

VIRGINIA ACTS OF ASSEMBLY -- 2020 SESSION

CHAPTER 725

An Act to amend the Code of Virginia by adding in Chapter 5 of Title 32.1 an article numbered 8, consisting of sections numbered 32.1-162.15:2 through 32.1-162.15:11, by adding in Article 1 of Chapter 29 of Title 54.1 a section numbered 54.1-2910.5, and by adding in Article 2 of Chapter 30 of Title 54.1 a section numbered 54.1-3018.2, relating to treatment of sexual assault survivors; requirements.

[H 808]

Approved April 6, 2020

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 5 of Title 32.1 an article numbered 8, consisting of sections numbered 32.1-162.15:2 through 32.1-162.15:11, by adding in Article 1 of Chapter 29 of Title 54.1 a section numbered 54.1-2910.5, and by adding in Article 2 of Chapter 30 of Title 54.1 a section numbered 54.1-3018.2 as follows:

Article 8.

Services for Survivors of Sexual Assault.

§ 32.1-162.15:2. Definitions.

"Anonymous physical evidence recovery kit" has the same meaning as in § 19.2-11.5.

"Approved pediatric health care facility" means a pediatric health care facility for which a plan for the delivery of services to pediatric survivors of sexual assault has been approved pursuant to § 32.1-162.15:6.

"Board" means the Board of Health.

"Department" means the Department of Health.

"Emergency contraception" means medication approved by the U.S. Food and Drug Administration that can significantly reduce the risk of pregnancy if taken within 72 hours after sexual assault.

"Follow-up health care" means any physical examination, laboratory tests to determine the presence of sexually transmitted infection, or appropriate medications, including HIV-prophylaxis, provided to a survivor of sexual assault by a health care provider within 90 days after the date on which treatment or transfer services pursuant to this article are first provided.

"Forensic medical examination" means health care services provided to a survivor of sexual assault that include medical history, physical examination, laboratory testing, assessment for drug-facilitated or alcohol-facilitated sexual assault, collection of evidence in accordance with the requirements of Chapter 1.2 (§ 19.2-11.5 et seq.) of Title 19.2, and discharge and follow-up health care planning necessary to ensure the health, safety, and welfare of the survivor of sexual assault and the collection and preservation of evidence that may be used in a criminal proceeding.

"Hospital" means any hospital licensed by the Department pursuant to this chapter.

"Pediatric health care facility" means a hospital, clinic, or physician's office that provides health care services to pediatric patients.

"Pediatric survivor of sexual assault" means a survivor of sexual assault who is under 13 years of age.

"Physical evidence recovery kit" has the same meaning as in § 19.2-11.5.

"Sexual assault forensic examiner" means a sexual assault nurse examiner, physician, physician assistant, nurse practitioner, or registered nurse who has completed training that meets or is substantially similar to the Sexual Assault Nurse Examiner Education Guidelines established by the International Association of Forensic Nurses.

"Sexual assault survivor transfer services" means an appropriate medical examination and such stabilizing treatment as may be necessary prior to the transfer of a sexual assault survivor from a transfer hospital to a treatment hospital in accordance with the provisions of a transfer plan approved by the Department.

"Sexual assault survivor treatment services" means a forensic medical examination and other health care services provided to a sexual assault survivor by a hospital in accordance with § 32.1-162.15:4 or pediatric health care facility in accordance with § 32.1-162.15:6.

"Transfer hospital" means a hospital with a sexual assault survivor transfer plan approved by the Department.

"Transportation service" means transportation provided to a survivor of sexual assault who is transferred from a transfer hospital, treatment hospital, or approved pediatric health care facility to a treatment hospital or approved pediatric care facility pursuant to a transfer plan approved in accordance with this article.

"Treatment hospital" means a hospital with a sexual assault survivor treatment plan approved by the

Department to provide sexual assault survivor treatment services to all survivors of sexual assault who present with a complaint of sexual assault within the previous seven days or who have disclosed past sexual assault by a specific individual and were in the care of that individual within the previous seven days.

§ 32.1-162.15:3. Services for survivors of sexual assault; plan required.

A. Every hospital licensed by the Department shall develop and, upon approval by the Department, implement a plan to provide either sexual assault survivor treatment services or sexual assault survivor transfer services for survivors of sexual assault.

B. Sexual assault survivor treatment plans shall include provisions for (i) the delivery of services described in § 32.1-162.15:4 and (ii) the storage, retention, and dissemination of photographic evidence in accordance with § 32.1-162.15:8.

C. Sexual assault survivor transfer service plans shall include (i) provisions for the delivery of services described in § 32.1-162.15:5 and (ii) the written agreement of a treatment hospital to accept transfer of survivors of sexual assault.

D. A treatment hospital for which a plan has been approved pursuant to subsection B or a transfer hospital for which a plan has been approved pursuant to subsection C may enter into an agreement for the transfer of pediatric survivors of sexual assault from the treatment hospital or transfer hospital to an approved pediatric health care facility pursuant to a pediatric sexual assault survivor transfer plan. Such plan shall include (i) provisions for the delivery of services described in § 32.1-162.15:6 and (ii) the written agreement of an approved pediatric health care facility to accept transfer of survivors of sexual assault.

E. Sexual assault survivor treatment plans, sexual assault survivor transfer plans, and pediatric sexual assault survivor transfer plans shall be submitted in a form and in accordance with procedures specified by the Board. The Department shall approve or deny such plans, in writing, within 30 days of receipt of such plans. If the Department denies a plan submitted pursuant to this section, the Department shall provide the hospital with a written statement setting forth the reasons for such denial.

§ 32.1-162.15:4. Treatment services.

A. The Board shall adopt regulations to establish standards for review and approval of sexual assault survivor treatment plans, which shall include provisions for the following services, when ordered by a health care provider and with the consent of the survivor of sexual assault:

1. Appropriate forensic medical examination;
2. Appropriate oral and written information concerning the possibility of infection or sexually transmitted disease, including human immunodeficiency virus (HIV) resulting from the sexual assault, accepted medical procedures and medications for the prevention or treatment of such infection or sexually transmitted disease, and the indications, contraindications, and potential risks of such medical procedures or medications;
3. Appropriate evaluations to determine the survivor of sexual assault's risk of infection or sexually transmitted disease, including HIV, resulting from the sexual assault;
4. Appropriate oral and written information regarding the possibility of pregnancy resulting from the sexual assault and medically and factually accurate oral and written information about emergency contraception, the indications and contraindications and potential risks associated with the use of emergency contraception, and the availability of emergency contraception for survivors of sexual assault;
5. Prescriptions of such medications as may be appropriate for treatment of the survivor of sexual assault both during treatment at the hospital and upon discharge, including, in cases in which prophylactic treatment for infection with HIV is deemed appropriate, an initial dose or all required doses of HIV prophylaxis;
6. Oral and written information regarding the need for follow-up care, including examinations and laboratory tests to determine the presence or absence of sexually transmitted infection or disease and follow-up care related to HIV prophylaxis;
7. Information about medical advocacy services provided by a rape crisis center with which the hospital has entered into a memorandum of understanding pursuant to subsection D; and
8. Referral for appropriate counseling and other support services.

B. All appropriate sexual assault survivor treatment services shall be provided without delay in a private location and in an age-appropriate or developmentally appropriate manner.

C. Forensic medical examinations provided pursuant to a sexual assault survivor treatment plan approved by the Board shall include an offer to complete a physical evidence recovery kit. Every treatment hospital for which a sexual assault survivor treatment plan has been approved by the Department shall report to the Department by December 1 of each year:

1. The total number of patients to whom a forensic medical examination was provided; and
2. The total number of physical evidence recovery kits offered and completed.

D. Every treatment hospital shall (i) enter into a memorandum of understanding with at least one rape crisis center for medical advocacy services for survivors of sexual assault and (ii) adopt procedures to ensure compliance with mandatory reporting requirements pursuant to §§ 63.2-1509 and

63.2-1606.

E. Records of services provided to survivors of sexual assault, including the results of any examination or laboratory test conducted pursuant to subsection A, shall be maintained by the treatment hospital and made available to law enforcement upon request of the survivor of sexual assault. Records of services provided to survivors of sexual assault 18 years of age and older shall be maintained by the hospital for a period of 20 years from the date the record was created. Records of services provided to survivors of sexual assault under 18 years of age shall be maintained for a period of 20 years after the date on which the survivor of sexual assault reaches 18 years of age.

F. Every treatment hospital, including every treatment hospital with an approved pediatric sexual assault survivor plan, shall include in its sexual assault survivor treatment plan provisions requiring appropriate health care providers who provide services in the hospital's emergency department to annually complete training developed and made available by the Department on the topic of sexual assault, detection of sexual assault, provision of services for survivors of sexual assault, and collection of evidence in cases involving alleged sexual assault. Such training shall be consistent with best practices outlined by the International Association of Forensic Nurses.

§ 32.1-162.15:5. Transfer services.

The Board shall adopt regulations to establish standards for review and approval of sexual assault survivor transfer plans and pediatric sexual assault survivor transfer plans, which shall include provisions for the following services, when ordered by a health care provider and with the consent of the survivor of sexual assault:

1. Appropriate medical examination and such stabilizing treatment as may be necessary prior to the transfer of a survivor of sexual assault from the transfer hospital to a treatment hospital;

2. Medically and factually accurate written and oral information about emergency contraception, the indications and contraindications and potential risks associated with the use of emergency contraception, and the availability of emergency contraception for survivors of sexual assault; and

3. Prompt transfer of the survivor of sexual assault to a treatment hospital or approved pediatric health care facility, as may be appropriate, including provisions necessary to ensure that transfer of the survivor of sexual assault or pediatric survivor of sexual assault would not unduly burden the survivor of sexual assault or pediatric survivor of sexual assault.

§ 32.1-162.15:6. Services for pediatric survivors of sexual assault; plan required.

A. A pediatric health care facility may provide treatment services or transfer services to pediatric survivors of sexual assault in accordance with a pediatric sexual assault survivor treatment plan or pediatric sexual assault survivor transfer plan approved by the Department. No pediatric health care facility shall provide pediatric sexual assault treatment or transfer services to a pediatric survivor of sexual assault unless a pediatric sexual assault survivor treatment plan for the pediatric health care facility has been approved by the Department.

B. A pediatric health care facility wishing to provide pediatric sexual assault survivor treatment services shall submit a pediatric sexual assault survivor treatment plan to the Department. The Board shall adopt regulations to establish standards for the review and approval of pediatric sexual assault survivor treatment plans, which shall include provisions for the delivery of treatment services described in § 32.1-162.15:4.

In cases in which the pediatric health care facility is not able to provide the full range of treatment services required by § 32.1-162.15:4, the plan shall include (i) the specific treatment services that the pediatric health care facility will provide for pediatric survivors of sexual assault; (ii) provisions for transfer services required by § 32.1-162.15:5 for pediatric survivors of sexual assault for whom treatment services are not provided by the pediatric health care facility; (iii) the written agreement of a treatment hospital to accept transfer of pediatric survivors of sexual assault for whom treatment services are not provided by the pediatric health care facility; and (iv) if the pediatric health care facility does not provide services 24 hours per day, seven days per week, provisions to inform the public regarding the need to seek an alternative source of treatment, including emergency medical services, which may include requirements for appropriate signage.

C. A pediatric health care facility wishing to provide pediatric sexual assault survivor transfer services shall submit a pediatric sexual assault survivor transfer plan to the Department. The Board shall adopt regulations to establish standards for review and approval of pediatric sexual assault survivor transfer plans, which shall include provisions for (i) the delivery of sexual assault survivor transfer services in accordance with the requirements of § 32.1-162.15:5 and (ii) the written agreement of a treatment hospital to accept transfer of pediatric survivors of sexual assault.

D. Pediatric sexual assault survivor treatment plans and pediatric sexual assault survivor transfer plans shall be submitted in a form and in accordance with procedures specified by the Board. The Department shall approve or deny such plans, in writing, within 30 days of receipt of such plans. If the Department denies a plan submitted pursuant to this section, the Department shall provide the hospital with a written statement setting forth the reasons for such denial.

§ 32.1-162.15:7. Inspections; report required.

A. The Department shall periodically conduct such inspections of hospitals licensed by the

Department as may be necessary to ensure that sexual assault survivor treatment plans, sexual assault survivor transfer plans, and pediatric sexual assault survivor transfer plans are implemented in accordance with the requirements of this article.

B. The Department shall report to the Governor and the General Assembly by December 1 of each year on:

1. The name of each hospital that has submitted a sexual assault survivor treatment plan, sexual assault survivor transfer plan, or pediatric sexual assault survivor transfer plan in accordance with the requirements of this section and, for each hospital, the specific type of plan, the date on which the plan was submitted, and the date on which the plan was approved;

2. The name of each hospital that has failed to submit a sexual assault survivor treatment plan, sexual assault survivor transfer plan, or pediatric sexual assault survivor transfer plan in accordance with the requirements of this section;

3. The name of each hospital for which an inspection was performed pursuant to subsection A and for each such hospital, the date of such inspection, and whether the hospital was found to be in compliance with the provisions of the sexual assault survivor treatment plan, sexual assault survivor transfer plan, or pediatric sexual assault survivor transfer plan for such hospital approved by the Department; and

4. For each hospital determined to be out of compliance with the requirements of the sexual assault survivor treatment plan, sexual assault survivor transfer plan, or pediatric sexual assault survivor transfer plan for such hospital approved by the Department, whether a plan of correction was submitted in accordance with the provisions of subsection A.

§ 32.1-162.15:8. Storage, retention, and dissemination of photographic documentation.

Photographic documentation collected by a treatment hospital or approved pediatric health care facility shall be maintained by the treatment hospital or approved pediatric health care facility as part of the patient's forensic medical examination. In the case of an anonymous physical evidence recovery kit, photographic documentation shall be maintained by the treatment hospital or approved pediatric health care facility, but the anonymous physical evidence recovery kit shall be maintained in accordance with § 19.2-11.6.

§ 32.1-162.15:9. Submission of evidence.

Every treatment hospital and approved pediatric health care facility that provides a forensic medical examination that includes completion of a physical evidence recovery kit to a survivor of sexual assault who has elected to report the assault to law enforcement shall notify the law-enforcement agency with the primary responsibility for investigating an alleged sexual assault within four hours of the forensic medical examination and arrange for collection of the physical evidence recovery kit within a reasonable timeframe. A treatment hospital or approved pediatric health care facility that provides a forensic medical examination that includes completion of a physical evidence recovery kit to a survivor of sexual assault who elects not to report the sexual assault to law enforcement shall comply with the provisions of § 19.2-11.6 relating to anonymous physical evidence recovery kits.

§ 32.1-162.15:10. Complaints.

The Department shall establish a process for receiving complaints regarding alleged violations of this article.

§ 32.1-162.15:11. Task Force on Services for Survivors of Sexual Assault.

A. There is hereby created the Task Force on Services for Survivors of Sexual Assault (the Task Force), which shall consist of (i) two members of the House of Delegates appointed by the Speaker of the House of Delegates; (ii) one member of the Senate appointed by the Senate Committee on Rules; (iii) the Attorney General, or his designee; (iv) the Commissioners of Health and Social Services, or their designees; (v) the Director of the Department of State Police; (vi) two representatives of hospitals licensed by the Department of Health appointed by the Governor; (vii) three physicians licensed by the Board of Medicine to practice medicine or osteopathy appointed by the Governor, each of whom is a practitioner of emergency medicine and at least one of whom is a pediatrician; (viii) three nurses licensed to practice in the Commonwealth appointed by the Governor, each of whom is a sexual assault nurse examiner; (ix) two representatives of organizations providing advocacy on behalf of survivors of sexual assault appointed by the Governor; and (x) one representative of an organization providing advocacy on behalf of children appointed by the Governor. The Commissioner of Health or his designee shall serve as chairman of the Task Force. Staff support for the Task Force shall be provided by the Department of Health.

B. The Task Force shall:

1. Develop model treatment and transfer plans for use by transfer hospitals, treatment hospitals, and pediatric health care facilities and work with hospitals and pediatric health care facilities to facilitate the development of treatment and transfer plans in accordance with the requirements of this article;

2. Develop model written transfer agreements for use by treatment hospitals, transfer hospitals, and pediatric health care facilities and work with treatment hospitals, transfer hospitals, and pediatric health care facilities to facilitate the development of transfer agreements in accordance with the requirements of this article;

3. *Develop model written agreements for use by treatment hospitals and approved pediatric health care facilities required to enter into agreements with rape crisis centers pursuant to subsection D of § 32.1-162.15:4;*

4. *Work with treatment hospitals and approved pediatric health care facilities to develop plans to employ or contract with sexual assault forensic examiners to ensure the provision of treatment services to survivors of sexual assault by sexual assault forensic examiners, including plans for implementation of on-call systems to ensure availability of sexual assault forensic examiners;*

5. *Work with treatment hospitals and approved pediatric health care facilities to identify and recommend processes to ensure compliance with the provisions of this article related to creation, storage, and retention of photographic and other documentation and evidence;*

6. *Develop and distribute educational materials regarding implementation of the provisions of this article to hospitals, health care providers, rape crisis centers, children's advocacy centers, and others;*

7. *Study and provide recommendations to the Department for the use of telemedicine in meeting the requirements of this article; and*

8. *Report to the Governor and the General Assembly by December 1 of each year regarding its activities and the status of implementation of the provisions of this article.*

§ 54.1-2910.5. Pediatric sexual assault survivor services; requirements.

Any health care practitioner licensed by the Board to practice medicine or osteopathy or as a physician assistant, or jointly licensed by the Board and the Board of Nursing as a nurse practitioner, who wishes to provide sexual assault survivor treatment services or sexual assault survivor transfer services, as defined in § 32.1-162.15:2, to pediatric survivors of sexual assault, as defined in § 32.1-162.15:2, shall comply with the provisions of Article 8 (§ 32.1-162.15:2 et seq.) of Chapter 5 of Title 32.1 applicable to pediatric medical care facilities.

§ 54.1-3018.2. Pediatric sexual assault survivor services; requirements.

Any person licensed by the Board as a registered nurse who wishes to provide sexual assault survivor treatment services or sexual assault survivor transfer services, as defined in § 32.1-162.15:2, to pediatric survivors of sexual assault, as defined in § 32.1-162.15:2, shall comply with the provisions of Article 8 (§ 32.1-162.15:2 et seq.) of Chapter 5 of Title 32.1 applicable to pediatric medical care facilities.

2. That the provisions of this act shall become effective on July 1, 2023, except that the provisions of (i) subsection A of § 32.1-162.15:4 of the Code of Virginia, as added by this act, requiring the Board of Health to adopt regulations to establish standards for the review and approval of sexual assault survivor treatment plans, (ii) § 32.1-162.15:5 of the Code of Virginia, as added by this act, requiring the Board of Health to adopt regulations to establish standards for the review and approval of sexual assault survivor transfer plans and pediatric sexual assault survivor transfer plans, and (iii) § 32.1-162.15:11 of the Code of Virginia, as added by this act, establishing the Task Force on Services for Survivors of Sexual Assault shall become effective in due course.