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TO: Idaho Hospitals, Health Clinics, Family Justice Centers, and SART programs
Idaho Police Departments and Sheriff Offices

SUBJECT: Change to Idaho Code 39-1390 — Medical staff are NOT required to “Mandatory Reporting” of ANONYMOUS ADULT Sexual Assault Medical Forensic Exam

As of July 1, 2019, medical staff working with *adult* (over 18 years old) patients who report to any entity that conducts sexual assault medical forensic exams are **NOT** required to report the identity of the *adult* victim/survivor to law enforcement when the *adult* victim/survivor requests an **anonymous sexual assault kit collection** (see addendum below for full code section). This change in law has no impact on current practices with minors. Mandatory reporting continues to be required in all cases involving minors.

Federal legislation enacted in 2005 that renewed the Violence Against Women Act (VAWA) (1994) codifies a process whereby **sexual assault survivors have a federal statutory right to remain anonymous** and still have sexual assault evidence collected and preserved. This allows a sexual assault survivor in trauma to get medical attention and preserve vital evidence, in case they want to report to police when they are more emotionally ready to do so. The Federal legislative intent of VAWA seeks to protect the anonymity of sexual assault survivors who choose to delay or not report the crime to law enforcement.

Medical staff working with sexual assault survivors should make every effort to provide “options counseling” to the sexual assault survivor prior to the commencement of a sexual assault forensic exam. Communicating the options and rights available to an adult sexual assault survivor early in the process is vital so they have the information they need to make their own decisions about what happens to them and their private information following a sexual assault. An adult sexual assault survivor must know the options and potential outcomes of choosing to have an anonymous kit collected or to involve law enforcement. Instructions on “options counseling” are available in the Idaho Sexual Assault Response Guidelines on the Idaho State Police website <https://isp.idaho.gov/forensics/saktrak/>. Options counseling informs sexual assault survivors of options and the potential outcomes of those decisions in a non-judgmental or coercive way; it does not involve discouraging or encouraging a survivor to take any certain path regarding reporting or accessing community-based services.

If law enforcement has not been involved before an adult sexual assault survivor reports to a medical facility, medical staff should NOT call or involve law enforcement without the patient's consent. If the adult sexual assault survivor wants to remain anonymous, it is essential that law enforcement is not contacted. Each medical facility should have a policy and procedure to alert law enforcement that prevents unwanted contact by an adult sexual assault survivor wishing to remain anonymous.

Because law enforcement can accidentally be dispatched to the medical facility without the consent of the adult patient, it is **best practice for law enforcement officers to check in with medical staff before meeting the adult sexual assault survivor** to be sure that the survivor did ask for a law enforcement involvement. This is one more way to help the adult sexual assault survivor in a time of trauma to retain trust in the process and potentially report the crime at some future time.

After medical staff collects an anonymous sexual assault evidence collection kit, and **after** anonymous sexual assault survivor medical release/discharge, medical staff will call the appropriate law enforcement agency with jurisdiction in the case to retrieve the kit. An anonymous sexual assault evidence collection kit must not have any personally identifying information on the inside or outside of the kit. The collection facility must note the kit tracking number in the HIPAA protected medical patient file and NOT give any identifying information about the survivor to law enforcement.

By Idaho statute, medical staff must enter the kit tracking number for the anonymous kit into the Idaho Sexual Assault Kit Tracking System (IKTS), and provide the patient with the kit number tracking form for potential future use.

Addendum

Idaho Code 39-1390. REPORTS TO LAW ENFORCEMENT AGENCIES OF CERTAIN TYPES OF INJURIES. (1) As soon as treatment permits, any person operating a hospital or other medical treatment facility, or any physician, resident on a hospital staff, intern, physician assistant, nurse or emergency medical technician, shall notify the local law enforcement agency of that jurisdiction upon the treatment of or request for treatment of a person when the reporting person has reason to believe that the person treated or requesting treatment has received:

- (a) Any injury inflicted by means of a firearm; or
- (b) Any injury indicating that the person may be a victim of a criminal offense.

(2) The report provided to the law enforcement agency pursuant to subsection (1) of this section shall include the name and address of the injured person, the character and extent of the person's injuries, and the medical basis for making the report. **Provided however, that when an adult injured person is being seen for the purposes of administration of an anonymous sexual assault evidence kit pursuant to section 67-2919, Idaho Code, the name, address, and any other personally identifying information of the adult injured person shall not be included in the report.**

(3) Any person operating a medical facility, or any physician, resident on a hospital staff, intern, physician assistant, nurse or emergency medical technician, shall be held harmless from any civil liability for reasonable compliance with the provisions of this section.