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State of Nevada Legislative Mail - 994416, public comments re: 148C-02411

Public Comments Received by Information Systems

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Message

From: Nathan Evans <nathan.evans@leg.state.nv.us>
To: Public Comments, Feedback, Comments, Responses <publiccomments@leg.state.nv.us>
Sent: Tuesday, February 27, 2024 2:37 PM

Dear Chairman, Dr. Evans:

I have just read the report regarding the proposed rule 148C-011. I read the Executive Summary. The approach the committee is taking is a good one. If you have any questions, please feel free to contact me.

Thanks

Thomas J. Jones, Nevada House of Representatives

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State Commission OAR Rule Making Comments 2024-1944, 0000000



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August 27, 2024

Brandolyn N Felton-Ernest
1900 Kanawha Blvd. E.
Building 1, Room W-400
Charleston, West Virginia 25311

Dear Ms. Felton-Ernest:

Re: LEGISLATIVE RULE 149CSR11, SEXUAL ASSAULT FORENSIC EXAMINATIONS

On behalf of the West Virginia Hospital Association and its member hospitals and health systems, we respectfully submit this letter to provide public comment in response to the above referenced **Legislative Rule 149CSR11, Sexual Assault Forensic Examinations**.

§149-11-3. Treatment of sexual assault victims.

Subdivision 3.1.2. requires a hospital to have *available*, 24 hours a day seven days a week, physicians, physician assistants, or APRNs who have completed a modified training course, or registered professional nurses who have completed a 40-hour, adult/adolescent sexual assault nurse examiner course *and* have access to teleSANE. We believe the specific training requirements exceed, and are contrary to, the statutory authority found in SB89 from 2023.

Per SB89, W. Va. Code §15-9B-4(b)(3) provides that “rules promulgated pursuant to subsection (a) of this section shall include: (3) Requiring a hospital to have trained health care provider *available* or transfer agreement as provided in a county plan, to complete a sexual assault forensic examination. “*Available*” includes, but not limited, having access to a trained sexual assault forensic examination expert via telehealth.”

The inclusion of the specifying language detailing what meets the requirement of “available” was intentional and agreed to by stakeholders, with the goal of increasing access to care for sexual assault victims. What is being proposed in this rule was proposed in both the introduced and committee substitute versions of SB89, and neither version of SB89 was ultimately approved by the legislature.

Through feedback from our member hospitals, we expressed concern that we would be unable to operationalize any provision that required a specifically trained health care provider be available at every hospital 24 hours a day seven days a week due to the current workforce challenges our hospitals face. Ensuring 24/7 availability of these trained personnel, meaning they’ve completed either the 40-hour training or modified training, is still not feasible in every hospital. Additionally, the rule does not provide any indication of what the modified training will consist of or how many hours the modified training will require.

Concerns were also expressed relating to the ability to retain trained SANE nurses due to high job stress, burnout, and turnover. Through negotiations with legislators and stakeholders, it was agreed that a hospital could meet the “availability” requirement by having access to a trained health care provider via telemedicine, referred to as TeleSANE. Furthermore, the development and implementation of the training requirements that are authorized in statute has now been delayed until 2026. This is further delaying access to care and treatment for sexual assault victims. We believe the best path forward is to operationalize what is currently permitted by statute, and then revisit this issue in the future if concerns remain.

Additionally, Subdivision 3.4.4. provides that the health care facility shall call a rape crisis center advocate and shall offer to call a friend or family member to accompany the victim. While we value the role and services rape crisis center advocates provide, if a victim doesn’t want that contact to occur, we’re concerned there could be a privacy and confidentiality issue in calling them anyway and asking them to come to the hospital. We would support a requirement that we offer the services of a rape crisis counselor to all victims, and that the patient have the option to agree or decline.

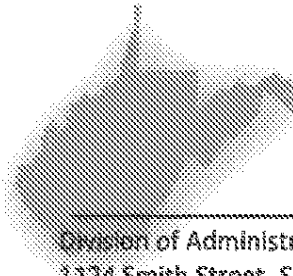
Finally, Subsection 3.7 requires a health care facility to take all reasonable steps to secure the patient’s informed written decision to consent or decline examination and treatment. We would ask for clarification as to if this requires paper records, or if electronic record of the decision will meet this mandate.

West Virginia hospitals, and the WVHA, remain committed to collaborating with all stakeholders to ensure patients receive necessary services when and where they’re needed. We appreciate the opportunity to provide public comments on this important issue. If you have any questions or concerns, please contact me at (304) 353-9720.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. James Kaufman', with a stylized flourish at the end.

M. James Kaufman, PhD
President & CEO
West Virginia Hospital Association



Sexual Assault Forensic Examination Commission

Division of Administrative Services, Justice and Community Services
1124 Smith Street, Suite 3100 Charleston, West Virginia 25301-1323

9/4/2024

Re: LEGISLATIVE RULE 149CSR11, SEXUAL ASSAULT FORENSIC EXAMINATIONS public comments

Response from the SAFE Commission

The SAFE Commission met on 9/3/2024 with representatives in attendance from the WV Hospital Association (WVHA). The Commission's response to the public comments made by the WVHA is below.

§149-11-3. Treatment of sexual assault victims.

For the past several years, the Commission has given significant consideration to balancing the need for competent, trained forensic examiners with the capacity of hospitals to have trained examiners available. In §15-9B-1(e), the SAFE Commission is explicitly tasked with *'establish[ing] mandatory statewide protocols for conducting sexual assault forensic examinations, including designating locations and providers to perform forensic examinations, establishing minimum qualifications and procedures for performing forensic examinations, and establishing protocols to assure the proper collection of evidence.'*

In §15-9B-2. Powers and duties of the commission are again outlined, noting in section (a) *The commission shall facilitate the recruitment and retention of qualified health care providers that are properly qualified to conduct forensic examinations* and in section (b) that *The commission shall authorize minimum training requirements for providers conducting exams and establish a basic standard of care for victims of sexual assault. The commission may adopt necessary and reasonable requirements relating to establishment of a statewide training and forensic examination system, including, but not limited to, developing a data collection system to monitor adherence to established standards.*

The SAFE Commission therefore stands firm on its belief that the training standards outlined in the legislative rule/emergency legislative rule are not only within its scope of authority, but are created in response to a legislative mandate.

The comments from the WVHA include repeatedly reference that the language referencing 'available' was agreed to by stakeholders. That summation is not entirely accurate. The initial version of SB89 [which passed in 2023 but which also had been introduced in identical bills in 2021 (SB476) and 2022 (SB78)], was a very brief bill that defined 3 terms (kit, sex offense and hospital) and would have required every hospital in WV to have health care providers trained and properly qualified by the SAFE Commission, with those providers available at all hours of hospital operation. The bills included no references to teleSANEs and provided no option for transfer agreements.

The SAFE Commission did not support those bills because it recognized that neither the Commission nor the hospitals had the capacity to meet those requirements. A special meeting of the SAFE Commission was held on 2/1/2023 specifically to review the proposed legislation and express concerns to the legislature. The consensus of the Commission at that meeting (as noted in the minutes) included two key points:

- In §15-9D-2. Required staff, remove 'shall' requiring every hospital to have 24/7 staffing, adding 'or transfer agreements' or other language referencing the county plans. The group felt that the county plans needed to be completed and could help address some of the gaps.
- Require that no one conducts exams without being trained, and that any training content/process must be approved by the SAFE Commission.

As those minutes reflect, and as was confirmed at a meeting held on 9/3/2024 to review the WVHA comments on the current Emergency Legislative rule, the SAFE Commission has **never** supported that exams be conducted by an untrained professional at the bedside. While the final version of SB89 included the insertion of telehealth/teleSANEs as an option to provide additional expertise, a telehealth support professional certainly could not be conducting the actual gynecological evidence collection on the patient remotely and could not be considered the actual health care provider.

To clarify the language in that section of the legislative rule, the SAFE Commission approves the following changes:

§149-11-3. Treatment of sexual assault victims.

3.1.2. Physicians, physician assistants, or APRNs within their scope of practice and utilizing availability to a teleSANE; ~~who have completed a modified training course,~~

~~3.1.3 or Registered professional nurses who have completed a modified training course a 40-hour, adult/adolescent sexual assault nurse examiner course and have access to utilize a teleSANE. All courses, modified courses, and teleSANE providers must be approved by the SAFE Commission; or~~

3.1.4. In lieu of the requirements contained in subdivisions 3.1.1. and 3.1.2., a signed written agreement with a hospital that is in compliance with the requirements of subdivisions 3.1.1. ~~and 3.1.2, and 3.1.3.~~

The changes would enable physicians, physician assistants or APRNs to continue conducting exams with no additional training required or be required to utilize a teleSANE. While Commission members did not believe this to be ideal practice, it was agreed that removing requirements would not reduce access to exams or put an additional hardship on the hospitals. The Commission did reaffirm its stance that registered nurses who are not SANE trained should not be conducting exams without additional training. It is outside the scope of their practice; therefore additional training and the utilization of a teleSANE would be required. Forensic exams are conducted for the purpose of collecting evidence, therefore those collecting evidence need to have a baseline of knowledge to properly collect and package the evidence as well as be able to testify in court.

§149-11-3. Treatment of sexual assault victims. Subdivision 3.4.4.

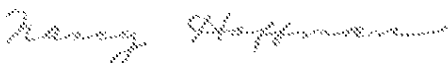
WVHA expressed confidentiality concerns in contacting a rape crisis center advocate. This practice is recommended in the U.S. Department of Justice's 'A National Protocol for Sexual Assault Medical Forensic Exams' and is consistent with WV's §16-11A-9 Sexual Assault Victims Bill of Rights that allows a victim to have someone accompany them during an exam. Standard practice is that advocates are called with no identifying victim information provided; victims are notified by hospital personnel when an advocate is available and then have the option to accept or decline the service. The wording of this section was adjusted to reflect that practice:

3.4.4. The health care facility shall call a rape crisis center advocate and shall offer to call a friend or family member to accompany the victim. Prior to introduction to the advocate, the victim must express consent to advocacy to a health care professional.

§149-11-3. Treatment of sexual assault victims. Subdivision 3.7.

WVHA requested clarification regarding whether or not patient consent could be electronic. The wording of this section was adjusted to clarify this option:

3.7. The health care facility shall take all reasonable steps to ~~document~~ document the patient's informed ~~written~~ decision to consent to or decline examination and treatment.



Nancy Hoffman, Chairperson