

Payment for Forensic Exams

Introduction

With the passage of the Violence Against Women Act (VAWA) in 1994, Congress specifically addressed the problem of sexual assault victims being charged with forensic exam costs.⁽¹⁾ Requiring states, Indian tribal governments, and local governmental agencies to assume responsibility for the "full out-of-pocket cost of forensic [sexual assault] medical exams"⁽²⁾ in order to qualify for the S.T.O.P. (Services Training Officers Prosecutors) Violence Against Women Formula Grants Program provided incentives for states to find alternative ways to cover the costs of sexual assault evidentiary exams.

In order to receive these federal funds, states must certify that sexual assault victims will not be responsible for the forensic exam costs and must designate an entity to pay for the exams. Although this requirement must be met for grant eligibility, the grants available under VAWA are not intended to be used to pay for forensic exams; instead, the funding is earmarked for a variety of other services related to violent crimes against women.

State Laws

Today, in order to receive the available federal funding, most states have enacted laws specifically providing for a designated payment source to cover the costs of forensic exams. Under the VAWA provisions, three options for compliance are offered:

- the entity can itself provide forensic exams to victims free of charge;
- the entity can arrange for victims to obtain exams from another source at no charge to the victims; or
- the entity can reimburse victims for the cost of such exams.⁽³⁾

If the third option is used, certain conditions must be met:

- reimbursement must cover the full cost of the exam without the application of a deductible or limitation on the amount paid;
- victims must be given at least one year from the date of the exam to apply for reimbursement;
- payment must be made by the applicable governmental entity within ninety days after receipt of written notification of the victim's incurred expense; and
- the reimbursing entity must provide information to all victims, including those who speak little or no English, at the time the exam is conducted, concerning procedures for obtaining reimbursement.⁽⁴⁾

Most states have chosen to have hospitals and clinics perform the exams without charge to the victim and then apply for reimbursement by the designated payment entity. By doing so, they avoid the ninety-day turnaround period required when victims are reimbursed.

Payment Entities

In most states, the exams are paid for by compensation programs or law enforcement agencies. Although forensic exam costs may be awarded as a medical treatment expense under many states' compensation programs, fifteen states have specifically chosen their programs as the primary source of payment for forensic exams.[\(5\)](#)

A number of states place responsibility for payment on the county in which the sexual offense occurred[\(6\)](#) or on the entity requesting that the victim have the examination performed, most often the investigating law enforcement agency[\(7\)](#) or the prosecuting attorney.[\(8\)](#)

Other entities designated as payment sources include:

- victim services agencies;
- criminal justice institutes;
- social service/health departments; and
- attorney general offices.

Billing Standards

- *Victim billing prohibited.* Laws in eighteen states designating a payment source for forensic exam costs, such as Connecticut, Kentucky, and West Virginia, specifically prohibit victim billing.[\(9\)](#)
- *Insurance coverage.* Some states, including Delaware and Pennsylvania, require that the victim's insurance be used as the first source of payment.[\(10\)](#) Illinois insurance companies are prohibited from incorporating exceptions to coverage in health insurance policies precluding payment of sexual assault exams and testing.[\(11\)](#) The submission of claims for forensic exams to the victim's insurance company raises privacy concerns. A few states' laws, like that enacted in New Hampshire, attempt to address this issue.[\(12\)](#)
- *Victim reimbursement.* In a few other states, such as New Jersey, victims may incur out-of-pocket expenses for exams until they are reimbursed by the appropriate entity.[\(13\)](#) Because it takes time to process reimbursement claims, victims in such states may be harassed for payment and have their credit histories damaged if they are unable to pay. Creditor intercession services can be especially helpful to these sexual assault victims.

Requirements for Payment

In a number of states, such as Florida and Mississippi, payment for the exam is conditioned on the victim's reporting of the crime and subsequent cooperation with the investigation and/or prosecution of the case.[\(14\)](#) Both of these conditions can cause problems for sexual assault victims. A victim who consents to having an exam and then decides not to report the crime to police may find herself responsible for the exam expenses. A victim who files a police report and

later determines that he or she is unable or unwilling to withstand the ordeal of a trial may also be billed for the exam. Victims need to be made aware of the possible financial consequences of choosing not to report the crime or pursue criminal prosecution.[\(15\)](#)

Payment Restrictions

About half of the states define what expenses are covered under their forensic exam payment laws.

- At least twelve states perform exams only for the purposes of collecting and securing crime scene evidence.[\(16\)](#)
- Other states, in addition to allowing payment for evidence collection, also cover disease testing and treatment.[\(17\)](#)
- At least one state offers sexual assault victims the option of pregnancy prevention medication.[\(18\)](#)

Limits may also be placed on the total amount reimbursable for an exam in the form of monetary caps. Of the fifteen states in which the victim compensation program is the designated payment entity for sexual assault forensic exams, five states impose no general cap on how much can be paid.[\(19\)](#) Eight other states, however, require providers to accept the compensation payment as payment in full.[\(20\)](#)

- Florida's \$250 cap is considered payment-in-full.[\(21\)](#)
- Pennsylvania has a higher cap, \$500 for the exam cost plus \$100 for medications.[\(22\)](#)
- North Carolina's \$1,000 maximum also covers mental health services provided to the victim.[\(23\)](#)

Other states, including Minnesota and West Virginia, determine maximum payment amounts on the basis of what are considered to be reasonable, customary expenditures for the services provided.[\(24\)](#)

Funding Sources

- *Federal funds.* States that use their compensation programs as the designated payment source for forensic exams receive some federal funds through grants under the Victims of Crime Act of 1984 (VOCA) to help cover the exam costs.[\(25\)](#)
- *Appropriations.* Other states must rely on appropriations and related funding sources. Both Missouri and West Virginia reimburse hospitals and physicians conducting forensic exams out of appropriations designated for that purpose.[\(26\)](#) Indiana's victim services division distributes grants to assist in the establishment of programs providing emergency sexual assault services.[\(27\)](#)
- *Court-imposed offender penalties and restitution.* Some states require the convicted offender to either pay a fee to a specified fund or to directly reimburse the paying entity. Offender penalties in Delaware are used to reimburse the victim compensation fund for forensic exam payments.[\(28\)](#) In Florida, convicted offenders, including juveniles, are ordered to pay restitution to the Crimes Compensation Trust Fund for the cost of the

initial forensic physical exam.(29) Restitution for medical examinations and related disease testing is also mandatory under Mississippi law.(30)

- *Civil judgments.* Under North Carolina law, when a sexual assault victim successfully sues an offender civilly for damages, reimbursement of the compensation program for the assistance awarded is included as part of the judgment against the offender.(31)

Special Concerns

Despite these federal and state legislative efforts, feedback from the field indicates that sexual assault victims are still being billed. In addition to problems due to ineffective billing procedures, many states share a number of related concerns.

- *Inefficient procedures.* In many states, victims frequently receive bills for forensic exam costs because of inefficient claims processing. Hospital emergency room staff are often not aware that another entity is responsible for payment, and handle exam bills, as they would be for any other medical treatment, sending the bills directly to the victim's insurance company or to the victim.
- *Delays in claims processing for victims who are billed in error.* The average time for processing claims ranges from two to three months in Kentucky to up to two years in Indiana. Many of the compensation programs that serve as primary payment sources for forensic exams have developed special claims processing procedures in order to expedite payment and reimburse victims within the requisite ninety-day period.(32)
- *Payment limits.* The fact that some states limit payments for forensic exams to amounts which are much lower than the actual exam costs is also problematic. In those states, hospitals and providers must either look to other sources for payment of the remaining balance or absorb the difference.
- *Campus sexual assault.* College students who are raped or sexually assaulted on campus face special issues in obtaining payment for forensic exams. Many school clinics are not equipped to perform sexual assault forensic exams, forcing victims to seek treatment off-campus where they may be responsible for the costs of the exam and related testing. In states where insurance must be billed first, student victims, many of whom are covered under their parents' health insurance policies, must choose to disclose the assault to their parents or find a way to pay the costs themselves.
- *Drug-facilitated sexual assault.* The use of drugs such as Rohypnol (flunitrazepam) and GHB (gamma-hydroxybutyrate) to incapacitate victims in order to sexually assault them has increased in recent years. As a result, collection of evidence in these types of cases has become a serious problem. The testing is expensive, and, in most jurisdictions, the urine samples needed to detect traces of the drugs are not routinely included in standardized rape kits so that valuable evidence is often lost. Rape kits need to be updated to allow for drug testing in cases when drug-facilitated rape is suspected, and both law enforcement officers and medical professionals need training to recognize when drugs may have been used.
- *Evidence collection problems.* In some states troublesome procedures in collecting DNA samples from victims as well as in the handling of evidence have been noted. Victims have complained about the insensitive manner in which evidence is collected, and improper handling of analyzed rape kits has resulted in the destruction of evidence. A

few states, like Connecticut and Illinois, have established programs to train hospital personnel in the correct use of sexual assault evidence collection kits.⁽³³⁾ In further response to such problems, a federal law, the Paul Coverdell National Forensic Sciences Improvement Act, was enacted in 2000 to provide funding for states to improve the quality and timeliness of DNA testing and related forensic science services.⁽³⁴⁾

- *DNA sample analysis backlog.* A related concern is the problem of labs taking too much time to process rape exam kits. In many states, the backlog of samples awaiting DNA analysis is already unmanageable. The DNA Analysis Backlog Elimination Act of 2000 provides federal funding to states to enable labs to hire the additional personnel needed to eliminate the backlog and decrease the processing time.⁽³⁵⁾

While most States have laws that designate payment sources to cover the costs of forensic exams, victims of sexual assault continue to be billed. Sexual assault victims need to be informed of their rights concerning the payment of forensic exams and to have avenues of recourse available when these rights are violated.

End Notes

1. 42 U.S.C. § 3796gg-4.
2. 42 U.S.C. § 3796gg(a)(1).
3. 42 U.S.C. § 3796gg-4(b).
4. *Id.*
5. Alabama, Arkansas, Delaware, Florida, Indiana, Iowa, Maine, New Hampshire, North Carolina, Oklahoma, Pennsylvania, South Carolina, Utah, Vermont, and Washington.
6. Examples include: Arizona, Kansas, Minnesota, Nevada, Ohio, and South Dakota.
7. Examples include: California, Colorado, Georgia, Idaho, Montana, Nebraska, Oregon, Texas, and Wyoming.
8. Examples include: Mississippi and West Virginia.
9. Conn. Code § 19a-112a; Ky. Code § ; and W.Va. Code § 61-8B-16. Other states include Alaska, California, Delaware, Florida, Indiana, Kansas, Maine, Maryland, Minnesota, Mississippi, Nevada, New Hampshire, Oregon, Pennsylvania, and Washington.
10. Del. Code 11 § 9019; Ky. Code § 15.935; Mn. Code 609.35; Mo. Code § 191.225; N.H. Code § 21-M:8-c; N.C. Code §§ 143B-480.1-3; and Penn. Code 42 § 1726.1 and 18 § 11.707 (H).
11. Ill. Code §§ 215-5/367; and 215-165/15.8.
12. N.H. Code § 21-M:8-c.
13. N.J. Code § 52:4B-44 (c)(4) (2000).
14. Fla. Code § 960.28 and Miss. Code § 99-37-25.
15. A new law in Maine, enacted in 1999, specifically addresses this issue. Victims who have not reported the sexual assault to police may have a forensic exam conducted without fear of being billed since billing of the victim or the victim's insurance company is specifically precluded under the law. The exam kit is given a tracking number to protect the victim's confidentiality and transported to the nearest law enforcement agency to be stored for at least ninety days. "If during that 90-day period [a]...victim decides to report the...offense to a law enforcement agency, the...victim may contact the hospital or health care practitioner [who conducted the exam] to determine the tracking number. The

hospital or health care practitioner shall provide the...victim with the tracking number on the forensic examination kit and shall inform the...victim which law enforcement agency is storing the kit.” The necessary evidence is preserved, and the victim is given time to decide how he or she wishes to proceed. Me. Code 5 § 3360-m and 24 § 2986.

16. Ariz. Code § 13-1414; Cal. Penal Code § 13823.95 (a-b); Colo. Code § 18-3-407.5 (1-2); Conn. Code § 19a-112a; Ga. Code § 16-6-1 and § 16-6-2; Idaho Code § 19-5303; La RS Code § 46:1802 (d); Me. Code tit. 30-A § 287; Mont. Code § 46-15-411 (1-2); Ohio Code § 2907.28; W.Va. Code § 61-8B-15-18; and Wyo. Code § 6-2-309.
17. Ala. Code § 15-23-5; Del. Code § 11-9019; Ill. Code 410 § 70/5-7; Iowa Code § 915.41; Ky Code § 216B.400 (as amended by 2000KY HB 448); Md. HG Code § 15-127; Nev. Code § 449.244 (1-2); N.C. Code §§ 143B-480.1-480.3; Pa. Code 18 P.S. § 11.707; and S.C. Code § 16-3-1350.
18. S.C. Code § 16-3-1350.
19. *Supra*, n. 9. States include Alabama, North Carolina, Utah, Vermont, and Washington.
20. *Id.* States include Arkansas, Delaware, Florida, Iowa, Maine, New Hampshire, Pennsylvania, and South Carolina.
21. Fla. Code § 960.28 (1-4).
22. Penn. Code 18 § 11.707.
23. N.C. Code § 143B-480.2.
24. Minn. Code § 609.35 and W.Va. Code § 61-8B-16 (a).
25. 42 U.S.C. § 10603(d)(2)(D).
26. Mo. Code § 191.225 and W.Va. Code § 61-8B-16.
27. Ind. Code § 16-21-8-4.
28. Del. Code § 11-9019.
29. Fla. Code § 960.28.
30. Miss. Code § 99-37-25.
31. N.C. Code § 143B-480.3.
32. *Supra*, note 9.
33. Ill. Code § 410-70/6.4.
34. Pub. Law No. 106-561.
35. Pub. Law No. 106-546.