



Health Facility Compliance Guidance Letter

Number: GL 20-2018-A
Title: Rights and Treatment of Adult Sexual Assault Survivors Under Guardianship (HB 4531-86R) [Amended]
Provider Types: Freestanding Emergency Medical Care Facilities, General and Special Hospitals
Date Issued: August 18, 2022

1.0 Subject and Purpose

This amended guidance letter replaces the previous GL 20-2018, issued on July 6, 2020, to remind freestanding emergency medical care (FEMC) facilities licensed under [Texas Health and Safety Code \(HSC\) Chapter 254](#) and general and special hospitals licensed under [HSC Chapter 241](#) they are required to comply with [House Bill \(HB\) 4531's](#) provisions. This amended guidance letter also provides additional clarity on HB 4531's requirements and notifies providers of related legislative guidance HHSC published regarding [HB 2706](#) (87th Legislature, Regular Session, 2021).

This letter provides instructions to FEMC facilities and general and special hospitals regarding provider responsibilities and expectations based on House Bill (HB) 4531, 86th Legislature, 2019, relating to the rights, treatment of, and services provided to certain adult sexual assault survivors, which took effect September 1, 2019.

2.0 Legislative Details & Provider Responsibilities

HB 4531 amended [HSC Chapter 323](#) to authorize adults under guardianship to make decisions related to sexual assault crisis services, including:

- Consenting to:
 - Forensic medical examinations and treatment;
 - Release of evidence contained in collection kits; and

- Disclosure of related confidential information;
- Authorizing the collection of forensic evidence; and
- Receiving counseling and other support services.¹

General and special hospitals and FEMC facilities are responsible for complying with [HSC Chapter 323](#), including having a written plan as required under [§323.002](#) and complying with [§323.004](#) which entitles a survivor of sexual assault to receive care at the facility or be stabilized and referred or transferred to a SAFE-ready facility; and the provisions added by HB 4531, HHSC rules adopted pursuant to that chapter,² and all other applicable statutes and rules regarding these facilities.

2.1 Survivor Competency

HB 4531 amended [HSC §323.004\(c\)](#) to require a health care facility³ to presume that an adult sexual assault survivor requesting a forensic medical examination and treatment is competent.

2.2 Emergency Services for Survivors

HB 4531 added [HSC §323.0044](#) to require a health care facility to provide a forensic medical examination and treatment to an adult sexual assault survivor who has a guardian appointed under [Texas Estates Code, Title 3](#) without the consent of the survivor's guardian, guardian ad litem, or other legal agent if:

- The health care facility determines the survivor understands the nature of the forensic medical examination and treatment;⁴ and
- The survivor agrees to receive the forensic medical examination and treatment.⁵

Subject to HSC §323.0044(c), if an adult sexual assault survivor requests a forensic medical examination and treatment and a health care facility determines the survivor potentially is incapable of consenting to the forensic medical examination and treatment, the health care facility may:

¹ Estates Code §1151.351(b)(25).

² Refer to Texas Administrative Code Title 25 (25 TAC) §133.41(e)(6) for hospitals and 25 TAC §131.46(h) for FEMC facilities.

³ Defined at HSC §323.001(3).

⁴ HSC §323.0044(a)(1).

⁵ HSC §323.0044(a)(2).

- Obtain consent from:
 - A relative or caretaker of the survivor on the survivor's behalf;⁶ or
 - The survivor's guardian, guardian ad litem, or other legal agent;⁷ or
- Petition a court with probate jurisdiction in the county in which the facility is located for an emergency order authorizing the forensic medical examination and treatment in the manner provided by [Texas Human Resources Code §48.208](#).⁸

Under HSC §323.0044(c), if a health care facility's personnel know or have reason to believe that the survivor's relative, caretaker, guardian, guardian ad litem, or other legal agent is a suspect or accomplice in the sexual assault of the survivor, the health care facility may not contact the survivor's relative, caretaker, guardian, guardian ad litem, or other legal agent.

A health care facility may not provide a forensic medical examination to an adult sexual assault survivor who has a guardian appointed under Texas Estates Code, Title 3 if the survivor refuses the examination, regardless of whether the survivor's guardian requests or consents to the examination.⁹

3.0 Background/History

HB 4531 authorized adults under guardianship to make decisions related to sexual assault crisis services, including consenting to forensic medical examinations and treatment, authorizing the collection of forensic evidence, consenting to the release of evidence contained in collection kits and disclosure of related confidential information, and receiving counseling and other support services. The purpose of this bill was to extend certain protections to adult survivors under guardianship if there was reason to believe the guardian was a suspect or accomplice in the assault.

On August 18, 2022, HHSC published guidance letter [GL 22-0002](#) on related legislation, [HB 2706](#) (87th Legislature, Regular Session, 2021), relating to the emergency services and care provided to victims of sexual assault and other sex offenses and to the processes associated with preserving and analyzing the evidence of those offenses.

⁶ HSC §323.0044(b)(1).

⁷ HSC §323.0044(b)(2).

⁸ HSC §323.0044(b)(3).

⁹ HSC §323.0044(d).

4.0 Resources

View HB 4531 (86th Legislature, Regular Session, 2019) at:
<https://capitol.texas.gov/tlodocs/86R/billtext/html/HB04531F.htm>.

View HB 2706 (87th Legislature, Regular Session, 2021) at:
<https://capitol.texas.gov/tlodocs/87R/billtext/html/HB02706F.htm>.

View HSC Chapter 254 at:
<https://statutes.capitol.texas.gov/Docs/HS/htm/HS.254.htm>.

View HSC Chapter 241 at:
<https://statutes.capitol.texas.gov/Docs/HS/htm/HS.241.htm>.

View HSC Chapter 323 at:
<https://statutes.capitol.texas.gov/Docs/HS/htm/HS.323.htm>.

View Texas Estates Code at: <https://statutes.capitol.texas.gov/?link=ES>.

View Texas Human Resources Code §48.208 at:
<https://statutes.capitol.texas.gov/Docs/HR/htm/HR.48.htm#48.208>.

View 25 TAC §133.41, Hospital Functions and Services at:
[https://texreg.sos.state.tx.us/public/readtac\\$ext.TacPage?sl=T&app=9&p_dir=F&p_rloc=198205&p_tloc=29474&p_ploc=14737&pg=3&p_tac=&ti=25&pt=1&ch=133&rl=41](https://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=T&app=9&p_dir=F&p_rloc=198205&p_tloc=29474&p_ploc=14737&pg=3&p_tac=&ti=25&pt=1&ch=133&rl=41).

View 25 TAC §131.46, Emergency Services at:
[https://texreg.sos.state.tx.us/public/readtac\\$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=25&pt=1&ch=131&rl=46](https://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=25&pt=1&ch=131&rl=46).

View HHSC's Information for Survivors of Sexual Assault webpage at:
<https://hhs.texas.gov/doing-business-hhs/provider-portals/health-care-facilities-regulation/information-survivors-sexual-assault>.

To receive future updates, sign up for GovDelivery at:
<https://service.govdelivery.com/accounts/TXHHSC/subscriber/new>.

5.0 Contact Information

If you have any questions about this letter, please contact the Policies and Rules Unit by email at: HCR_PRU@hhs.texas.gov.