the Chairs of this Committee, the Chairs of the House Health and Human Services Committee, and the Independent Regulatory Review Committee (IRRC) for review and approval. Copies of the final regulation were also delivered to those stakeholders who had previously submitted comments and requested to see the final regulation when submitted to the standing committees and IRRC.

On October 18, 2007, IRRC held a meeting on the Department's regulation. Following testimony by representatives for the Department and stakeholders, IRRC approved the final regulation. Under the provisions of the Regulatory Review Act, the final regulation was also deemed approved by this committee and the House Health and Human Services Committee the previous day.

The final regulation became effective upon publication in the *Pennsylvania Bulletin* on January 26 of this year. The regulation is now located in Title 28 of the Pennsylvania Code at sections 117.51 - 117.58.

Because the religious and moral objections to providing emergency contraception are well documented, the Department's regulation recognizes that hospitals with those objections are not required to offer and provide emergency contraception to victims. Instead, these hospitals may comply with the regulation under alternative requirements. It should be noted that the regulation itself does not create the religious or moral exemption regarding the provision of emergency contraception. Instead, the regulation recognizes the language of the Health Care Facilities Act that creates the religious or moral exemption.

Under the alternative requirements, hospitals must notify the Department, law enforcement, and emergency medical services providers in their community that they do not provide emergency contraception on the basis of religious or moral objections. The hospitals must also provide oral and written notice of the religious or moral objection to emergency contraception to victims and that emergency contraception may not be provided. Additionally, this information must be prominently posted in the hospitals' emergency services areas. These oral, written, and posted notices must also inform patients that hospitals must arrange for transportation of the victim, at no cost to the victim, to a location where emergency contraception may be obtained if requested by the victim. Hospitals are required to comply with all other requirements of the regulation, including providing the victim with information and counseling regarding the risk of pregnancy and the availability of emergency contraception.

The Department's regulation does not require referral of the victim to a facility where emergency contraception is provided, nor does it require transportation by the hospital itself. The written emergency contraception informational materials developed by the Department list a telephone number which connects callers with a local Rape Crisis Center. This Center can make the appropriate referral of the victim to a location where emergency contraception can be obtained without the hospitals' involvement. Further, hospitals are not required to actually transport the victim, but instead to *arrange* for transportation for the victim at no cost to the victim. This can be accomplished in accordance with the regulations by having the hospital make arrangements with a local Rape Crisis Center or similar sexual assault victim assistance organization or other group, to provide transportation to the victim.

The Department's regulation does not present a substantial burden to the free exercise of religion. The Department's regulation carefully balances the rights of hospitals to refuse to provide a service or medication on the basis of a religious or moral objection while concurrently protecting the rights of rape victims as patients to be informed of their current and potential health conditions, and of all treatment available for those conditions

To assist hospitals in providing victims with factual, unbiased information relating to emergency contraception, the Department prepared written informational materials which hospitals may use for distribution to hospital staff and sexual assault victims in accordance with the requirements of the regulation. These materials are available on the Department's Web site and

are now posted in seven different languages as well as in an English audio format.

Since the publication of the final regulation earlier this year, the Department has received notice from 11 hospitals that they would not provide emergency contraception to sexual assault victims because doing so conflicts with their stated religious or moral beliefs. The names of these hospitals have been posted on the Department's Web site and will also be published in the *Pennsylvania Bulletin* on an annual basis.

The Department has not received any complaints or been informed of any incidents relating to a hospital which is not complying with the regulation. Similarly, the Department has not been made aware of any hospital which has found it difficult to comply with the regulation.

The Department met with representatives from the Pennsylvania Catholic Health Association to discuss the requirements relating to emergency contraception and how hospitals with religious or moral beliefs against providing emergency contraception could comply with the regulation. Following the publication of the final regulation, the Department agreed to work with the Catholic Health Association and hospitals, and provide comments on the policies and procedures developed pursuant to the regulation to assist them in complying with all the applicable requirements. The Department has not received any specific policies or procedures from these hospitals for review. We will continue to work with all hospitals to ensure compliance with the regulations.

The Department received comments requesting that individual practitioner rights be recognized in the regulations in a similar manner to the recognition given to the hospitals' rights. In response to these comments, the Department noted that its licensing authority did not extend to the individual practitioners within the hospitals. However, the Department previously promulgated regulations which require hospitals to observe and comply with all existing civil rights protections for all patients and staff, and discrimination on the basis of religion is prohibited. Accordingly, hospitals must develop procedures that would ensure the provision of sexual assault victim emergency services in accordance with the Department's regulations and still accommodate individual practitioner beliefs.

Finally, I would like to take this opportunity to inform the committee of the Department's work as it relates to Act 165 of 2006, the Sexual Assault Testing and Evidence Collection Act. Act 165 requires the Department to work with various stakeholders to develop standards for rape kits for use in Pennsylvania. The Department, in consultation with the Pennsylvania Coalition Against Rape (PCAR), established a Sexual Assault Evidence Collection Committee which included representation from PCAR, the Pennsylvania Commission on Crime and Delinquency, Pennsylvania District Attorney's Association, Pennsylvania State Police, YWCA Harrisburg, Keystone Chapter of the International Association of Forensic Nurses, York Hospital, members of sexual assault response teams, and the Hospital and Healthsystem Association of Pennsylvania. The Committee established the minimum standards for rape kits used in Pennsylvania.

The Department published a notice in the *Pennsylvania Bulletin* informing hospitals of these minimum requirements. The Committee also developed a training plan regarding the use and application of the rape kits, and training will be provided to hospitals and staff at no charge through regional trainings. The Department will continue to work with the stakeholders under the provisions of Act 165 to review these standards and ensure that they are updated appropriately to meet state-of-the-art minimum standards.

Thank you for the opportunity to testify today. I would be happy to take any questions you have at this time.