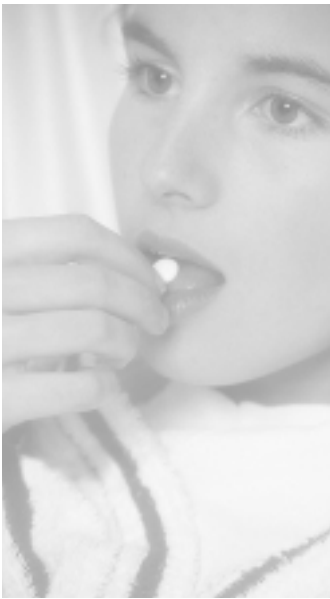


Strategy 2

Administrative Action



Administrative Action

Introduction

A second method of improving access to emergency contraception for rape victims is an administrative approach, in which advocates ask an executive branch agency (such as a state Department of Health) to issue regulations, guidelines or protocols for hospitals to follow.

This approach may be desirable in your state if legislation would be difficult or impossible for political reasons. A prerequisite for the administrative approach is that your Governor and state Health Commissioner are receptive to the idea. The administrative approach also can be useful as a first step for coalitions that wish to proceed more slowly toward legislation.

Advantages:

- Action to improve access to EC can be taken more quietly, behind the scenes, in an administrative process, without a public confrontation with those opposing emergency contraception.
- Consideration of the measure will take place in an arena in which medical experts may weigh in more heavily, as opposed to a legislative arena, in which political concerns may override medical science.

Disadvantages:

- Administrative action does not carry the same force as legislation.
- Administrative protocols can be changed if Governors or Health Commissioners change and have different views about EC.
- Because administrative deliberations usually take place out of the public eye, the administrative agency can make compromises behind-the-scenes without your input or knowledge. Advocacy groups planning to promote administrative policies should be sure they have access to the administrators who will be writing the policy.

This section of the toolkit provides examples of administrative policies adopted in two states, New York and Ohio, with some discussion about the process by which the policies were issued and the perceived effectiveness of these measures.

The New York experience

In response to disparities in treatment of sexual assault victims in hospitals around the state, pro-choice and anti-sexual assault organizations approached the New York State Department of Health, which was in the process of revising its official hospital protocol for treating sexual assault victims. The advocacy organizations presented information about the efficacy and safety of emergency contraception (EC) in preventing pregnancy from sexual assault, and stressed the fact that EC is more effective the sooner it is taken. They noted the delays that can be caused when a hospital sends a rape victim elsewhere to obtain EC.

In May 2002, the NYSDOH issued a *Protocol for the Acute Care of the Adult Patient Reporting Sexual Assault*, an update from the 1991 protocol. By establishing a standard of care for providers throughout the state, the revised protocol requires all hospitals to establish and implement policies for the treatment of rape victims. The 2002 protocol included guidance for hospitals on STD testing, procedures for contacting rape victim advocates as well as collecting and maintaining forensic evidence utilizing the New York State standardized evidence collection procedures.

Significantly, the new protocol advised hospitals to counsel rape victims about emergency contraception and to either provide the medication on site or arrange for the rape victim to receive it from an alternate provider in a timely manner. The Protocol stopped short of simply requiring all hospitals to provide EC on site to rape victims, due to behind-the-scenes lobbying against such a provision by the New York State Catholic Conference, representing Catholic hospitals.

Key Features of the 2002 New York State Protocol:¹

Sexual assault examiners in hospital emergency departments are expected to:

- Counsel female patients about pregnancy prophylaxis options (EC) and the importance of timely action.
- Ensure that patients are properly informed of the effectiveness rates, risks and benefits associated with medications and devices to prevent pregnancy after a sexual assault.
- Provide patients with accurate and appropriate information to make an informed choice regarding prophylaxis against pregnancy resulting from sexual assault.
- Ensure that services to obtain EC are made available without delay.

The Protocol does permit a hospital to elect not to provide emergency contraception. However, it clearly states that in such situations, *the hospital is responsible to make arrangements with another provider to dispense EC to the rape victim*. Such arrangements can include:

- Providing the patient with a prescription for the medication when it can be confirmed that there is a pharmacy open and able to meet this need on a timely basis.
- Providing the patient with an order that can be honored on an ordered ambulatory basis by a facility clinic that is able to meet this need and is available to the patient; or,
- Referring the patient to a physician or a clinic where arrangements have been made for the patient to receive prophylaxis against pregnancy resulting from sexual assault.

¹ *Protocol for the Acute Care of the Adult Patient Reporting Sexual Assault*. New York State Department of Health. May 2002. http://www.health.state.ny.us/nysdoh/sexual_assault/index.htm.

This Protocol establishes that a patient must have access to prophylaxis. Moreover, a non-providing hospital must consider the patient's ability to secure the medication elsewhere on a timely basis. This will be accomplished by documenting that the patient:

- is physically and mentally able to pursue alternate options;
- is suitably attired to present at an alternate site; and
- has (as appropriate and necessary) transportation and resources needed to secure the treatment.

If any of the above criteria cannot be met, treatment must be directly provided by the initial hospital.

These conditions are crucial features of the NYS Protocol as they ensure that pregnancy prophylaxis (EC) is provided. Although the Protocol does not require hospitals to actually provide EC on site, it does at least provide for appropriate referral to an alternative site that can provide EC on a timely basis, *if* the woman is capable of getting there.

Pro-choice and anti-sexual assault advocates in New York State felt that the Protocol was an important step forward, but that it still stopped short of the ideal requirement that all hospitals should have to provide EC on site.

The Ohio experience

In Ohio, the Crime Victim Compensation Act requires that hospitals, that apply for state compensation, follow the *Protocol for the Treatment of Adult and Adolescent Sexual Assault Patients*, which is issued by the Ohio State Department of Health. Providers must adhere to this protocol, which was revised in 2002, to receive victim compensation funding in their medical facilities.

Key features of the Ohio Protocol for treating a sexual assault patient:²

- According to the Ohio Revised Code 2907.01³, sexual assault encompasses rape and sexual battery, as well as any sexual penetration involving force or coercion against the person's will.
- The Protocol states that medical personnel must discuss and offer options for emergency contraception with the female patient who has been sexually assaulted.
- Treatment, however, is at the discretion of the health care provider with the permission of the patient.
- If the medical facility does not provide emergency contraception for religious reasons, the victim must be referred to another physician, facility or agency within 72 hours of the assault.
- Medical personnel should inform the patient that some medications may lessen the effectiveness of emergency contraception and determine if the patient is taking such medication.

It is important to note that the Protocol does not in any way mandate providers to give emergency contraception. Moreover, the Protocol has a broad exemption and a referral process that, because of the timing, will not ensure that women can get access to EC in a sufficiently timely manner.

For a complete version of the Ohio protocol go to:
<http://www.odh.state.oh.us/ODHPrograms/SADV/sadvprot.htm>

² *Protocol for the Treatment of Adult and Adolescent Sexual Assault Patients*. Ohio Department of Health Sexual Assault Protocol, Revised July 2002.

³ The Ohio Revised code can be found at <http://onlinedocs.andersonpublishing.com/revisedcode/>.