

IV. Liability and Legal Information

This section serves as a guide to relevant laws and liability issues. For more specific information regarding the applicability of this information to your practice, please contact your legal department or administration.

ILLINOIS DOMESTIC VIOLENCE ACT

The Illinois Domestic Violence Act (IDVA) recognizes domestic violence as a serious crime. It creates a legal remedy for victims called an Order of Protection, and requires that law enforcement officers provide specific types of assistance to victims. Following are a few of the remedies for victims established by the IDVA:

- ◆ Forbid any further abuse, neglect or exploitation.
- ◆ Order the abuser not to enter the shared home for a period of time. This is often called a 'vacate order' or an 'exclusive possession order'.
- ◆ Prohibit the abuser from entering or remaining present at victim's school, place of employment, or other specified place when the victim is present.
- ◆ Require or recommend counseling for the abuser.
- ◆ Order the abuser to return a child or not remove a child from the principle caretaker.

The Domestic Violence Victim's Handbook, included in this Kit, provides a thorough overview of the IDVA, including the steps to obtaining an Order of Protection. Article IV of the IDVA addresses the Health Care Providers' role in responding to victims of intimate partner violence:

**Providing information on services; liability
(750 ILCS 60/401)**

Any person who is licensed, certified or otherwise authorized by the law of this State to administer health care in the ordinary course of business or practice of a profession **shall offer to a person suspected to be a victim of abuse immediate and adequate information regarding services available to victims of abuse.**

Any person who is licensed, certified or otherwise authorized by the law of this State to administer health care in the ordinary course of business or practice of a profession and who in good faith offers to a person suspected to be a victim of abuse information regarding services to the victims of abuse **shall not be civilly liable for any act or omission of the agency providing those services to the victims of abuse for the inadequacy of those services provided by the agency.**

LIABILITY

Some health care providers are concerned that they may increase their liability if they conduct intimate partner violence screening and interventions in their practice. However, according to a study conducted by Orloff and Chung (1996), failure to act in cases of intimate partner violence accounts for two of the three primary areas of liability regarding intimate partner violence response. The following three areas of liability were identified:

- ❖ Reporting abuse to the police without the permission of an adult victim of abuse
- ❖ Negligence in the following areas: identifying victims of domestic violence (diagnoses), documenting injuries, properly treating victims, providing victims with information about their options to counter intimate partner violence (including safety planning), and making referrals to specialists (domestic violence experts).
- ❖ Failure to warn potential victims about the threat of assault from an abuser when the health professional learns that there is a danger of harm to an identifiable victim or victims by a patient who is a perpetrator of intimate partner violence.

LAW ENFORCEMENT REPORTING

Illinois does not have an explicit mandatory reporting law for intimate partner violence and it is not clear that mandatory reporting would best ensure the safety of competent adult victims or connect them with needed resources. **According to the American Medical Association's Diagnostic and Treatment Guidelines on Domestic Violence, "Disclosure of a diagnosis of abuse to partners or any third party and reporting to authorities should be done only with the abused woman's knowledge and consent."**

However, Illinois does have the following crime reporting law, adopted in 1931, that requires physicians to report to law enforcement officials certain injuries that appear to have resulted from a criminal act:

2630/3.2 Notification of Treatment of Firearm Injury and Injury Sustained In Commission of or Received From Criminal Offense.

3.2. It is the duty of any person conducting or operating a medical facility, or any physician or nurse as soon as treatment permits, to notify the local law enforcement agency of that jurisdiction upon the application for treatment of a person, who is not accompanied by a law enforcement officer, when it reasonably appears that the person requesting treatment has received:

- 1) Any injury resulting from the discharge of a firearm; or
- 2) Any injury sustained in the commission of or as a victim of a criminal offense.

Any hospital, physician or nurse shall be forever held harmless from any civil liability for their reasonable compliance with the provisions of this Section.

CHILD ABUSE REPORTING ACT

Health care providers are well aware of their responsibility as mandated reporters of child abuse and neglect. The following information is provided to assist in reporting:

Guidelines for Calling the Child Abuse Hotline: Mandated reporters and other persons should call the Hotline when they have reasonable cause to suspect that a child has been abused or neglected. The Hotline worker will determine if the information given meets the legal requirements to initiate an investigation.

Child Abuse Hotline
1-800-25-ABUSE (1-800-252-2873)
1-800-358-5117 (TTY)

The Hotline operates 24 hours per day, 365 days a year. The Hotline is less busy in the early morning hours, and reporters may be able to get through more quickly during these times. Reporter should be prepared to provide phone numbers where they can be reached throughout the day in case the Hotline must call back for more information.

ELDER ABUSE AND NEGLECT REPORTING ACT

Health care providers are required to report suspected elder abuse for patients who are 60 years of age or older, and are unable to make a report for themselves due to dysfunction. A physician may always voluntarily report suspected elder abuse, with assurance of confidentiality and immunity from liability.

To Report Suspected Elder Abuse in Illinois, contact:

Senior Help Line: **800-252-896**

After Hours: **800-279-0400**

V. JCAHO Standards

The following standards of patient care are taken directly from the "Comprehensive Accreditation Manual for Hospitals: The Official Handbook", produced by the Joint Commission on the Accreditation of Hospital Organizations, January of 2001.

STANDARD

PE.1.9 Possible victims of abuse are identified using criteria developed by the hospital.

Intent of PE.1.9

Victims of abuse or neglect may come to a hospital through a variety of channels. The patient may be unable or reluctant to speak of the abuse, and it may not be obvious to the casual observer. Nevertheless, hospital staff members need to know if a patient has been abused, as well as the extent and circumstances of the abuse, to give the patient appropriate care.

The hospital has objective criteria for identifying and assessing possible victims of abuse and neglect, and they are used throughout the organization. Staff are to be trained in the use of these criteria.

The criteria focus on observable evidence and not on allegation alone. They address at least the following situations:

- a. **Physical assault;**
- b. **Rape or other sexual molestation;**
- c. **Domestic abuse; and**
- d. **Abuse or neglect of elders and children.**

When used appropriately by qualified staff members, the criteria prevent any action or question that could create false memories of abuse in the individual being assessed.

Staff members are able to make appropriate referrals for victims of abuse and neglect. To help them do so, the hospital maintains a list of private and public community agencies that provide help for abuse victims.

In addition, the assessment of victims of alleged or suspected abuse or neglect is conducted consistent with standard PE.8 in this chapter.

Examples of Implementation for PE.1.9

1. Staff members question whether abuse may have occurred if a patient's story for his or her injury(ies) does not match the actual injury---for example, x-rays show an unexplained broken bone. Physical findings are compared to the hospital's approved procedure containing the criteria that outline objective evidence of possible abuse or neglect.
2. Staff members observe the behavior of those who brought a child to the emergency room (for example, does the child cling to one parent and avoid the other?). Staff members question the child in a non-threatening manner, look for bruises on the body, and listen to explanations to see if there is a balance between the physical evidence and the story.

STANDARD

PE.6 The special needs of patients who are receiving treatment for emotional or behavioral disorders are addressed by the assessment process.

Intent of PE.6

The content of the assessment and reassessment of patients receiving treatment for mental and behavioral disorders includes at least the following elements:

- A history of mental, emotional, behavioral, and substance use problems, their co-occurrence, and treatment;
- Current mental, emotional, and behavioral functioning, including a mental status examination;
- Maladaptive or problem behaviors; and
- A psychosocial assessment.

As appropriate to the patient's age and specific clinical needs, the psychosocial assessment includes information about the patient's

- Environment and home;
- Leisure and recreation;
- Religion;
- Childhood history;
- Military service history;
- Financial status;
- The social, peer-group, and environmental setting from which the individual comes;
- **Sexual history, including abuse (either as the abuser or the abused);**
- **Physical abuse (either as the abuser or the abused);**
- The individual's family circumstances, including the constellation of the family group;
- The current living situation; and
- Social, ethnic, cultural, emotional, and health factors.

Those responsible for the patient's care determine the need for family members to participate in the individual's care. When appropriate, the following additional assessments are conducted:

- Vocational or educational assessment and
- Legal assessment.

The community resources currently used by the individual (especially for patients with severe and persistent mental illness) are identified.

In addition, when indicated by the patient's age and specific clinical needs, the following are performed:

- A psychiatric exam;
- Psychological assessments, including intellectual, projective, neuropsychological, and personality testing; and
- Other functional evaluations of communication, self-care, and visual-motor functioning.

STANDARD

PE.8 Patients who are possible victims of alleged or suspected abuse or neglect have special needs relative to the assessment process.

Intent of PE.8

As part of the initial screening and assessment process, information and evidentiary material(s) may be collected that could be used in future actions as part of the legal process. The hospital has specific and unique responsibilities for safeguarding such material(s).

Policies and procedures define the hospital's responsibility for collecting, retaining, and safeguarding information and evidentiary material(s). The following are documented in the patient's medical record:

- Consents from the patient, parent, or legal guardian, or compliance with other applicable law;
- Collecting and safeguarding evidentiary material released by the patient;
- Legally required notification and release of information to authorities; and
- **Referral made to private or public community agencies for victims of abuse.**

Hospital policy defines these activities and specifies who is responsible for carrying them out.

Health care providers working in compliance with JCAHO standards should be aware that the above standards may be changed or updated periodically, and additional standards may be applicable to intimate partner violence response with patients.