

STATE OF NEW YORK

4842

2019-2020 Regular Sessions

IN ASSEMBLY

February 5, 2019

Introduced by M. of A. PAULIN -- read once and referred to the Committee on Health

AN ACT to amend the public health law and the executive law, in relation to treatment of domestic violence victims and documentation of injury and evidence

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The public health law is amended by adding a new section
2 2805-z to read as follows:

3 § 2805-z. Treatment of domestic violence victims and documentation of
4 injury and evidence. 1. Upon the request and consent of the patient,
5 every hospital providing treatment to alleged victims of domestic
6 violence shall be responsible for:

7 (a) providing documentation of domestic violence evidence, including
8 but not limited to the maintenance of domestic violence evidence and the
9 chain of custody as provided in subdivision two of this section;

10 (b) contacting a domestic violence assistance organization or shelter,
11 if any, providing domestic violence services and assistance to the
12 geographic area served by the hospital to establish the coordination of
13 non-medical services to domestic violence victims who request such coor-
14 ordination and services; and

15 (c) ensuring that domestic violence victims are not billed for domes-
16 tic violence forensic exams and are notified orally and in writing of
17 the option to decline to provide private health insurance information
18 and have the office of victim services reimburse the hospital for the
19 exam pursuant to subdivision thirteen of section six hundred thirty-one
20 of the executive law.

21 2. Domestic violence evidence shall be collected and maintained as
22 follows:

23 (a) All domestic violence evidence, including but not limited to
24 photographic evidence, shall be provided to the alleged victim upon
25 their request. Upon the consent of the victim, all domestic violence
26 evidence, including photographic evidence, shall be kept in a locked,
27 separate and secure area for five years from the date of collection;

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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provided that such evidence shall be transferred to a new location or locations pursuant to this subdivision.

(b) Domestic violence evidence shall include, but not be limited to, slides, cotton swabs, photographs, clothing and other items. Where appropriate, such items shall be refrigerated and the cloths and swabs shall be dried, stored in paper bags, and labeled. Each item of evidence shall be marked and logged with a code number corresponding to the alleged domestic violence victim's medical record.

(c) Upon collection, the hospital shall notify the alleged domestic violence victim that, after five years, the domestic violence evidence will be discarded in compliance with state and local health codes and that the alleged domestic violence victim's clothes or personal effects will be returned to the alleged domestic violence victim at any time upon request. The alleged domestic violence victim shall be given the option of providing contact information for purposes of receiving notice of the planned destruction of such evidence after the expiration of the five-year period.

3. Nothing within this section shall preclude the reporting hospital from using the resources, procedures, or means of notification previously established under any other law with respect to the collection of evidence that does not mitigate or abrogate any responsibilities herein.

4. Notwithstanding any provision of this section, where the person is an alleged victim of a sexual assault or offense the hospital shall treat and maintain evidence in accordance with section twenty-eight hundred five-i of this article.

§ 2. Subdivision 1 of section 631 of the executive law, as separately amended by chapters 189 and 295 of the laws of 2018, is amended to read as follows:

1. No award shall be made unless the office finds that (a) a crime was committed, (b) such crime directly resulted in personal physical injury to or the exacerbation of a preexisting disability, or condition, or death of, the victim, and (c) criminal justice agency records show that such crime was promptly reported to the proper authorities; and in no case may an award be made where the criminal justice agency records show that such report was made more than one week after the occurrence of such crime unless the office, for good cause shown, finds the delay to have been justified. Notwithstanding the foregoing provisions of this subdivision, in cases involving an alleged sex offense as contained in article one hundred thirty of the penal law or incest as defined in section 255.25, 255.26 or 255.27 of the penal law or labor trafficking as defined in section 135.35 of the penal law or sex trafficking as defined in sections 230.34 and 230.34-a of the penal law or an offense chargeable as a family offense as described in section eight hundred twelve of the family court act or section 530.11 of the criminal procedure law, the criminal justice agency report need only be made within a reasonable time considering all the circumstances, including the victim's physical, emotional and mental condition and family situation. For the purposes of this subdivision, "criminal justice agency" shall include, but not be limited to, a police department, a district attorney's office, and any other governmental agency having responsibility for the enforcement of the criminal laws of the state provided, however, that in cases involving such sex offense or family offense a criminal justice agency shall also mean a family court, a governmental agency responsible for child and/or adult protective services pursuant to title six of article six of the social services law and/or title one of article nine-B of the social services law, and any medical facility estab-

1 lished under the laws of the state that provides a forensic physical
2 examination for victims of rape and sexual assault or a forensic exam-
3 ination of domestic violence victims pursuant to section twenty-eight
4 hundred five-z of the public health law.

5 § 3. Section 631 of the executive law is amended by adding a new
6 subdivision 19 to read as follows:

7 19. Notwithstanding any other provision of law, rule, or regulation to
8 the contrary, when any New York state accredited hospital, accredited
9 sexual assault examiner program, or licensed health care provider
10 furnishes services to any alleged domestic violence victim, including
11 but not limited to a forensic examination of domestic violence victims
12 pursuant to section twenty-eight hundred five-z of the public health law
13 in accordance with the domestic violence offense evidence collection
14 protocol and standards established by the department of health, such
15 hospital, sexual assault examiner program, or licensed health care
16 provider shall provide such services to the person without charge and
17 shall bill the office directly. The office, in consultation with the
18 department of health, shall define the specific services to be covered
19 by the domestic violence forensic exam reimbursement fee, which must
20 include at a minimum forensic examiner services, hospital or health care
21 facility services related to the exam, and related laboratory tests. The
22 office, in consultation with the department of health, shall also gener-
23 ate the necessary regulations and forms for the direct reimbursement
24 procedure. The rate for reimbursement shall be the amount of itemized
25 charges not exceeding eight hundred dollars, to be reviewed and adjusted
26 annually by the office in consultation with the department of health.
27 The hospital, sexual assault examiner program, or licensed health care
28 provider must accept this fee as payment in full for these specified
29 services. No additional billing of the victim for said services is
30 permissible. A domestic violence victim may voluntarily assign any
31 private insurance benefits to which he or she is entitled for the health
32 care forensic examination, in which case the hospital or health care
33 provider may not charge the office; provided, however, in the event the
34 domestic violence victim assigns any private health insurance benefit,
35 such coverage shall not be subject to annual deductibles or coinsurance
36 or balance billing by the hospital, sexual assault examiner program or
37 licensed health care provider. A hospital, sexual assault examiner
38 program or licensed health care provider shall, at the time of the
39 initial visit, request assignment of any private health insurance bene-
40 fits to which the domestic violence victim is entitled on a form
41 prescribed by the office; provided, however, such domestic violence
42 victim shall be advised orally and in writing that he or she may decline
43 to provide such information regarding private health insurance benefits
44 if he or she believes that the provision of such information would
45 substantially interfere with his or her personal privacy or safety and
46 in such event, the domestic violence forensic exam fee shall be paid by
47 the office. Such domestic violence victim shall also be advised that
48 providing such information may provide additional resources to pay for
49 services to other victims. If he or she declines to provide such health
50 insurance information, he or she shall indicate such decision on the
51 form provided by the hospital, sexual assault examiner program or
52 licensed health care provider, which form shall be prescribed by the
53 office.

54 § 4. This act shall take effect immediately.