



Health Care Regulation Guidance Letter

Number: GL 22-0002
Title: Amended Requirements for Emergency Services and Care Provided to Sexual Assault Survivors (HB 2706-87R)
Provider Types: Freestanding Emergency Medical Care Facilities and General and Special Hospitals
Date Issued: August 18, 2022

1.0 Subject and Purpose

The Texas Health and Human Services Commission (HHSC) provides guidance to licensed providers on legislation passed during the 87th Legislature, Regular Session (2021). [House Bill \(HB\) 2706](#), 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, took effect September 1, 2021.

This letter provides instruction to freestanding emergency medical care facilities (FEMCs) and general and special hospitals on the passage of HB 2706 and outlines provider responsibilities and expectations.

2.0 Legislative Details & Provider Responsibilities

HB 2706 amended certain requirements regarding emergency services and care for survivors of sexual assault and other sex offenses, which include:

- Establishing operational requirements and standards for sexual assault forensic examination (SAFE) programs that provide examinations to survivors of sexual assault and standards for SAFE programs under [HSC Chapter 323, Subchapter B](#).
- Revising the following:
 - Emergency services and information form content requirements under [HSC Chapter 323](#);

- Timeframe for publication of the SAFE-ready facility list under [HSC §323.008](#); and
- Examination cost reimbursement procedures under [Texas Code of Criminal Procedure \(TCCP\) Article \(Art.\) 56A.252](#).

HB 2706 updated references to the agency responsible for publishing the following materials required under [Texas Health and Safety Code \(HSC\) Chapter 323](#) from the Texas Department of State Health Services to HHSC:

- The online list of all hospitals and other health facilities designated as Sexual Assault Forensic Examination (SAFE)-ready facilities required by [HSC §323.008](#); and
- The information forms for survivors of sexual assault required by HSC [§323.0051\(a\)](#) and [§323.0052\(a\)](#).

HB 2706 prohibits evidence collected during a forensic medical examination from being used to investigate or prosecute a misdemeanor offense, or an offense related to a controlled substance under [HSC Chapter 481, Subchapter D](#), alleged to have been committed by an individual from whom the evidence was collected during the examination.¹

2.1 SAFE Programs

HB 2706 added new [HSC Chapter 323, Subchapter B](#), which establishes SAFE-ready facility designation criteria and operational standards for SAFE programs. A SAFE program is a program that meets the requirements as specified by [HSC §323.052](#), and operated independently from licensed general or special hospitals, FEMC facilities, or general or special hospitals owned by the state.²

To receive designation from HHSC as a SAFE-ready facility, a SAFE program must comply with the following requirements:

- Meet the standards under [HSC §323.053](#)³;
- Provide forensic medical examinations to sexual assault survivors in accordance with [HSC §323.054](#); and⁴

¹ TCCP Art. 38.435.

² HSC §323.051(1).

³ HSC §323.052(a)(1).

⁴ HSC §323.052(a)(2).

- Notify HHSC that the program employs or contracts with a sexual assault forensic examiner⁵ or uses a telemedicine system of sexual assault forensic examiners to provide consultation during a sexual assault forensic medical examination to a licensed nurse or physician.⁶

If a forensic medical examination of a sexual assault survivor is required under either [TCCP Chapter 56A, Subchapter F](#) or [Subchapter G](#), a SAFE program must provide a forensic medical examination to a sexual assault survivor under the care of the program in accordance with [Government Code Chapter 420, Subchapter B](#).⁷

Only a sexual assault examiner or sexual assault nurse examiner may perform a forensic medical examination under a SAFE program,⁸ and the sexual assault examiner or sexual assault nurse examiner must obtain a sexual assault survivor's informed and written consent before performing a forensic medical examination or providing medical treatment to the survivor.⁹

A sexual assault survivor receiving a forensic medical examination from a sexual assault examiner or sexual assault nurse examiner employed by or under contract with a SAFE program may not be required to:¹⁰

- Participate in the investigation or prosecution of an offense as a prerequisite to receiving the forensic medical examination or medical treatment; or¹¹
- Pay for the costs of the forensic portion of the forensic medical examination or for the evidence collection kit.¹²

⁵ HSC §323.051(3).

⁶ HSC §323.052(b).

⁷ HSC §323.054(a).

⁸ HSC §323.054(b).

⁹ HSC §323.054(c).

¹⁰ HSC §323.054(d).

¹¹ HSC §323.054(d)(1).

¹² HSC §323.054(d)(2).

2.2 Emergency Services for Survivors of Sexual Assault

HB 2706 requires a licensed general or special hospital or licensed FEMC facility that has a shower facility and is providing care to a sexual assault survivor to allow the survivor to access a shower at no cost after a forensic medical examination.¹³

HB 2706 amended [HSC §323.002\(a\)](#) to require a health care facility¹⁴ to also comply with [HSC §323.0044](#), which requires a health care facility to provide a forensic medical examination and treatment to an adult sexual assault survivor for whom a guardian is 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 and the survivor agrees to receive the forensic medical examination and treatment.¹⁵

HB 2706 also amended [HSC §323.004](#) to require a non-SAFE-ready facility to inform a sexual assault survivor arriving at the facility of the following:

- The facility is not a SAFE-ready facility.¹⁶
- The name and location of nearby SAFE-ready facilities (not just the information for the closest SAFE-ready facility).¹⁶
- The survivor has the right to choose either to:
 - receive care at the non-SAFE-ready facility¹⁷ or
 - be stabilized and then either referred or transferred to a SAFE-ready facility to receive a forensic medical examination and other services described by [HSC §323.004\(b\)](#)¹⁸

2.3 Informational Materials for Survivors of Sexual Assault

HB 2706 updated references to the agency responsible for publishing the information forms and SAFE-ready facility list required under [HSC Chapter 323](#) from the Texas Department of State Health Services to HHSC.¹⁹

¹³ HSC §323.004(b)(8).

¹⁴ Defined at HSC §323.001(3).

¹⁵ HSC §323.002(a).

¹⁶ HSC §323.004(a-1)(1).

¹⁷ HSC §323.004(a-1)(2)(A)

¹⁸ HSC §323.004(a-1)(2)(B).

¹⁹ HSC §§323.005(a); 323.0051(a); 323.0052(a); 323.008.

HB 2706 updated the requirements for the informational sheet under [HSC §323.005\(a\)](#) as follows:

- The information sheet must include information about the retention and preservation period under [TCCP Article 38.43](#) of biological evidence collected from the forensic medical examination.²⁰
- The information sheet must include a statement that a sexual assault survivor has the right to access a shower for free after the forensic medical examination when the health care facility has a shower facility.²¹

HB 2706 also updated the statutory reference regarding collection of evidence to [TCCP Chapter 56A, Subchapter G](#), for the information forms required under [HSC §323.0052](#).

HHSC maintains the required information forms, which the agency updated in accordance with HB 2706, and the SAFE-ready facility list on the [Information for Survivors of Sexual Assault webpage](#).

2.4 Reimbursement for Examination Costs

HB 2706 amended [TCCP Art. 56A.252](#) to allow a health care provider that provides a forensic medical examination to a sexual assault survivor in accordance with [TCCP Chapter 56A, Subchapter F](#) to apply to the Texas Office of the Attorney General (OAG) to be reimbursed for the following costs of the forensic medical examination:²²

- reasonable costs of the forensic portion of the examination; and²³
- the evidence collection kit.²⁴

The OAG is responsible for setting the reimbursement fee amount by rule,²²⁹ and a facility must use the application form required by the OAG and must submit the following with the application:²⁵

²⁰ HSC §323.005(a)(8).

²¹ HSC §323.005(a)(9).

²² TCCP Art. 56A.252(a).

²³ TCCP Art. 56A.252(a)(1).

²⁴ TCCP Art. 56A.252(a)(2).

²⁵ TCCP Art. 56A.252(b).

- the documentation of the law enforcement agency's request for the forensic medical examination, as required under [TCCP Art. 56A.251\(d\)](#); and²⁶
- a complete and itemized bill of the reasonable costs of the forensic portion of the examination.²⁷

A health care provider must accept the reimbursement from the OAG as payment for the reimbursable costs of an examination unless:²⁸

- The health care provider:²⁹
 - submits a written request to the OAG for additional reimbursement; and³⁰
 - provides any documentation supporting additional reimbursement that the OAG requests; and³¹
- The OAG determines there is a reasonable justification for additional reimbursement.³²

A health care provider is only entitled to reimbursement for a forensic medical examination to a sexual assault survivor under [TCCP Art. 56A.252](#) if a physician, sexual assault examiner, or sexual assault nurse examiner provides the examination on the provider's premises.³³

A health care provider (including a SAFE program³⁴) may request the OAG to provide training to the provider regarding the reimbursement application process.³⁵

HB 2706 also amended [TCCP Art. 56A.304](#) to allow a health care provider that provides a forensic medical examination to a sexual assault survivor in accordance with [TCCP Chapter 56A, Subchapter F](#) within 120 hours after the sexual assault occurred to apply to the OAG to be reimbursed for the following costs of the forensic medical examination:³⁶

²⁶ TCCP Art. 56A.252(b)(1).

²⁷ TCCP Art. 56A.252(b)(2).

²⁸ TCCP Art. 56A.252(c).

²⁹ TCCP Art. 56A.252(c)(1).

³⁰ TCCP Art. 56A.252(c)(1)(A).

³¹ TCCP Art. 56A.252(c)(1)(B).

³² TCCP Art. 56A.252(c)(2).

³³ TCCP Art. 56A.252(d).

³⁴ TCCP Art. 56A.302(5).

³⁵ TCCP Art. 56A.252(e).

³⁶ TCCP Art. 56A.304(a).

- reasonable costs of the forensic portion of the examination; and³⁷
- the evidence collection kit.³⁸

The OAG is responsible for setting the reimbursement fee amount by rule,³⁶ and a facility must use the application form required by the OAG and submit the following with the application:³⁹

- certification that the examination was conducted in accordance with the requirements of [TCCP Art. 56A.303\(a\)](#); and⁴⁰
- a complete and itemized bill of the reasonable costs of the forensic portion of the examination.⁴¹

A health care provider must accept the reimbursement from the OAG as payment for the reimbursable costs of an examination unless:⁴²

- The health care provider:⁴³
 - submits a written request to the OAG for additional reimbursement; and⁴⁴
 - provides any documentation supporting additional reimbursement that the OAG requests; and⁴⁵
- The OAG determines there is a reasonable justification for additional reimbursement.⁴⁶

A health care provider is only entitled to reimbursement for a forensic medical examination to a sexual assault survivor under [TCCP Art. 56A.304](#) when a sexual assault examiner, or sexual assault nurse examiner provides the examination on the provider's premises.⁴⁷

³⁷ TCCP Art. 56A.304(a)(1).

³⁸ TCCP Art. 56A.304(a)(2).

³⁹ TCCP Art. 56A.304(b).

⁴⁰ TCCP Art. 56A.304(b)(1).

⁴¹ TCCP Art. 56A.304(b)(2).

⁴² TCCP Art. 56A.304(c).

⁴³ TCCP Art. 56A.304(c)(1).

⁴⁴ TCCP Art. 56A.304(c)(1)(A).

⁴⁵ TCCP Art. 56A.304(c)(1)(B).

⁴⁶ TCCP Art. 56A.304(c)(2).

⁴⁷ TCCP Art. 56A.304(d).

A health care provider may request the OAG to provide training to the provider regarding the reimbursement application process.⁴⁸

3.0 Background/History

General and special hospitals licensed under [HSC Chapter 241](#) and FEMC facilities licensed under [HSC Chapter 254](#) are required to comply with requirements under [HSC Chapter 323](#) regarding emergency services and forensic examinations for survivors of sexual assault.

On August 18, 2022, HHSC published related guidance, amended [GL 20-2018-A](#), to remind FEMC facilities and general and special hospitals they are required to comply with [HB 4531](#) (86th Legislature, Regular Session, 2019) and provide additional clarity on HB 4531's requirements.

4.0 Resources

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

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

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

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

View HSC Chapter 481, Subchapter D at: <https://statutes.capitol.texas.gov/Docs/HS/htm/HS.481.htm#D>.

View TCCP Chapter 56A at: <https://statutes.capitol.texas.gov/Docs/CR/htm/CR.56A.htm>.

View TCCP Article 38.43 at: <https://statutes.capitol.texas.gov/Docs/CR/htm/CR.38.htm#38.43>.

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

View Government Code Chapter 420, Subchapter B at: <https://statutes.capitol.texas.gov/Docs/GV/htm/GV.420.htm#B>.

⁴⁸ TCCP Art. 56A.304(e).

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

View Guidance Letter 20-2018-A at:
<https://www.hhs.texas.gov/sites/default/files/documents/doing-business-with-hhs/provider-portal/facilities-regulation/memos/gl-20-2018.pdf>.

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

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.