

# New Requirements for Wisconsin Hospitals Providing Services to Sexual Assault Victims

May 05 2008

Practice Area: Health Law

---

Wisconsin legislators recently signed Assembly Bill 377, also known as the "Compassionate Care for Rape Victims" Act, into law. Effective March 28, 2008, Wis. Stat. § 50.375 requires that hospitals provide information on and access to emergency contraception for victims of sexual assault. The Act specifically requires a hospital that provides emergency services to a victim of sexual assault to do all of the following:

- Provide to the victim medically and factually accurate and unbiased written and oral information about emergency contraception and its use and efficacy.
- Orally inform the victim of all of the following: (1) her option to receive emergency contraception at the hospital; (2) her option to report the sexual assault to a law enforcement agency; and (3) any available options for her to receive an examination to gather evidence regarding the sexual assault.
- Immediately provide to the victim upon her request emergency contraception, in accordance with the instructions approved by the federal Food and Drug Administration. If the medication should be taken in more than one dosage, the hospital must provide all subsequent dosages to the victim for later self administration.

Under the Act, "emergency contraception" is defined as "a drug, medicine, oral hormonal compound, mixture, preparation, instrument, article or device that is approved by the federal food and drug administration and that prevents a pregnancy after sexual intercourse."

Hospitals are not required to provide contraception to any woman who is pregnant (as indicated by a pregnancy test).

## **Catholic Hospitals and Emergency Contraception**

Historically, there have been inconsistent policies and practices among Wisconsin hospitals for dispensing emergency contraception and providing education to sexual assault victims. According to a 2006 survey, nearly half of Wisconsin hospital emergency rooms did not offer emergency contraception to rape victims at all.

Catholic hospitals, which comprise 41% of Wisconsin's emergency rooms, follow this trend and generally are reluctant to offer emergency contraception to victims. But the Ethical and Religious Directives for Catholic Health Care Services (the "ERDs") make clear that emergency contraception is an acceptable treatment option for rape victims who are not pregnant. Specifically, the ERDs state the following at Directive 36:

A female who has been raped should be able to defend herself against a potential conception from the sexual assault. If after appropriate testing, there is no evidence that conception has occurred already, she may be treated with medications that would prevent ovulation, sperm capacitation, or fertilization. It is not permissible, however, to initiate or recommend treatments that have as their purpose or direct effect the removal, destruction, or interference with the implantation of a fertilized ovum.

The Compassionate Care for Rape Victims Act accommodates this directive by not requiring hospitals to provide emergency contraception to a rape victim who is confirmed pregnant by a pregnancy test. Catholic hospitals have the flexibility to test whether pregnancy occurred, and then deny emergency contraception in the event of a positive test. The issue remains, however, as to whether under the ERDs, a hospital may decline to provide emergency contraception if a victim refuses a pregnancy test. Wis. Stat. § 50.375 is silent on this issue, which complicates the matter for Catholic hospitals because the ERDs are clear that Catholic hospitals should not initiate treatments that could interfere with the pregnancy. This is reiterated in the United States Conference for Catholic Bishops' ("USCCB") fact sheet on emergency contraception and Treatment of Victims of Sexual Assault, available on the USCCB website. The fact sheet states, "If conception has occurred. . . a Catholic hospital will not dispense drugs to interfere with implantation of a newly conceived human embryo."

Unfortunately, the Department of Health and Family Services has not provided guidance regarding a hospital's obligations under Wis. Stat. § 50.375 if a sexual assault victim refuses a pregnancy test, leaving Catholic hospitals to independently determine how to proceed under these circumstances. Supporters of the legislation have noted that the Act's failure to address this issue should not lead Catholic hospitals to refuse emergency contraception without a negative pregnancy test because although such contraception prevents pregnancy after sexual intercourse, it would not end a current pregnancy. The Wisconsin Catholic Conference also has addressed this potential problem by relying on Wisconsin's conscience exemption statute, Wis. Stat. § 253.09, which affords protection to those medical workers who refuse to offer emergency contraception if they learn the sexual assault victim already is pregnant or if the victim refuses a pregnancy test. That said, Catholic hospitals should be aware of this new requirement and its potential implications on compliance with the ERDs.

### **Responsibilities of Wisconsin Hospitals**

All Wisconsin hospitals should inform staff of their new responsibilities under Wis. Stat. § 50.375. The new law does not have explicit training requirements, but does require that hospitals ensure that each employee who could potentially provide care to a victim of sexual assault have available medically and factually accurate and unbiased information about emergency contraception. The Department of Health and Family Services is responsible for enforcing compliance with § 50.375. And although the new law is complaint-driven, the Department is obligated to periodically review hospital procedures to determine whether a hospital is in compliance with the requirements. In the event of noncompliance, the Department is authorized to directly assess forfeitures against a hospital in the amount of not less than \$2,500 and not more than \$5,000 for each violation.

---

von Briesen & Roper Legal Update is a periodic publication of von Briesen & Roper, s.c. It is intended for general information purposes for the community and highlights recent changes and developments in the legal area. This publication does not constitute legal advice, and the reader should consult legal counsel to determine how this information applies to any specific situation.

