

109TH CONGRESS
2D SESSION

S. 3945

To provide for the provision by hospitals of emergency contraceptives to women, and post-exposure prophylaxis for sexually transmitted disease to individuals, who are survivors of sexual assault.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 26, 2006

Mrs. CLINTON (for herself, Mrs. MURRAY, Mr. LAUTENBERG, Mrs. BOXER, Mr. MENENDEZ, Ms. CANTWELL, Mr. KENNEDY, Mr. INOUE, Mr. KERRY, Mr. JEFFORDS, and Mr. CHAFEE) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To provide for the provision by hospitals of emergency contraceptives to women, and post-exposure prophylaxis for sexually transmitted disease to individuals, who are survivors of sexual assault.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Compassionate Assist-
5 ance for Rape Emergencies Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1 (1) It is estimated that 25,000 to 32,000
2 women become pregnant each year as a result of
3 rape or incest. An estimated 22,000 of these preg-
4 nancies could be prevented if rape or incest survivors
5 had timely access to emergency contraception.

6 (2) A 1996 study of pregnancies resulting from
7 rape or incest (published in the American Journal of
8 Obstetrics and Gynecology) found that 50 percent of
9 the pregnancies described in paragraph (1) ended in
10 abortion.

11 (3) Surveys have shown that many hospitals do
12 not routinely provide emergency contraception to
13 women seeking treatment after being sexually as-
14 sailed.

15 (4) The risk of pregnancy after sexual assault
16 has been estimated to be 4.7 percent in survivors
17 who were not protected by some form of contracep-
18 tion at the time of the attack.

19 (5) The Food and Drug Administration has de-
20 clared emergency contraception to be safe and effec-
21 tive in preventing unintended pregnancy, reducing
22 the risk by as much as 89 percent if taken within
23 days of unprotected intercourse and up to 95 per-
24 cent if taken in the first 24 hours after unprotected
25 intercourse.

1 (6) Medical research strongly indicates that the
2 sooner emergency contraception is administered, the
3 greater the likelihood of preventing unintended preg-
4 nancy.

5 (7) In light of the safety and effectiveness of
6 emergency contraceptive pills, both the American
7 Medical Association and the American College of
8 Obstetricians and Gynecologists have endorsed more
9 widespread availability of such pills.

10 (8) The American College of Emergency Physi-
11 cians and the American College of Obstetricians and
12 Gynecologists agree that offering emergency contra-
13 ception to female patients after a sexual assault
14 should be considered part of the standard of care.

15 (9) Approximately 30 percent of United States
16 women of reproductive age are unaware of the avail-
17 ability of emergency contraception.

18 (10) New data from a survey of women having
19 abortions estimates that 51,000 abortions were pre-
20 vented by use of emergency contraception in 2000
21 and that increased use of emergency contraception
22 accounted for 43 percent of the decrease in total
23 abortions between 1994 and 2000.

24 (11) It is essential that all hospitals that pro-
25 vide emergency medical treatment provide emergency

1 contraception as a treatment option to any woman
2 who has been sexually assaulted, so that she may
3 prevent an unintended pregnancy.

4 (12) Victims of sexual assault are at increased
5 risk of contracting sexually transmitted diseases.

6 (13) Some sexually transmitted infections can-
7 not be reliably cured if treatment is delayed, and
8 may result in high morbidity and mortality. HIV has
9 killed over 520,000 individuals in the United States,
10 and the Centers for Disease Control and Prevention
11 currently estimates that over 1,000,000 individuals
12 in the United States are infected with the virus.
13 Even modern drug treatment has failed to cure in-
14 fected individuals. Nearly 80,000 individuals in the
15 United States are infected with hepatitis B each
16 year, with some individuals unable to fully recover.
17 An estimated 1,250,000 individuals in the United
18 States remain chronically infected with the hepatitis
19 B virus and at present, 1 in 5 of those infected indi-
20 viduals may expect to die of liver failure.

21 (14) It is possible to prevent some sexually
22 transmitted diseases by treating an exposed indi-
23 vidual promptly. The use of post-exposure prophylaxis
24 using antiretroviral drugs has been dem-
25 onstrated to effectively prevent the establishment of

1 HIV infection. Hepatitis B infection may also be
2 eliminated if an exposed individual receives prompt
3 treatment.

4 (15) The Centers for Disease Control and Pre-
5 vention has recommended risk evaluation and appro-
6 priate application of post-exposure treatment for vic-
7 tims of sexual assault. For such individuals, imme-
8 diate treatment is the only means to prevent a life-
9 threatening infection.

10 (16) It is essential that all hospitals that pro-
11 vide emergency medical treatment provide assess-
12 ment and treatment of sexually transmitted infec-
13 tions to minimize the harm to victims of sexual as-
14 sault.

15 **SEC. 3. DEFINITIONS.**

16 In this Act:

17 (1) **EMERGENCY CONTRACEPTION.**—The term
18 “emergency contraception” means a drug, drug regi-
19 men, or device that is—

20 (A) approved by the Food and Drug Ad-
21 ministration to prevent pregnancy; and

22 (B) is used postcoitally.

23 (2) **HOSPITAL.**—The term “hospital” has the
24 meaning given such term in title XVIII of the Social
25 Security Act (42 U.S.C. 1395 et seq.), including the

1 meaning applicable in such title for purposes of
2 making payments for emergency services to hospitals
3 that do not have agreements in effect under such
4 title. Such term includes a health care facility that
5 is located within, or that enters into a contract with,
6 a correctional institution or a post-secondary edu-
7 cational institution.

8 (3) LICENSED MEDICAL PROFESSIONAL.—The
9 term “licensed medical professional” means a doctor
10 of medicine, doctor of osteopathy, registered nurse,
11 physician assistant, or any other health care profes-
12 sional determined to be appropriate by the Sec-
13 retary.

14 (4) SECRETARY.—The term “Secretary” means
15 the Secretary of Health and Human Services.

16 (5) SEXUAL ASSAULT.—

17 (A) IN GENERAL.—The term “sexual as-
18 sault” means a sexual act (as defined in sub-
19 paragraphs (A) through (C) of section 2246(2)
20 of title 18, United States Code) where the vic-
21 tim involved does not consent or lacks the ca-
22 pacity to consent.

23 (B) APPLICATION OF PROVISIONS.—The
24 definition in subparagraph (A) shall—

1 (i) in the case of section 2, apply to
2 males and females, as appropriate;

3 (ii) in the case of section 4, apply only
4 to females; and

5 (iii) in the case of section 5, apply to
6 all individuals.

7 **SEC. 4. SURVIVORS OF SEXUAL ASSAULT; PROVISION BY**
8 **HOSPITALS OF EMERGENCY CONTRACEP-**
9 **TIVES WITHOUT CHARGE.**

10 (a) IN GENERAL.—Federal funds may not be pro-
11 vided to a hospital under any health-related program, un-
12 less the hospital meets the conditions specified in sub-
13 section (b) in the case of—

14 (1) any woman who arrives at the hospital and
15 states that she is a victim of sexual assault, or is ac-
16 companied by someone who states she is a victim of
17 sexual assault; and

18 (2) any woman who arrives at the hospital
19 whom hospital personnel have reason to believe is a
20 victim of sexual assault.

21 (b) ASSISTANCE FOR VICTIMS.—The conditions spec-
22 ified in this subsection regarding a hospital and a woman
23 described in subsection (a) are as follows:

24 (1) INFORMATION.—The hospital promptly pro-
25 vides the woman with medically and factually accu-

1 rate and unbiased written and oral information
2 about emergency contraception, including informa-
3 tion explaining that—

4 (A) emergency contraception has been ap-
5 proved by the Food and Drug Administration
6 as a safe and effective way to prevent preg-
7 nancy after unprotected intercourse or contra-
8 ceptive failure if taken in a timely manner, and
9 is more effective the sooner it is taken; and

10 (B) emergency contraception does not
11 cause an abortion and cannot interrupt an es-
12 tablished pregnancy.

13 (2) EMERGENCY CONTRACEPTION.—The hos-
14 pital promptly offers emergency contraception to the
15 woman, and promptly provides such contraception to
16 her at the hospital on her request.

17 (3) CONDITIONS FOR INFORMATION.—The in-
18 formation provided pursuant to paragraph (1) is in
19 clear and concise language, is readily comprehen-
20 sible, and meets such conditions regarding the provi-
21 sion of the information in languages other than
22 English as the Secretary may establish.

23 (4) PROVISION DESPITE INABILITY TO PAY.—
24 The services described in paragraphs (1) through (3)

1 are not denied because of the inability of the woman
2 to pay for the services.

3 **SEC. 5. PREVENTION OF [SEXUALLY TRANSMITTED] DIS-**
4 **EASE.**

5 (a) IN GENERAL.—Federal funds may not be pro-
6 vided to a hospital under any health-related program, un-
7 less the hospital provides risk assessment, counseling, and
8 treatment as required under this section to a survivor of
9 sexual assault described in subsection (b).

10 (b) SURVIVORS OF SEXUAL ASSAULT.—An individual
11 is a survivor of a sexual assault described in this sub-
12 section if the individual—

13 (1) arrives at the hospital and states that the
14 individual is a victim of sexual assault, or is accom-
15 panied to the hospital by another individual who de-
16 clares that the first individual is a victim of sexual
17 assault; or

18 (2) arrives at the hospital and hospital per-
19 sonnel have reason to believe the individual is a vic-
20 tim of sexual assault.

21 (c) REQUIREMENT FOR RISK ASSESSMENT, COUN-
22 SELING, AND TREATMENT.—The following shall apply
23 with respect to a hospital described in subsection (a):

24 (1) RISK ASSESSMENT.—A hospital shall
25 promptly provide a survivor of a sexual assault with

1 an assessment of the individual's risk of contracting
2 sexually transmitted infections described in para-
3 graph (2)(A), which assessment shall be conducted
4 by a licensed medical professional and be based
5 upon—

6 (A) available information regarding the as-
7 sault as well as the subsequent findings from
8 medical examination and any tests that may be
9 conducted; and

10 (B) established standards of risk assess-
11 ment which shall include consideration of any
12 recommendations established by the Centers for
13 Disease Control and Prevention, and may also
14 incorporate consideration of findings of peer-re-
15 viewed clinical studies and appropriate research
16 utilizing in vitro and non-human primate mod-
17 els of infection.

18 (2) COUNSELING.—A hospital shall provide a
19 survivor of a sexual assault with advice, provided by
20 a licensed medical professional, concerning—

21 (A) significantly prevalent sexually trans-
22 mitted infections for which effective post-expo-
23 sure prophylaxis exists, and for which the defer-
24 ral of treatment would either significantly re-

1 duce treatment efficacy or pose substantial risk
2 to the individual's health; and

3 (B) the requirement that prophylactic
4 treatment for infections described in subpara-
5 graph (A) shall be provided to the individual
6 upon request, regardless of the ability of the in-
7 dividual to pay for such treatment.

8 (3) TREATMENT.—A hospital shall provide a
9 survivor of a sexual assault, upon request, with pro-
10 phylactic treatment for infections described in para-
11 graph (2)(A).

12 (4) ABILITY TO PAY.—The services described in
13 paragraphs (1) through (3) shall not be denied be-
14 cause of the inability of the individual involved to
15 pay for the services.

16 (5) LANGUAGE.—Any information provided
17 pursuant to this subsection shall be clear and con-
18 cise, readily comprehensible, and meet such condi-
19 tions regarding the provision of the information in
20 languages other than English as the Secretary may
21 establish.

22 (d) RULE OF CONSTRUCTION.—Nothing in this sec-
23 tion shall be construed to—

24 (1) require that a hospital provide prophylactic
25 treatment for a victim of sexual assault when risk

1 assessment (according to recommendations estab-
2 lished by the Centers for Disease Control and Pre-
3 vention) clearly recommends against the application
4 of post-exposure prophylaxis;

5 (2) prohibit a hospital from seeking reimburse-
6 ment for the cost of services provided under this sec-
7 tion to the extent that health insurance may provide
8 reimbursement for such services; and

9 (3) establish a requirement that any victim of
10 sexual assault submit to diagnostic testing for the
11 presence of any infectious disease.

12 **SEC. 6. AGENCY CRITERIA.**

13 Not later than 30 days prior to the expiration of the
14 period described in section 7, the Secretary shall publish
15 in the Federal Register criteria for meeting the conditions
16 described in sections 4 and 5.

17 **SEC. 7. EFFECTIVE DATE.**

18 This Act takes effect on the expiration of the 180-
19 day period beginning on the date of the enactment of this
20 Act.

○