Health Facility Compliance Guidance Letter

<table>
<thead>
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<th>Number:</th>
<th>GL 20-2018</th>
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<tr>
<td>Title:</td>
<td>Rights and Treatment of Sexual Assault Survivors (HB 4531-86R)</td>
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<td>Provider Types:</td>
<td>Freestanding Emergency Medical Care Facilities, Hospitals–General, Hospitals–Special</td>
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<td>Date Issued:</td>
<td>July 6, 2020</td>
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1.0 Subject and Purpose

The Texas Health and Human Services Commission (HHSC) provides guidance to licensed providers on legislation passed during the most recent Texas legislative session. House Bill (HB) 4531, 86th Legislature, 2019, Regular Session, relating to the rights, treatment of, and services provided to certain adult sexual assault survivors, took effect September 1, 2019.

HB 4531 amended Texas Health and Safety Code (HSC), Chapter 323 to authorize adults under guardianship to make decisions related to sexual assault crisis services, including consenting to forensic medical examinations and treatment, authorizing the collection of forensic evidence, consenting to the release of evidence contained in collection kits and disclosure of related confidential information, and receiving counseling and other support services.

This letter outlines provider responsibilities and expectations.

2.0 Policy Details & Provider Responsibilities

HHSC requires hospitals¹ and freestanding emergency medical care facilities² to comply with all statutes and rules regarding these facilities. Accordingly, facilities are responsible for complying with the provisions of HSC Chapter 323, including those added by HB 4531.

¹ 25 TAC §133.41(e)(6)
² 25 TAC §131.46(h)
2.1 Survivor Competency

HB 4531 revised HSC Chapter 323 by amending Section 323.004 to require facilities to presume that an adult sexual assault survivor requesting a forensic medical examination and treatment is competent.

2.2 Emergency Services for Survivors

HB 4531 revised HSC Chapter 323 by adding Section 323.0044 to require facilities to do the following:

(1) Provide a forensic medical examination and treatment to an adult sexual assault survivor for whom a guardian is appointed without the consent of the survivor’s guardian or other legal agent if:
   a. the health care facility determines the survivor understands the nature of the forensic medical examination and treatment; and
   b. the survivor agrees to receive the forensic medical examination and treatment.

(2) If an adult sexual assault survivor requests a forensic medical examination and treatment and a health care facility determines the survivor potentially is incapable of consenting to the forensic medical examination and treatment, the health care facility may:
   a. obtain consent from a relative or caretaker of the survivor on the survivor’s behalf
   b. obtain consent from the survivor’s guardian, guardian ad litem, or other legal agent; or
   c. petition a court with probate jurisdiction in the county in which the facility is located for an emergency order authorizing the forensic medical examination and treatment.

(3) If personnel of a health care facility know or have reason to believe that the survivor’s relative, caretaker, guardian, guardian ad litem, or other legal agent is a suspect or accomplice in the sexual assault of the survivor, the health care facility may not contact the survivor’s relative, caretaker, guardian, guardian ad litem, or other legal agent.
(4) A health care facility may not provide a forensic medical examination to an adult sexual assault survivor for whom a guardian is appointed if the survivor refuses the examination, regardless of whether the survivor’s guardian requests or consents to the examination.

3.0 Background/History

HB 4531 authorized adults under guardianship to make decisions related to sexual assault crisis services, including consenting to forensic medical examinations and treatment, authorizing the collection of forensic evidence, consenting to the release of evidence contained in collection kits and disclosure of related confidential information, and receiving counseling and other support services. The purpose of this bill was to extend certain protections to adult survivors under guardianship if there was reason to believe the guardian was a suspect or accomplice in the assault.

4.0 Resources


HB 4531 is available to view in its entirety here: https://capitol.texas.gov/tlodocs/86R/billtext/pdf/HB04531F.pdf.


5.0 Contact Information

If you have any questions about this letter, please contact the Policy, Rules, and Training Section by email at: HCQ_PRT@hhsc.state.tx.us.