



Position on SB 146

Sexual Assault Victims Bill of Rights

On July 1, 2020, Indiana's Sexual Assault Victims Bill of Rights went into effect. This law provides victims with several critical rights including, but not limited to, the right to speak with a victim advocate or victim service provider during any hospital visit for the purpose of receiving a sexual assault examination. Specifically, IC 35-40.5-4-3 states, "before a provider commences a forensic medical examination, or as soon as possible, the provider shall notify a victim advocate or a victim service provider. If a victim advocate or victim service provider is not available, the provider shall notify victims assistance or a social worker." The law expressly states that a victim advocate must ("shall") be contacted.

In recent weeks, a document that outlines information and responsibilities for healthcare providers, followed by a healthcare FAQ, was written by healthcare providers who are part of the Statewide SART. These documents, though well-intended, have had unintentional consequences to a sexual assault victims' access to an advocate; the very right outlined in this law. The document states the following:

"It is imperative that a provider be acutely aware of the dangers in information sharing prior to obtaining patient consent. Any patient identifier shared with an advocate, LE officer, or other person by the SANE, triage nurse, charge nurse, or other hospital personnel without patient consent may be a HIPAA violation. Advocacy plays a very important role in the healing process of the patient following an assault, however, how and when that becomes a part of the process should not be at the expense of the patient's privacy or safety. It is best practice to ensure the nursing process is utilized to implement advocacy services according to facility policy that protect both the rights of the patient, as well as the provider. Speak to your facility administration and legal department to determine the best process for whether contacting advocacy on behalf of the patient should be implemented before or after consent is obtained."

It is best practice for advocacy services to be initiated automatically, regardless of whether the victim requests one. This should and can be done without providing patient identifying information to comply with HIPAA (OVW National Protocol, 2013). Initiating contact with a victim advocate should be done immediately and prior to notifying the victim. Asking a victim whether or not they would like a victim advocate contacted once they arrive at the hospital is often problematic as it places an undue burden on the victim who may not wish to burden an advocate to come in, wake up, etc. Additionally, asking a victim to wait in the hospital, following a significant traumatic event, for a victim advocate to arrive is neither trauma-informed nor victim-centered. Contacting advocacy immediately, then making the offer the victim to speak with the advocate once the advocate is already on-site follows best practice and is congruent with a trauma-informed and victim-centered approach. The victim is afforded the opportunity to accept or deny advocacy services, and the victim and the advocate do not meet unless the victim consents to meeting the advocate.

The Indiana Coalition to End Sexual Assault and Human Trafficking shares the concerns of victims' privacy, safety, and honors and respects the privacy of all victims. Contacting advocacy prior to getting consent from the patient does not violate HIPAA. The HIPAA Privacy Rule restricts the use or disclosure of a patient's "protected health information." The privacy rule allows the use or disclosure of **de-identified health information**, as it is **no longer considered protected health information**ⁱ. Following HIPAA's "[safe harbor](#)" method of de-identifying health information, the following information is **permitted to be shared with an advocate**:

- Gender
- Age - if under 89 years old
- Primary Language

Although HIPAA is clear, to avoid any ongoing HIPAA concerns, ICESAHT recommends that the sexual assault advocate simply be notified, "an advocate is needed at the hospital." Additionally, a [Business Associates Agreement](#) can be created and signed between the hospital and advocacy organization, if needed.

In conclusion, the Indiana Sexual Assault Victims Bill of Rights is clear – *before a provider commences a forensic medical examination, or as soon as possible, the provider shall [must] notify a victim advocate or a victim service provider*. Initiating services by contacting an advocate without getting a victim's initial consent is not outlined in this statute and it does not violate HIPAA or the autonomy of a victim. Consent, privacy, safety, and choice are foundational tenets within the sexual assault field. To that end, a victim is always provided with a choice and the opportunity to consent to speak with the advocate once the advocate is already on-site (and before meeting the advocate). The Indiana Coalition to End Sexual Assault and Human Trafficking supports national best practice for victims, and thus the law as written.

ⁱ Guidance Regarding Methods for De-identification of Protected Health Information in Accordance with the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule. United States Department of Health and Human Services.