STATE OF NEW YORK

525

2021-2022 Regular Sessions

IN SENATE

(Prefiled)

January 6, 2021

Introduced by Sens. BIAGGI, SERINO -- read twice and ordered printed, and when printed to be committed to the Committee on Health

AN ACT to amend the public health law and the executive law, in relation to the 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:

Section 1. Section 2805-z of the public health law, as amended by chapter 37 of the laws of 2020, is amended to read as follows:

§ 2805-z. Hospital domestic violence policies and procedures. 1. Every general hospital shall: (a) develop, maintain and disseminate written policies and procedures for the identification, assessment, treatment and referral of confirmed or suspected cases of domestic violence; (b) establish, and implement on an ongoing basis, a training program for all nursing, medical, social work and other clinical personnel, and security personnel working in hospital service units regarding the policies and procedures established pursuant to this section; and (c) designate a staff member to contact the domestic violence or victim assistance organization identified by the commissioner under subdivision [~~three~~] **seven** of this section providing victim assistance to the geographic area served by such hospital to establish the coordination of services to domestic violence victims.

2. Upon admittance or commencement of treatment of a confirmed or suspected domestic violence victim, such hospital shall advise the victim of the availability of the services of a domestic violence or victim assistance organization. If after receiving such advice the domestic violence victim wishes the presence of a domestic violence or victim assistance advocate, such hospital shall contact the appropriate organization and request that one be provided.

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

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3. Upon the request and consent of the patient, every hospital providing treatment to alleged victims of domestic violence shall be responsible for:

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

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

(c) ensuring that domestic violence victims are not billed for domestic violence 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.

4. Domestic violence evidence shall be collected and maintained as follows:

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

5. 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.

6. 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.

[~~3~~] 7. The commissioner shall promulgate such rules and regulations as may be necessary and proper to carry out effectively the provisions of this section. Prior to promulgating such rules and regulations, the commissioner shall consult with the office for the prevention of domestic violence and other such persons as the commissioner deems necessary to develop a model policy for hospitals to utilize in complying with this section and to identify the domestic violence or victim assistance

organizations operating in each hospital's geographic area, a list of which the commissioner shall provide to hospitals with the model policy.

§ 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 established under the laws of the state that provides a forensic physical examination for victims of rape and sexual assault **or a forensic examination of domestic violence victims pursuant to section twenty-eight hundred five-z of the public health law**.

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

19. Notwithstanding any other provision of law, rule, or regulation to the contrary, when any New York state accredited hospital, accredited sexual assault examiner program, or licensed health care provider furnishes services to any alleged domestic violence victim, including but not limited to a forensic examination of domestic violence victims pursuant to section twenty-eight hundred five-z of the public health law in accordance with the domestic violence offense evidence collection protocol and standards established by the department of health, such hospital, sexual assault examiner program, or licensed health care provider shall provide such services to the person without charge and shall bill the office directly. The office, in consultation with the department of health, shall define the specific services to be covered by the domestic violence forensic exam reimbursement fee, which must include at a minimum forensic examiner services, hospital or health care facility services related to the exam, and related laboratory tests. The office, in consultation with the department of health, shall also generate the necessary regulations and forms for the direct reimbursement

procedure. The rate for reimbursement shall be the amount of itemized charges not exceeding eight hundred dollars, to be reviewed and adjusted annually by the office in consultation with the department of health. The hospital, sexual assault examiner program, or licensed health care provider must accept this fee as payment in full for these specified services. No additional billing of the victim for said services is permissible. A domestic violence victim may voluntarily assign any private insurance benefits to which he or she is entitled for the health care forensic examination, in which case the hospital or health care provider may not charge the office; provided, however, in the event the domestic violence victim assigns any private health insurance benefit, such coverage shall not be subject to annual deductibles or coinsurance or balance billing by the hospital, sexual assault examiner program or licensed health care provider. A hospital, sexual assault examiner program or licensed health care provider shall, at the time of the initial visit, request assignment of any private health insurance benefits to which the domestic violence victim is entitled on a form prescribed by the office; provided, however, such domestic violence victim shall be advised orally and in writing that he or she may decline to provide such information regarding private health insurance benefits if he or she believes that the provision of such information would substantially interfere with his or her personal privacy or safety and in such event, the domestic violence forensic exam fee shall be paid by the office. Such domestic violence victim shall also be advised that providing such information may provide additional resources to pay for services to other victims. If he or she declines to provide such health insurance information, he or she shall indicate such decision on the form provided by the hospital, sexual assault examiner program or licensed health care provider, which form shall be prescribed by the office.

§ 4. This act shall take effect on the same date and in the same manner as chapter 37 of the laws of 2020, takes effect.