

GUIDELINES FOR VICTIM ADVOCATE ACCOMPANIMENT DURING HOSPITAL EXAMS AND CONSULTATIONS



STATE OF WISCONSIN
DEPARTMENT OF HEALTH SERVICES
Division of Quality Assurance

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I. BACKGROUND

The Department of Health Services and the Department of Justice acknowledge with appreciation the input of the Wisconsin Coalition Against Sexual Assault and the Wisconsin Hospital Association during the drafting of the guidelines.

2015 Wisconsin Act 351 became effective on August 1, 2016, and creates a new statutory section, [Wis. Stat. § 50.378](#), relating to granting victims of sexual assault, human trafficking involving a commercial sex act, or child sexual abuse a right to be accompanied by a victim advocate. The Act, also known as the Victim Accompaniment Law, impacts hospitals, law enforcement, and judicial proceedings. In summary, the Act impacts health care providers as follows:

- The Act provides that a hospital that provides emergency services to a victim of sexual assault, human trafficking involving a commercial sex act, or child sexual abuse must generally permit a victim advocate to accompany the victim to any examination or consultation that is performed at the hospital as a result of the alleged violation if the victim requests an advocate. This right is subject to various exceptions, including that the hospital need not delay examining or treating the victim pending the arrival of a victim advocate, if the delay would endanger the health or safety of the victim or risk the loss of evidence.
- The Act creates a requirement for hospitals to notify certain individuals of specific victims' rights under the Act.
- The Act specifies that hospitals and their employees or agents are immune from civil liability for requirements relating to allowing a victim advocate to accompany a victim or providing notification of a victim's right to be so accompanied, as well as for any act or omission by a victim advocate.
- The Act modifies Wisconsin's health care record confidentiality statute to permit a health care provider to release a portion of a victim's patient health care record to the victim advocate who is accompanying the victim.

The following guidelines were created in compliance with [Wis. Stat. § 50.378](#), which requires the Wisconsin Department of Health Services (DHS), in cooperation with the Wisconsin Department of Justice (DOJ), to develop guidelines for hospitals subject to the accompaniment requirement.

II. DEFINITIONS

A. VICTIM ADVOCATE

A "victim advocate" is an individual who is an employee of, or a volunteer for, an organization the purpose of which is to provide counseling, assistance, or support services free of charge to a victim. [Wis. Stat. § 50.378\(1\)\(a\)](#); [Wis. Stat. § 905.045\(1\)\(e\)](#)

For more information about identifying and contacting a victim advocate, see Section IV.

B. VICTIM OF SEXUAL ASSAULT, HUMAN TRAFFICKING, OR CHILD SEXUAL ABUSE

For the purpose of the accompaniment law, a “victim of sexual assault, human trafficking, or child sexual abuse” is an individual “who alleges or for whom it is alleged that he or she suffered from [any of the following:]”:

- Sexual exploitation by a therapist § 940.22
- Sexual assault § 940.225
- Human trafficking involving a commercial sex act § 940.302
- Sexual assault of a child § 948.02
- Repeated acts of sexual assault of the same child § 948.025
- Sexual exploitation of a child § 948.05
- Trafficking of a child involving a commercial sex act § 948.051
- Causing a child to view or listen to sexual activity § 948.055
- Incest with a child § 948.06
- Child enticement § 948.07
- Use of a computer to facilitate a child sex crime § 948.075
- Soliciting a child for prostitution § 948.08,
- Sexual assault of a child placed in substitute care § 948.085
- Sexual intercourse with a child age 16 or older § 948.09,
- Sexual assault of a child by a school staff person or a person who works or volunteers with children § 948.095
- Exposing genitals, pubic area or intimate parts § 948.10
- Exposing a child to harmful material, descriptions or narrations § 948.11

Cite: [Wis. Stat. § 50.378\(1\)\(b\)](#)

III. HOSPITAL DUTIES AND VICTIMS’ RIGHTS UNDER ACT

The Victim Accompaniment Law contains both mandated duties of the hospital and designated rights to which victims of sexual assault, human trafficking, or child sexual abuse are entitled within the hospital setting. In order for victims to have a meaningful opportunity to exercise their rights, they must be aware the rights exist. The Act provides rights that can only be exercised while the victim is receiving emergency services at the hospital. Therefore, it is critical that victims understand their rights in that context, during that timeframe, and that the information provided is timely and in a format that is easily understood.

A. PATIENT RIGHT TO ACCOMPANIMENT AT EXAMS AND CONSULTATIONS

With certain exceptions, described in Sub. E, below, “a hospital that provides emergency services to a victim of sexual assault, human trafficking, or child sexual abuse shall, at the request of a victim of sexual assault, human trafficking or child sexual abuse, permit a victim advocate to accompany the victim to any examination or

consultation that is performed at the hospital as a result of the violation.” [Wis. Stat. § 50.378\(2\)\(a\)](#)

B. ACCOMPANIMENT FOR PATIENTS WHO ARE MINORS

If the victim is a minor, various persons *may* request a victim advocate to accompany the victim. [Wis. Stat. § 50.378\(2\)\(b\)](#) and [\(c\)](#).

- If the patient is at least 10 years of age, the request for such accompaniment may be made by a parent, guardian, or legal custodian of the minor.
- If the patient has not attained the age of 10, a treating medical professional may make a request that the patient be accompanied by a victim advocate.
- The statute does not preclude a parent, guardian, or legal custodian of a victim under the age of 10 from requesting the patient be accompanied by a victim advocate.
- At any age, a minor may request accompaniment without the consent of the patient’s parent, guardian, or legal custodian.

C. NOTICE OF RIGHTS

Pursuant to [Wis. Stat. § 50.378\(4\)\(c\)](#), the Department of Health Services (DHS) created DQA form F-01805, *Patient Rights for Victims*, to be used by hospitals that provide emergency services to victims of sexual assault, human trafficking, or child sexual abuse to provide notification to victims and, if a victim is a minor who is at least 10 years of age, the victim’s parent, guardian, or legal custodian, of his or her right to be accompanied by a victim advocate. The form contains the statutorily required notifications, information about victims’ rights under the Act and hospital duties under the Act, including the mandatory notice required by [Wis. Stat. § 50.378\(2\)\(d\)](#) and the authority of the hospital to exclude an advocate under certain circumstances. (See Sub. E. for more information about exclusions.) The form may be used by hospitals to make required notifications and can be found at: <https://www.dhs.wisconsin.gov/forms/f01805.pdf>

D. RIGHTS CREATED BY THE ACT

The Act gives victims of sexual assault, human trafficking, or child sexual abuse who, as a result of those violations, present as a patient at a hospital that provides emergency services the following rights:

- If a minor, the right to request accompaniment by a victim advocate without the consent of a parent, guardian, or legal custodian. [Wis. Stat. § 50.378\(2\)\(c\)](#)
- If a minor of at least 10 years of age, to have his or her parent, guardian or legal custodian provided with notice of the victim’s right to be accompanied by a victim advocate. [Wis. Stat. § 50.378\(2\)\(d\)](#)
- If requested, to be accompanied by a victim advocate at exams and consultations related to emergency services provided to the victim as described in Sec. III. [Wis. Stat. § 50.378\(2\)](#)
- To request the exclusion of a victim advocate at any examination or consultation that is performed at the hospital as a result of the sexual assault, human trafficking, or child abuse. [Wis. Stat. § 50.378\(2\)\(e\)](#) Such requests shall be directed to the victim advocate, and it is the duty of the victim advocate to comply

with such a request; however, an advocate's refusal to comply may be used by the hospital as a basis for excluding a specific victim advocate, pursuant to [Wis. Stat. § 50.378\(2\)\(g\)3.b.](#)

- To submit a complaint to the Department of Health Services, Division of Quality Assurance if he or she believes the hospital did not comply with the Victim Accompaniment Law. See Section V. for information about the grievance process.
- To receive notice of his or her right to be accompanied by a victim advocate and notice of his or her right to be accompanied by a different advocate, if the hospital has excluded a victim advocate. [Wis. Stat. § 50.378\(2\)\(d\)](#)

E. EXCEPTIONS AND EXCLUSIONS

1. *Delay of Treatment*

The hospital need not delay treatment or an exam pending the arrival of an advocate if the delay would endanger the health or safety of the victim or risk the loss of evidence. [Wis. Stat. § 50.378\(2\)\(f\)](#)

2. *Exclusion by the Patient*

A victim may request the exclusion of a victim advocate at any examination or consultation that is performed at the hospital as a result of the sexual assault, human trafficking, or child sexual abuse. The victim advocate is required by law to comply with the request. [Wis. Stat. § 50.378 \(2\)\(e\)](#)

3. *Exclusion by the Hospital*

A specific victim advocate may be excluded by the hospital for any of the following reasons pursuant to [Wis. Stat. § 50.378 \(2\)\(g\)](#).

1. The presence or continued presence of the victim advocate obstructs the provision of necessary medical care to the victim.
2. The victim advocate fails to comply with hospital policies governing the conduct of individuals accompanying patients in the hospital.
3. The hospital has knowledge that the victim advocate, in his or her role as a victim advocate at any hospital, has taken one of the following actions and is more likely than not to take that action again:
 - a. Failing to agree to or comply with confidentiality requirements relating to another individual at a hospital.
 - b. Failing to comply with a request by a victim that the advocate be excluded.

It is recommended that the hospital document the reason for excluding a specific advocate.

4. *Duty of Hospital if Hospital Excludes an Advocate*

If a hospital has excluded a specific advocate, the hospital must, at the request of the victim, permit a different victim advocate to accompany the victim. [Wis. Stat. § 50.378\(2\)\(h\)](#)

IV. FACILITATION OF VICTIM ADVOCATE ACCOMPANIMENT

A. CONTACTING A VICTIM ADVOCATE

If a patient wants to be accompanied by a victim advocate, a hospital is encouraged to provide additional information about how to contact an advocate if an advocate is not already present. The patient or hospital staff may contact resources to locate a victim advocate for the victim.

B. IDENTIFICATION OF LOCAL VICTIM ADVOCATES

1. **The Wisconsin Coalition Against Sexual Assault (WCASA)** maintains a directory of recognized individuals and organizations that provide victim advocate services. That directory can be found at:
<http://www.wcasa.org/pages/SASPs.php>

WCASA Contact Information

Mail: 2801 West Beltline Highway, Suite 202
Madison, WI 53713

Phone: 608-257-1516

Fax: 608-257-2150

Online: <http://www.wcasa.org>

2. **The Department of Justice Office of Crime Victim Services** maintains a list of sexual assault programs and early response services. This information can be obtained by calling 800-446-6564 or 608-264-9497 or visiting DOJ-OCVS online at <https://www.doj.state.wi.us/ocvs/specialized-resources/specialized-resources>.

NOTE: *There may be other local organizations that maintain current information about sexual assault victim service providers. Hospitals are encouraged to maintain current information about local sexual assault victim service providers to fulfill requests made by patients for an advocate.*

C. COMMUNICATIONS BETWEEN THE PATIENT AND THE VICTIM ADVOCATE

A victim advocate is responsible for discussing the victim advocate's confidentiality obligations and exceptions to confidentiality with the victim.

D. ACCESS OF VICTIM ADVOCATE TO VICTIM'S HEALTH CARE RECORD

The Act makes changes to [Wis. Stat. § 146.82](#) of the Wisconsin Statutes, which governs confidentiality of patient health care records. The Act permits a hospital to release a portion, but not a copy of a patient health care record to a victim advocate-providing accompaniment to a victim of sexual assault, human trafficking, or child sexual abuse under the Act. [Wis. Stat. § 146.82\(4\)\(b\)3](#).

V. GRIEVANCES

A. COMPLAINTS TO DHS

The Wisconsin Department of Health Services (DHS) is mandated by law to respond to any complaint received by DHS concerning noncompliance with the Victim Accompaniment Law by a hospital. Wis. Stat. § 50.378 (4)(a)

Any person who believes a hospital did not comply with the Victim Accompaniment Law, may file a complaint with the Department of Health Services (DHS) / Division of Quality Assurance (DQA). There are several ways to file a complaint with DQA:

Mail: DHS/DQA Bureau of Health Services
ATTN: Complaint Coordinator
819 N. 6th St., Room 609-B
Milwaukee, WI 53203

Phone: 608-266-8481

Toll-free: 1-800-642-6552

Online: <https://www.dhs.wisconsin.gov/guide/complaints.htm>

B. CIVIL LIABILITY

A hospital and its employees or agents are immune from civil liability for allowing a victim advocate to accompany a victim, for any failure to comply with any requirement of subsection 2 of the Victim Accompaniment Law [[Wis. Stat. § 50.378\(2\)](#)], and for any act or omission by a victim advocate [[Wis. Stat. § 50.378\(3\)](#)].