

STORAGE NAME: h0125.hr.doc
DATE: January 23, 2002

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
HEALTH REGULATION
ANALYSIS**

BILL #: HB 125
RELATING TO: Emergency Treatment/Rape Survivors
SPONSOR(S): Representative Gannon and others
TIED BILL(S): None.

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) HEALTH REGULATION
 - (2) STATE ADMINISTRATION
 - (3) FISCAL POLICY & RESOURCES
 - (4) COUNCIL FOR HEALTHY COMMUNITIES
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I. SUMMARY:

HB 125 requires all licensed hospitals or other health facilities that provide emergency treatment to rape survivors to include timely counseling and medically and factually accurate, clear and concise, unbiased written and oral information about emergency contraception as a treatment option. If emergency contraception is requested, the facility shall immediately provide medically appropriate emergency contraception or refer the victim to a facility or provider that will provide access to the emergency contraception. Such referral should be documented in the patient's medical record.

Chapter 395, F.S. provides for the regulation of hospitals and other medical facilities. Statutorily defined treatment of specific patient types include, child abuse and neglect cases, infectious diseases, emergency medical services, and access to emergency services and care. The treatment of sexual assault victims in a licensed facility, which provides emergency care, is outlined in section 395.1021, F.S.

Emergency contraception methods are used after intercourse to prevent pregnancy, all which require a physician prescription. A recently release drug, Plan B, is not effective if a woman is already pregnant and will not terminate an existing pregnancy.

The National Advisory Council on Violence Against Women issued a report in October, 2001, indicating that "...care for acute symptoms and prophylaxis (prevention) for pregnancy..." be included when appropriate as part of emergency medical care associated with sexual assault. The National Advisory Council on Violence Against Women is a council that is chaired jointly by John Ashcroft, Attorney General of the U.S. Department of Justice and Tommy Thompson, Secretary of the U.S. Department of Health and Human Services.

Catholic hospitals in the United States are governed by the *Ethical and Religious Directives for Catholic Health Care Services*, issued by the US Bishops in 1994. Women whose contraception has failed during consensual sexual intercourse usually cannot receive emergency contraception in Catholic Hospitals. The Directives, however, do treat emergency contraception after rape differently from abortion, sterilization, and contraception for family planning.

The bill provides for an effective date of October 1, 2002.

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II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|---|---|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| Provides additional regulation on licensed health facilities. | | | |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |

B. PRESENT SITUATION:

Sexual Violence

According to a report by the National Advisory Council on Violence Against Women, a council that is chaired jointly by John Ashcroft, Attorney General of the U.S. Department of Justice and Tommy Thompson, Secretary of the U.S. Department of Health and Human Services, "Millions of women are victims of sexual assault, dating or domestic violence, or stalking at some point in their lives, and the traumatic effects of this violence have a tremendous impact on survivors' physical and mental health. Too many victims never discuss incidents of violence with anyone or approach the health and mental health care, criminal justice, or other systems for assistance. However, most women come to health care settings for regular exams, for treatment of specific problems both caused by and independent of the abuse, and for the care of their children and other family members. Health care providers may be the first and only professionals who see a battered woman or sexual assault victims. This makes the health and mental care systems crucial points for early intervention and prevention for women who have survived or experienced violence.

The health effects of violence against women are extensive. In addition to possible acute injuries sustained during sexual assault, physical, sexual, and psychological abuse are linked to numerous adverse chronic health conditions. These include arthritis, chronic neck or back pain, frequent migraines or other types of headaches, visual problems, sexually transmitted infections, chronic pelvic pain, increased gynecological symptoms, peptic ulcers, and functional or irritable bowel syndrome.

Violence against women is also directly related to adverse mental health effects. Sexual assault trauma and domestic violence are often life-altering experiences resulting in numerous emotional and behavioral responses. Sexual assault victims are more likely than other crime victims to attempt suicide. More than one-third of sexual assault victims and battered women experience symptoms of depression. Victims of both sexual assault and domestic violence experience symptoms consistent with posttraumatic stress disorder."

Among the recommendations of the report from the National Advisory Council on Violence Against Women include:

- Adopt current federal guidelines governing victim compensation agencies, which permit reimbursement of examination cost to hospital and other medical facilities regardless of whether the assault is reported to law enforcement authorities.
- **Include care for acute symptoms and prophylaxis (prevention) for pregnancy**, sexually transmitted diseases transmission, and treatment for the hepatitis B virus when appropriate as part of emergency medical care associated with an assault.

According to the Centers for Disease Control, Atlanta, Georgia:

- The revised National Crime Victimization Survey for 1992-1993 estimated that annually 172,400 women were victims of rape.
- There were 71 forcible rapes per 100,000 females reported to United States law enforcement agencies in 1996.
- Data from the National Women's Study, a longitudinal telephone survey of a national household probability sample of women at least 18 years of age, showed 683,000 women forcibly raped each year and that **84% of rape victims did not report the offense to the police.**
- Using Uniform Crime Report data for 1994 and 1995, the Bureau of Justice Statistics found that of rape victims who reported the offense to law enforcement, about 40% were under the age of 18, and 15% were younger than 12.4.
- In a national survey, 27.7% of college women reported a sexual experience since the age of 14 that met the legal definition of rape or attempted rape, and 7.7% of college men reported perpetrating aggressive behavior which met the legal definition of rape.
- The adult pregnancy rate associated with rape is estimated to be 4.7%. This information, in conjunction with estimates based on the U.S. Census suggests that there may be 32,101 annual rape-related pregnancies among American women over the age of 18.

Crime Victims Services

Florida law provides guidelines for the fair treatment of victims and witnesses in the criminal justice and juvenile justice systems, through chapter 960, F.S. It authorizes a direct-support organization to assist victims of adult and juvenile crime. It provides victims to have the opportunity to have a defendant tested for HIV if there was a transmission of body fluids during the crime. It also designates a Victims Compensation Trust Fund to assist victims of violent personal crimes to pay for stipulated expenses they incur because of the crime.

The Florida Attorney General's Division of Victim Services not only serves as an advocate for crime victims and victims' rights; it also administers a compensation program to ensure financial assistance for innocent victims of crime.

Injured crime victims may be eligible for financial assistance for medical care, lost income, mental health services, funeral expenses and other out-of-pocket expenses directly related to the injury. If needed, they can also be referred to support organizations within their home area. Specifically, s. 960.05(2)(j), F.S., requires the Crime Victims Services Office to act as an advocate for the victims of crime to obtain aid and services from public or private health, education, welfare, or rehabilitation agencies or groups to treat persons who have been victims of crime. According to representatives

from the Attorney General office, medical expenses for rape victims are billed directly to the Crime Victims Services Office.

Hospital Providers

Chapter 395, F.S. provides for the regulation of hospitals and other medical facilities. Statutorily defined treatment of specific patient types include, child abuse and neglect cases, infectious diseases, emergency medical services, and access to emergency services and care. The treatment of sexual assault victims in a licensed facility, which provides emergency care services, is outlined by section 395.1021, F.S., which states:

“Any licensed facility which provides emergency room services shall arrange for the rendering of appropriate medical attention and treatment of victims of sexual assault through:

- (1) Such gynecological, psychological, and medical services as are needed by the victim.
- (2) The administration of medical examinations, tests, and analyses required by law enforcement personnel in the gathering of evidence required for investigation and prosecution.
- (3) The training of medical support personnel competent to provide the medical services and treatment as described in subsections (1) and (2).

Such licensed facility shall also arrange for the protection of the victim's anonymity while complying with the laws of this state and may encourage the victim to notify law enforcement personnel and to cooperate with them in apprehending the suspect”.

Faith-Based Hospital Providers

Catholic hospitals in the United States are governed by the *Ethical and Religious Directives for Catholic Health Care Services*, issued by the US Bishops in 1994. Women whose contraception has failed during consensual sexual intercourse usually cannot receive emergency contraception in Catholic Hospitals. The Directives, however, do treat emergency contraception after rape differently from abortion, sterilization, and contraception for family planning. Directive No. 36 states that “compassionate and understanding should be given to a person who is the victim of sexual assault. Health care providers should cooperate with law enforcement officials, offer the person psychological and spiritual support, and accurate medical information.” Hospitals may attempt to prevent conception in the case of rape, as Directive No. 36 states. “If after appropriate testing, there is no evidence that conception has occurred already, she may be treated with medications that would prevent ovulation, sperm capacitating or fertilization. It is not permissible, however, to initiate or to recommend treatments that have as their purpose or direct effect the removal, destruction, or interference with the implantation of a fertilized ovum.” The Directive does not specify how to determine whether conception has occurred, leaving the Catholic hospitals to interpret when they may provide emergency contraception.¹

Emergency Contraception

Emergency contraception methods are used after intercourse to prevent pregnancy, all which require a physician prescription. The most commonly used option is a regimen of combined oral

¹ *Catholic Health Restrictions May Be Hazardous to Your Health*. Washington DC: Catholic for a Free Choice, 1999.

contraceptive pills (called ECPs, for emergency contraceptive pills) within 72 hours of unprotected intercourse. Other options include use of progestin-only mini-pills within 48 to 72 hours; or insertion of a copper-releasing intrauterine device (IUD) within five days of unprotected sexual intercourse.

The American Medical Association (AMA) is recommending that women receive greater access to emergency contraception, including over the counter access to the drugs. Emergency contraceptive pills, also known as ECPs or "morning after pills," are prescribed by physicians and sold under the brand names Preven and Plan B.

On July 29, 1999, the United States Food and Drug Administration (FDA) approved Women's Capital Corp.'s Plan B (TM) (levonorgestrel) Tablets; the first progestin-only pill developed to prevent pregnancy after a contraceptive accident, sexual assault or unplanned sex. Plan B® tablets require a prescription and must be taken within 72 hours of unprotected sex.

Plan B reduces the risk of pregnancy from about eight percent down to one percent. This represents an 89 percent reduction in risk of pregnancy following a single act of unprotected sex. Efficacy is better if Plan B is taken as directed as soon as possible after unprotected intercourse.

According to the drug manufacturer, **Plan B is not effective if a woman is already pregnant and will not terminate an existing pregnancy.** Plan B acts as an emergency contraceptive mainly by preventing ovulation or fertilization (by altering tubal transport of sperm and/or ova). In addition, it may inhibit implantation (by altering the endometrium). It is not effective once the process of implantation has begun. According to the drug manufacturer, "Fertility returns within a cycle or two after a course of Plan B. A significant percentage of women notice differences in their next period. Some notice heavier (13.8% of all users) and some lighter (12.5%) menstrual bleeding.

The drug Plan B differs greatly from a more commonly known emergency contraceptive, RU486, Mifepristone or Mifeprex, manufactured by Danco Laboratories, which has been approved by the FDA as a non-surgical abortion, which maybe administered up to 7 weeks of a pregnancy. Mifepristone is an anti-Progesterone drug that stops the early pregnancy from growing.

According to AHCA, Medicaid covers emergency contraceptives that have been on the market for sometime. However, Medicaid does not cover the drug Plan B under its family planning services, because the manufacturer has yet to obtain a rebate agreement with the U.S. Health and Human Services office.

County Health Departments (CHDs)

According to the Florida Department of Health, the county health departments are working under the following policies and procedures regarding emergency contraceptives:

- Internal Operating Policy: FAMPLAN 7, Provision of Emergency Contraceptive Pills in the CHD Guidebook. All CHD should have a copy of this policy.
- On December 6, 1994, the Final Policy and Protocol on the Provision of Emergency Contraceptive Pills, signed by Dr. Charles Mahan, was distributed to all CHD Directors, Administrators and Nursing Directors to be placed in the CHD Guidebook.
- Family Planning visits to CHDs evidence that counseling and emergency contraceptive pills are available to clients as requested.
- All CHDs have received the "After Sexual Assault Brochures" from the Sexual Violence Prevention Program that lists the rape victim service programs in Florida that provide services needed by a rape client. They have also been provided the 1-888-956-7273 rape prevention education number staffed by the Florida Council Against Sexual

Violence, Inc., which also makes referrals for victims of rape. Those CHDs that do not provide emergency services to rape victims through a SANE (Sexual Assault Nurse Examiner) or SAVE (Sexual Assault Victim Examiner) program know where in their communities to immediately refer the victim.

- All CHDs are given the Emergency Contraceptive Hotline number, 1-800-584-9911. The office refers calls based on the telephone number the individual is calling from to a listing of community/service providers. Leon County Health Department is one of the providers listed for this area.

C. EFFECT OF PROPOSED CHANGES:

HB 125 requires all licensed hospitals or other health facilities that provide emergency treatment to rape survivors to include timely counseling and medically and factually accurate, clear and concise, unbiased written and oral information about emergency contraception as a treatment option. If emergency contraception is requested, the facility shall immediately provide medically appropriate emergency contraception or refer the victim to a facility or provider that will provide access to the emergency contraception. Such referral should be documented in the patient's medical record.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. The bill requires that upon request, a rape survivor has the option of immediate access to medically appropriate emergency contraception and timely counseling by licensed hospitals or other health care facilities that provide emergency medical care. If the facility does not provide emergency contraception as a treatment option, it must refer any woman who seeks treatment because of an alleged rape to another hospital or health care facility that will provide this treatment option.

Provides for definitions of emergency care to a rape survivor, emergency contraception, incest, rape, and rape survivor.

Specifies the duties of a licensed hospital or other facility that provides emergency care to rape survivors including counseling and factually accurate, clear concise, unbiased written and oral information on emergency contraception.

The facility must inform each rape survivor of the option to receive emergency contraception. If requested, medically appropriate emergency contraception shall be provided by the facility immediately or the rape survivor shall be referred to a licensed hospital or other health care facility or provider that will prescribe or provide immediate access to medically appropriate emergency contraception. The referral will be documented in the patient's medical record.

Section 2. Provides for an effective date of October 1, 2002.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

According to AHCA and DOH, there is not a fiscal impact associated with this bill.

2. Expenditures:

According to AHCA and DOH, there is not a fiscal impact associated with this bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

According to AHCA, health facilities may incur some minor cost of providing written information or emergency contraception to rape victims.

D. FISCAL COMMENTS:

While section 960.28, F.S., provides funding of no more than \$250 for initial forensic physical examinations, no allowance for use of these monies for emergency contraception for victims is authorized.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require a city or county to expend funds or to take any action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

The bill does not authorize AHCA to promulgate additional rules for hospitals or other health facilities providing this treatment option.

C. OTHER COMMENTS:

A fiscal impact statement was requested from the Florida Hospital Association (FHA), which indicates, "...that there may be uncompensated cost for the pregnancy prophylaxis. It is difficult to estimate this number, however, because we have no information regarding:

- The total number of rape victims who are actually seen in a hospital facility (as opposed to other centers such as a private physician office or a rape crisis center).
- The total number of women who are unable to pay for the treatment, whether because they lack insurance coverage or their existing coverage does not cover the cost.”

In addition, FHA provided the following information: “According to the information provided by a pharmacist, the first pill is to be taken ASAP—within 72 hours in order to improve efficacy. The second pill is taken 12 hours later. Cost of the 2-pill course of therapy will be \$20-\$30 depending on pharmacy markup. According to the FDLE, 12,388 forcible sex offenses occurred in Florida in the year 2000. Relying on these numbers (assuming no change in the crime rate or price), the maximum cost (worst case scenario) to Florida hospitals would be about \$371,000 annually. I suspect the actual could be significantly less. It is also my understanding that the Crime Victim’s Compensation Fund also may be a source of payment; ...The bill also mandates that facilities provide victims with counseling, oral, and written information related to emergency contraception. I doubt we have written materials about the treatment, unless they are developed and provided to us by someone else—either the manufacturer or an advocacy organization. This could involve a cost, although...do not have a way to estimate it at this time.”

The Agency for Health Care Administration suggests that the provisions in this bill be placed in section 395.1021, F.S. In addition, they suggest, that the term “incest” not be defined in the bill since it is not used in the body of the bill or rather than define the term, use the term in the body of the bill and reference the definition in s. 826.04, F.S.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON HEALTH REGULATION:

Prepared by:

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