



Maryland
Hospital Association

August 3, 2018

Ms. Zenita Hurley
Chief Counsel, Civil Rights
Office of the Attorney General
200 St. Paul Place
Baltimore, MD 21202

Reference: COMAR 02.08.01, Sexual Assault Victims' Rights- Disposal of Rape Kit Evidence and Notification

Dear Ms. Hurley:

On behalf of the Maryland Hospital Association's 64 member hospitals and health systems, we appreciate the opportunity to comment on the proposed regulations under *COMAR Chapter 02.08.01, Sexual Assault Victims' Rights: Disposal of Rape Kit Evidence and Notification*. We support the draft regulations, with a few exceptions that deserve additional consideration or clarification.

Maryland's hospitals support statewide standardization of policies and timelines for disposing of sexual assault evidence, establishing a chain of custody for sexual assault evidence kits, retaining evidence, informing victims of current laws and rights, and notifying victims prior to destruction of any evidence collected. Maryland's hospitals support the timely transfer of custody of the sexual assault evidence kit to the appropriate law enforcement agency within 30 days after an exam is performed.

Additional clarification is needed regarding specifying law enforcement agencies and the capacity to test kits and provide results to victims within 30 days. Also, clear guidance for handling of Jane Doe/Anonymous kits is needed.

Following are explanations for why each section should be updated:

Rationale-Section .03, 1. To ensure chain of custody and a simple transfer of kits from hospitals to law enforcement agencies, the responding law enforcement agency should take all kits collected by the hospital and ensure they are sent to the agency ultimately responsible for the investigation. The hospital does not always have contact information for agencies in the jurisdiction where the assault occurred. Patients often are transported or walk into the nearest hospital. Patients often do not reside in the same jurisdiction in which they seek care.

Rationale-Section .03, B., I. Kits are rarely, if ever, processed within 30 days. The current draft language would lead victims to believe results will be available within 30 days after receipt of their kit. Additionally, it should be determined whether existing crime labs have the capacity to process within the current time frame. The state should consider starting with a longer time frame to reach the goal of 30 days.

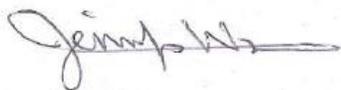
Rationale-Section .04, Clarification is needed on whether this pertains to all kits, including Jane Doe/Anonymous Reporting Kits (In Washington, D.C., Jane Doe kits are stored by a third party to ensure anonymity). We appreciate the committee's ongoing discussion about policies and procedure regarding Jane Doe kits.

Rationale- Section .04, B., Hospitals support the preservation of evidence for a minimum of 20 years, which not only brings the state into compliance with federal law, but also protects and empowers victims of sexual assault. It should be noted that the Maryland Sexual Assault Evidence Kit Policy & Funding Committee has raised concerns regarding the ability of the state's crime labs to preserve certain biological evidence, such as blood and urine samples, for 20 years. This should be further examined to verify that these crime labs are equipped with appropriate resources to prevent evidence degradation. Since victims now have the choice to delay pursuing legal action with the assurance their evidence will be preserved, it is paramount that the integrity of the evidence be maintained.

Rationale-Section .04, D. Clarification is needed on who is responsible for informing victims of the need to submit a written request for notification of destruction of evidence. This ideally would be done at the time of the examination. In Jane Doe cases, there should be procedures to ensure anonymity while allowing for submission of this request in lieu of a state tracking system. We understand that the committee and the Attorney General's office will continue to consider additional options to have a kit tested and results reported to the victim without mandatory police involvement.

We appreciate the Attorney General's consideration of our comments and look forward to continuing to serve on the Maryland Sexual Assault Evidence Kit Policy & Funding Committee.

Respectfully,



Jennifer Witten
Vice President, Government Affairs