SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2246

SPONSOR: Health, Aging and Long-Term Care Committee and Senator Wasserman Schultz

SUBJECT: Hospitals and Health Care Facilities

DATE: March 7, 2002 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harkey	Wilson	HC	Favorable/CS
2.			AHS	
3.			AP	
4.				
5.				
6.				

I. Summary:

The bill requires hospitals, ambulatory surgical centers and mobile surgical facilities licensed under ch. 395, F.S., and health care practitioners licensed under chs. 458, 459, and 464, F.S., that provide care to rape survivors to provide victims of rape or incest access to pregnancy-prevention prophylaxis. A facility or practitioner must provide the rape survivor with medically factual information about pregnancy-prevention prophylaxis, inform the survivor of the medical option to receive pregnancy-prevention prophylaxis, and if it is requested, either provide the pregnancy-prevention prophylaxis or inform the rape survivor of a health care facility or health care practitioner that will prescribe or provide immediate access to pregnancy-prevention prophylaxis. If the rape survivor is transferred to, or receives care from, a sexual assault program or a specialized team that provides rape counseling, a health care facility or practitioner is relieved of the duty to provide pregnancy-prevention prophylaxis.

This bill creates s. 381.0047, F.S.

II. Present Situation:

National Policy Recommendations Re: Assisting Victims of Sexual Assault to Prevent Pregnancy

According to the U.S. Centers for Disease Control and Prevention (CDC), "The adult pregnancy rate associated with rape is estimated to be 4.7 percent. This information, in conjunction with estimates based on the U.S. Census, suggest that there may be 32,101 annual rape-related pregnancies among American women over the age of 18."

The National Advisory Council on Violence Against Women, chaired jointly by Attorney General John Ashcroft, and Secretary of the U.S. Department of Health and Human Services,

Tommy Thompson, 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. Emergency contraception methods are used after intercourse to prevent pregnancy. Such contraceptive medicines require a physician's prescription.

The American Academy of Pediatrics (APA) issued a policy statement in June 2001, titled "Care of the Adolescent Sexual Assault Victim," which says, "Pregnancy prevention and postcoital contraception should be addressed with every adolescent female rape and sexual assault victim. This discussion should include risks of failure and options for pregnancy management. A baseline urine pregnancy test should be performed. This is important because the adolescent could be pregnant from sexual activity that occurred before the assault." The policy statement cites the following statistics regarding victims of sexual assault:

> National data show that adolescents continue to have the highest rates of rape and other sexual assaults of any age group. Annual rates of sexual assault per 1000 persons (males and females) were reported in 1998 by the US Department of Justice to be 3.5 for ages 12 through 15 years, 5.0 for ages 16 through 19 years, 4.6 for ages 20 through 24 years, and 1.7 for ages 24 through 29 years. There are significant gender differences in adolescent rape and sexual assault, with female victims exceeding males by a ratio of 13.5:1.6. National Crime Victimization Survey statistics reported 308,569 rapes and sexual assaults in females 12 years or older and 21,519 rapes and sexual assaults in males 12 years or older in 1998. This represents a decrease from peak rates of rape and sexual assault reported in 1992. The US Department of Justice reported that more than half of all rape and sexual assault victims in 1998 were females younger than 25 years. (Care of the Adolescent Sexual Assault Victim (RE0067))

Requirements for Florida Hospitals and Other Medical Facilities

Chapter 395, F.S., provides for the regulation of hospitals, ambulatory surgical centers, and mobile surgical 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.

Section 960.28, F.S., provides for payment of sexual assault victims' initial physical examination whether or not the victim is covered by health or disability insurance. This section prohibits a health care provider from billing a victim or the victim's parents for an initial forensic physical examination. The Crime Victims' Services Office of the Department of Legal Affairs pays for the medical exam, not to exceed $250 with respect to any violation.

Public Health

Chapter 381, F.S., establishes general provisions for public health. Among other public health provisions, the chapter contains s. 381.0051, F.S., which is the "Comprehensive Family Planning Act." The Department of Health is required to implement a family planning program that includes the "prescription for and provision of all medically recognized methods of contraception". Subsection (3) of that section provides that:

> Except as otherwise provided in this section, no medical agency or institution of this state or unit of local government shall interfere with the right of any patient or physician to use medically acceptable contraceptive procedures, supplies, or information or to restrict the physician-patient relationship.

Subsection (6) of s. 381.0051, F.S., provides that:

> The provisions of this section shall not be interpreted so as to prevent a physician or other person from refusing to furnish any contraceptive or family planning service, supplies, or information for medical or religious reasons; and the physician or other person shall not be held liable for such refusal.

According to the Florida Department of Health, the county health departments (CHDs) 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 CHDs 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.

Emergency Contraception

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

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 may be administered up to 7 weeks of a pregnancy. Mifepristone is an anti-Progesterone drug that stops the early pregnancy from growing.

Ethical Issues in the Provision of Pregnancy Prophylaxis by Faith-Based Hospitals

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 care 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 capacitation, 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."

III. Effect of Proposed Changes:

The bill creates s. 381.0047, F.S., to require hospitals, ambulatory surgical centers and mobile surgical facilities licensed under ch. 395, F.S., and health care practitioners licensed under chs. 458, 459, and 464, F.S., that provide care to rape survivors to provide victims of rape or incest access to pregnancy-prevention prophylaxis and timely counseling. The bill provides legislative findings and intent, and defines the terms *care to a rape survivor*, *incest*, *pregnancy-prevention prophylaxis*, *rape*, and *rape survivor* as follows:

Care to a rape survivor is medical examinations, procedures, and services provided to a rape survivor.

Incest is a sexual offense described in s. 826.04, F.S.

Pregnancy-prevention prophylaxis is any drug or device approved by the federal Food and Drug Administration that prevents pregnancy after sexual intercourse.

Rape is sexual battery as described in ss. 794.011 and 827.071, F.S.

Rape survivor is a person who alleges or is alleged to have been raped or is the victim of alleged incest and because of the alleged offense seeks treatment as a patient.

The bill requires hospitals, ambulatory surgical centers and mobile surgical facilities licensed under ch. 395, F.S. and health care practitioners licensed under chs. 458, 459, and 464, F.S., that provide care to a rape survivor to:

- Provide each rape survivor with medically and factually accurate, clear and concise information about pregnancy-prevention prophylaxis including its indications, contraindications, and risks associated with its use.
- Inform each rape survivor of the option to receive pregnancy-prevention prophylaxis as a treatment.
- If pregnancy-prevention prophylaxis is requested, immediately provide the medically appropriate pregnancy-prevention prophylaxis if it is determined to be medically appropriate or inform the rape survivor of a health care facility or practitioner that will prescribe or provide immediate access to pregnancy-prevention prophylaxis if it is deemed by the practitioner to be medically appropriate. The provision of this information must be documented in the patient's medical record.

However, if the rape survivor is transferred to, or receives care from, a sexual assault program or a specialized team that provides rape counseling, a health care facility or practitioner is relieved of the duty to provide pregnancy-prevention prophylaxis.

The bill takes effect October 1, 2002.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Art. VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Art. I, s. 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Art. III, s. 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Facilities and practitioners would incur some minor costs of providing information and medically appropriate pregnancy-prevention prophylaxis to rape survivors. While s. 960.28, F.S., provides funding of no more than $250 for initial forensic physical examinations, no allowance for use of these monies for medically appropriate pregnancy-prevention prophylaxis for victims is authorized.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.