

MEMORANDUM

TO: Chairman Owens and Members of the Senate Judiciary Committee
FROM: Katherine McBride, Assistant Revisor
DATE: February 13, 2012
RE: 2011 SB 91

Two questions were posed regarding 2011 SB 91. First, how the bill interacts with K.S.A. 65-448, which concerns the examination of victims of sexual offenses. Secondly, how the term “medical care facility” is defined as referenced in the bill.

K.S.A. 65-448 provides that upon the request of a law enforcement officer and written consent of a reported victim, or upon the request of a victim, any physician, licensed physician assistant specially trained in performing sexual assault evidence collection, or a registered professional nurse specially trained in performing sexual assault evidence collection, on call or on duty at a state medical care facility, shall examine victims of certain sexual offenses (rape, criminal sodomy, aggravated criminal sodomy, indecent liberties with a child, aggravated indecent liberties with a child, incest and aggravated incest). Refusals by a physician, licensed physician assistant or registered professional nurse to conduct such an examination shall be reported to the appropriate licensing boards for disciplinary action.

All medical care facilities in this state are subjected to licensure. K.S.A. 65-427. The term “medical care facility”, as used in K.S.A. 65-448, means a hospital, ambulatory surgical center or recuperation center, but shall not include a hospice which is certified to participate in the medicare program under 42 code of federal regulations, chapter IV, section 418.1 *et seq.*, and amendments thereto, and which provides services only to hospice patients. K.S.A. 65-425. The use of the term “medical care facility” in SB 91 picks up the definition of “medical care facility” of K.S.A. 65-425, as the bill makes its two new sections part of and supplemental to the article in which this definition resides within the Kansas Statutes Annotated.

SB 91 requires licensed medical care facilities that provide emergency care to “sexual assault survivors” to amend evidence collection protocols for treatment of such survivors to include informing them about the availability of emergency contraception and educating them on the proper use of emergency contraception and appropriate follow-up care. “Sexual assault survivor” is defined by the bill as a female victim of certain sexual offenses (rape, indecent liberties with a child, aggravated indecent liberties with a child, incest or aggravated incest) who presents herself as a patient for treatment with regard to the sexual offense.

There may be one potential concern in an analysis of the interaction between SB 91 and K.S.A. 65-448. K.S.A. 65-448 specifically provides that the department of health and environment, in cooperation with the Kansas bureau of investigation, establish procedures for collecting sexual assault evidence. Additionally, the Kansas bureau of investigation is afforded rule and regulation authority in order to implement the provisions of the statute. K.S.A. 65-448(a) and (d). While 2011 SB 91 directs licensed medical care facilities to change evidence collection protocols for the treatment of sexual assault survivors, the department of health and environment and the Kansas bureau of investigation have separate statutory authority to collect sexual assault evidence. It is unclear whether there is a conflict between the bill’s requirement of medical care facilities to change procedures and established procedures in place by the department of health and environment and the Kansas bureau of investigation.