

AMENDMENTS TO LB183

Introduced by Hunt, 8.

1 1. Strike the original sections and insert the following new
2 sections:

3 Section 1. Sections 1 to 4 of this act shall be known and may be
4 cited as the Sexual Assault Emergency Care Act.

5 Sec. 2. For purposes of the Sexual Assault Emergency Care Act:

6 (1) Department means the Department of Health and Human Services;

7 (2) Director means the Director of Public Health of the Division of
8 Public Health or the director's designee;

9 (3) Emergency care for a sexual assault survivor means a medical
10 examination, procedure, or service provided by a hospital to a sexual
11 assault survivor following a sexual assault;

12 (4) Emergency contraception means a drug approved by the federal
13 Food and Drug Administration that prevents pregnancy after sexual
14 intercourse;

15 (5) Hospital means a hospital licensed under the Health Care
16 Facility Licensure Act;

17 (6) Medically and factually accurate and objective means verified or
18 supported by the weight of research conducted in compliance with accepted
19 scientific methods and standards, the currently accepted professional
20 standards of care and established protocols for medical care following
21 sexual assault as established in section 29-4311, and recognized as
22 accurate and objective by leading professional organizations and agencies
23 with relevant expertise in the field of obstetrics and gynecology;

24 (7) Sexual assault means any sexual assault that involves sexual
25 penetration as set forth in section 28-318 or substantially similar
26 conduct; and

27 (8) Sexual assault survivor means an individual who is a victim of

1 sexual assault and who reports such sexual assault to a hospital,
2 including anonymous reporting pursuant to section 28-902.

3 Sec. 3. (1) A hospital which provides emergency care for a sexual
4 assault survivor shall:

5 (a) Provide the sexual assault survivor with medically and factually
6 accurate and objective written and oral information about emergency
7 contraception;

8 (b) Provide the sexual assault survivor with written and oral
9 information in a language the sexual assault survivor understands about
10 the option to receive emergency contraception at the hospital; and

11 (c) Dispense a complete course of emergency contraception, in
12 accordance with the currently accepted professional standards of care and
13 established protocols for sexual assault forensic medical examinations,
14 to the sexual assault survivor who accepts or requests it.

15 (2) A hospital which provides emergency care for a sexual assault
16 survivor shall provide training for all personnel involved in such care
17 regarding the provision of medically and factually accurate and objective
18 information about emergency contraception.

19 (3) A hospital which provides emergency care for a sexual assault
20 survivor shall ensure compliance with the Sexual Assault Emergency Care
21 Act and shall develop policies and procedures, as necessary, to ensure
22 compliance with the act in the case of moral or religious objections by
23 individual health care providers.

24 Sec. 4. (1) Any complaint regarding compliance with the Sexual
25 Assault Emergency Care Act may be filed with the department.

26 (2)(a) The department shall review complaints received regarding
27 failure of a hospital to provide services in compliance with the Sexual
28 Assault Emergency Care Act to determine the action to be taken to satisfy
29 the complaint. In making a determination as to whether or not to conduct
30 an investigation, the department may consider factors such as:

31 (i) Whether the complaint pertains to a matter within the authority

1 of the department to enforce;

2 (ii) Whether the circumstances indicate that a complaint is made in
3 good faith and is not malicious, frivolous, or vexatious;

4 (iii) Whether the complaint is timely or has been delayed too long
5 to justify present evaluation of its merit;

6 (iv) Whether the complainant may be a necessary witness if action is
7 taken and is willing to identify himself or herself and come forward to
8 testify if action is taken; or

9 (v) Whether the information provided or within the knowledge of the
10 complainant is sufficient to provide a reasonable basis to believe that a
11 violation has occurred or to secure necessary evidence from other
12 sources.

13 (b) A complaint submitted to the department shall be confidential. A
14 person submitting a complaint shall be immune from criminal or civil
15 liability of any nature, whether direct or derivative, for submitting a
16 complaint or for disclosure of documents, records, or other information
17 to the department.

18 (3) The department shall retain all complaints it receives regarding
19 failure of a hospital to provide services in compliance with the Sexual
20 Assault Emergency Care Act. The department shall provide a report
21 electronically to the Legislature by December 1 of every even-numbered
22 year that includes, but is not limited to, the annual number of
23 complaints, the nature of the complaint, and the hospitals for which
24 those complaints were made. The report shall also include the
25 determination of the department's investigation and any disciplinary
26 action or penalties applied. The report shall not include any personal
27 health or identifying information.

28 (4)(a) If the department determines after investigation of a
29 complaint that a hospital has failed to provide services in compliance
30 with the Sexual Assault Emergency Care Act, the department shall send to
31 the hospital, by certified mail to the last address shown on the records

1 of the department, a notice setting forth the determination, the
2 particular reasons for the determination, including a specific
3 description of the nature of the violation and the statute violated, and
4 the type of disciplinary action which is pending, which may include the
5 penalties described in subsection (5) of this section. Within fifteen
6 days after service of the notice, the hospital shall notify the
7 department in writing that the hospital (i) desires to contest the notice
8 and request an informal conference with a representative of the
9 department in person or by other means at the request of the hospital,
10 (ii) desires to contest the notice and request an informal conference
11 with a representative of a peer review organization with which the
12 department has contracted, (iii) desires to contest the notice and
13 request a hearing, or (iv) does not contest the notice. If the department
14 does not receive such notification within such fifteen-day period, the
15 action of the department shall be final.

16 (b) If an informal conference is requested pursuant to subdivision
17 (a)(i) or (ii) of this subsection, the director shall assign to conduct
18 the informal conference, respectively, a representative of the department
19 other than the individual who did the investigation upon which the notice
20 is based or a representative of a peer review organization. The
21 representative shall hold an informal conference with the hospital within
22 thirty days after the department's receipt of such request. Within twenty
23 working days after the conclusion of the conference, the representative
24 shall report in writing to the department the representative's conclusion
25 regarding whether to affirm, modify, or dismiss the notice and the
26 specific reasons for the conclusion and shall provide a copy of the
27 report to the director and the hospital.

28 (c) Within ten working days after receiving a report under
29 subdivision (b) of this subsection, the department shall consider such
30 report and affirm, modify, or dismiss the notice and shall state the
31 specific reasons for such decision, including, if applicable, the

1 specific reasons for not adopting the conclusion of the representative as
2 contained in such report. The department shall provide the hospital with
3 a copy of such decision by certified mail to the last address shown in
4 the records of the department. If the hospital desires to contest an
5 affirmed or modified notice, the hospital shall notify the director in
6 writing within five working days after receiving such decision that the
7 hospital requests a hearing.

8 (d) If a hospital successfully demonstrates during an informal
9 conference or a hearing that the deficiencies should not have been cited
10 in the notice, (i) the deficiencies shall be removed from the notice and
11 the deficiency statement and (ii) any sanction imposed solely as a result
12 of those cited deficiencies shall be rescinded.

13 (e)(i) If the hospital requests a hearing under subdivision (a)(iii)
14 of this subdivision, the department shall hold a hearing and give the
15 hospital the right to present such evidence as may be proper. On the
16 basis of such evidence, the director shall affirm, modify, or set aside
17 the determination. A copy of such decision setting forth the findings of
18 facts and the particular reasons upon which the decision is based shall
19 be sent by either registered or certified mail to the hospital. The
20 decision shall become final thirty days after the copy is mailed unless
21 the hospital, within such thirty-day period, appeals the decision under
22 subdivision (f) of this subsection.

23 (ii) The procedure governing hearings authorized by this section
24 shall be in accordance with rules and regulations adopted and promulgated
25 by the department. A full and complete record shall be kept of all
26 proceedings. Witnesses may be subpoenaed by either party and shall be
27 allowed fees at a rate prescribed by rule and regulation.

28 (f) Any party to a decision of the department under the Sexual
29 Assault Emergency Care Act may appeal such decision. The appeal shall be
30 in accordance with the Administrative Procedure Act.

31 (5) The department shall:

1 (a) For the first substantiated complaint:

2 (i) Issue a written warning to the hospital stating that it has
3 failed to provide services in compliance with the Sexual Assault
4 Emergency Care Act; and

5 (ii) Require the hospital to correct the deficiency that led to the
6 complaint; and

7 (b) For the second and subsequent substantiated complaints, impose a
8 fine of one thousand dollars on the hospital:

9 (i) Per sexual assault survivor who the department finds to have
10 been denied medically and factually accurate and objective written and
11 oral information about emergency contraception or who the department
12 finds has not been offered emergency contraception in violation of
13 subsection (1) of section 3 of this act; or

14 (ii) Per month from the date of the complaint alleging noncompliance
15 until the hospital provides training in compliance with subsection (2) of
16 section 3 of this act.

17 Sec. 5. If any section in this act or any part of any section is
18 declared invalid or unconstitutional, the declaration shall not affect
19 the validity or constitutionality of the remaining portions.