

Form #2

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

ATTACH A BRIEF SUMMARY OF YOUR PROPOSAL

Agency: Department of Administration
Rule Type: Legislative

Title Number: 168CSR1
Cite Authority: 61-8B-18

**STATEMENT OF CIRCUMSTANCE
AND BRIEF SUMMARY**

Title 168, Series 1, Payment for Costs of Forensic Medical Examination

During the Regular Legislative Session of 2007 the Legislature revised the statutes governing the Forensic Medical Examination Fund in Senate Bill 529 (Effective June 10, 2007). Further amendments of the statute not forthcoming and after approval of the Insitute's Executive Council the Insitute now seeks to amend the rules to comport with the statutory changes contemplated in said bill.

Changes include prohibiting any requirement that an alleged victim of a sexual offense must pay for the costs of a forensic medical examination , participate in the criminal justice system or cooperate with law enforcement in order to receive a forensic medical examination. Additionally changes include eliminating certain reimbursements and clarifying that licensed medical facilities may seek payment from the alleged victim or his or her insurer for services rendered other than forensic medical examinations.

FILED

**TITLE 168
PROCEDURAL RULE
PROSECUTING ATTORNEYS INSTITUTE**

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

**SERIES 1
PAYMENT FOR COSTS OF FORENSIC MEDICAL EXAMINATION**

§168-1-1. General.

1.1. Scope. -- This rule outlines procedures for paying the costs of forensic medical examinations for victims of sexual offenses from the forensic medical examination fund administered by the West Virginia Prosecuting Attorneys Institute. This rule is not intended to set standards for the conduct of a criminal investigation or to affect in any manner the admissibility of evidence.

1.2. Authority. -- W. Va. Code §61-8b-18.

1.3. Filing Date. -- June 3, 2002.

1.4. Effective Date. -- July 3, 2002.

§168-1-2. Definitions.

2.1. Terms Defined by Statute -- Terms defined in W. Va. Code §61-8B have the same meanings when used in this rule unless the context or subject matter clearly requires a different interpretation.

2.2. Terms Defined -- As used in this rule, the following terms have the following meanings unless the context or subject matter clearly requires a different interpretation:

2.2.1. "Licensed health care professional" means a state-licensed health care professional licensed, registered or certified under Chapter 30 of the W. Va. Code.

2.2.2. "Licensed medical facility" or "hospital" means a hospital, critical access hospital or other health facility

licensed under W. Va. Code §16-5B, a similarly licensed out-of-state hospital that accepts West Virginia medicaid patients in a county adjacent to the West Virginia county in which venue lies, or a facility authorized and operated under W. Va. Code §16-2.

2.2.3. "Physician" means a physician licensed under W. Va. Code §§30-3 or 30-14.

2.2.4. "Sexual assault nurse examiner" or "SANE" means a registered nurse who has received at least forty (40) hours of sexual assault nurse examiner classroom training in the area of sexual assault through an accredited school of nursing or a program approved for continuing education credit by the West Virginia Board of Examiners of Registered Professional Nurses, and who has completed the associated clinical experience requirement.

§168-1-3. Responsibilities of the Licensed Medical Facility.

3.1. In order to be eligible for and to receive reimbursement for conducting forensic medical examinations, a licensed medical facility must comply with the following procedures:

3.1.1. Each hospital performing medical examinations must use either the WV State Police Sexual Assault Kit or kits containing, at a minimum, the items contained in the WV State Police Sexual Assault Kit. Each hospital may order sexual assault kits free of charge from the WV State Police.

3.1.2. Where an alleged victim of an alleged violation of W. Va. Code §61-8b ET SEQ. chooses to participate in an investigation of said alleged violation and if If an investigating officer is not present at the time the alleged victim arrives at the hospital, a law enforcement officer ~~an investigating officer or local police agency~~ should be contacted immediately through appropriate emergency channels.

3.1.3. Prior to conducting a forensic medical examination, the examining physician or SANE will explain to the alleged victim what a sexual assault examination involves and determine whether the victim wishes to participate in an investigation regarding the alleged sex crimes violation and document said decision in writing. ~~prosecuting attorney or assistant prosecuting attorney in the county where the alleged assault occurred must be notified and approve conducting a forensic medical examination. If the prosecuting attorney or assistant prosecuting attorney is not available, then approval must be obtained from the investigating officer or police agency. The hospital should keep on hand copies of the Forensic Medical Examination Fund Certification Form, available upon request from the Prosecuting Attorneys Institute. The obtaining of additional consents included in the sexual assault kit and any additional consents which may be required by law is the responsibility of the hospital.~~

3.1.4. If possible, the forensic medical examination should be conducted by a physician, a sexual assault nurse examiner (SANE), a physician assistant working under the direct supervision of a physician, or an advanced practice nurse. Recognizing, however, that sensitivity to the needs of a victim of sexual assault may preclude delays in conducting the examination, payment will not be refused based on qualifications of the medical personnel performing the examination when the forensic medical examination is

conducted by a licensed health care professional acting within the scope of practice at a licensed medical facility.

3.1.5. Hospital personnel should take note of any physical evidence, such as statements made by the alleged victim, as well as articles of clothing, etc. It is strongly recommended that the hospital preserve documents concerning this evidence and record the methods of collection.

3.1.6. Where an alleged victim of an alleged violation of W. Va. Code §61-8b ET SEQ. chooses to participate in an investigation of said alleged violation, after ~~After~~ gathering the forensic evidence, the sexual assault kit shall be sealed and turned over to the investigating officer or police agency. Any and all other evidence collected by hospital staff shall also be turned over to the investigating officer or police agency. Where an alleged victim of an alleged violation of W. Va. Code §61-8b ET SEQ. chooses not to participate in an investigation of said alleged violation hospital personnel will be responsible for preparing the forensic evidence to be transported in such a manner and to such a location as is designated in the instructions accompanying the WV State Police Sexual Assault Kits.

3.1.7. Following the completion of a forensic medical examination, the hospital shall submit a certification that such an examination was performed and may submit, within a reasonable time of the date of examination, an original invoice for the forensic medical examination to the West Virginia Prosecuting Attorneys Institute at its regular business address, Attention: Forensic Medical Examination Fund, ~~prosecuting attorney in the county where the alleged offense occurred.~~ The invoice shall contain the name of the alleged victim and the date of the alleged offense.

3.1.8. ~~A second original invoice should be sent to the WV Prosecuting Attorneys Institute at its regular business address, Attention: Forensic Medical Examination Fund. Reimbursement from the Fund is limited to \$350.00 for the cost of a forensic medical examination or, when that sum appears to be less than all reasonable, customary and usual costs of the forensic medical examination, a greater sum determined by resolution of the Executive Counsel of the West Virginia Prosecuting Attorneys Institute after consultation with providers and consideration of the limits of available funding. A licensed medical facility may not bill the alleged victim, or the alleged victim's insurance company, of an alleged violation for costs of a forensic medical examination authorized and approved by a Prosecuting Attorney, investigating officer or police agency.~~

§168-1-4. Responsibilities of Law Enforcement Agencies.

4.1. When contacted an The investigating officer or law enforcement agency is responsible for the following duties:

4.1.1. The investigating officer should inform the victim upon arrival at the hospital that the Forensic Medical Examination Fund will pay for the cost of the forensic medical examination, ~~if the examination is conducted as part of a criminal investigation.~~ The investigating officer may need not require secure a an alleged victim's agreement to pursue prosecution of the case as a condition precedent to of obtaining the examination. Payment from the fund may not be refused for the reason that the victim later fails or refuses to cooperate in a criminal prosecution.

4.1.2. The investigating officer is responsible for contacting the prosecuting attorney or assistant prosecuting attorney in the county where the alleged offense

occurred to alert said prosecuting attorney or assistant prosecuting attorney of the investigation in order for the prosecutor to approve conducting the forensic medical examination.

~~4.1.3. When the prosecuting attorney or assistant prosecuting attorney in the county where the alleged offense occurred is unavailable to give approval to the hospital to conduct a forensic medical exam, the investigating officer may give approval for the administration of the exam. If the investigating officer approves the exam, that officer must complete and sign the Forensic Medical Examination Fund Certification Form.~~

~~4.1.4. Regardless of who initially approves the examination, the prosecuting attorney in the county where the alleged offense occurred must sign the certification form for payment to be authorized. Therefore, the investigating officer must send a certification form signed by the officer or police agency to the appropriate prosecuting attorney. An investigating officer may transmit a signed form by fax.~~

4.1.3 4.1.5. Upon completion of the forensic medical exam, the investigating officer is responsible for promptly transferring all evidence to the WV State Police Crime Laboratory in South Charleston, West Virginia for evaluation.

~~§168-1-5. Responsibilities of the Prosecuting Attorney.~~

~~5.1. The prosecuting attorney is responsible for the following duties:~~

~~5.1.1. The prosecuting attorney or an assistant prosecuting attorney in the county where the alleged sexual offense occurred will be notified by the licensed medical facility prior to administering the forensic medical exam. If the prosecuting attorney or assistant prosecuting attorney agrees that the examination is in connection~~

~~with a criminal investigation in that county, the prosecutor shall authorize the forensic medical examination and shall complete and sign a Forensic Medical Examination Fund Certification Form. If the prosecuting attorney or assistant prosecuting attorney from the appropriate county cannot be reached, the investigating officer or local police agency may approve conducting the examination.~~

5.1.2. Following completion of the forensic medical exam, the licensed medical facility will send an original examination invoice to the prosecuting attorney in the county where the alleged offense occurred.

5.1.3. The prosecuting attorney shall review the forensic information presented in the invoice. If appropriate, the prosecuting attorney shall certify that the examination was conducted as part of a criminal investigation. When a law enforcement officer authorized the initial examination, the prosecuting attorney may add his or her certification on the same form. The completed certification form should be attached to the original invoice.

5.1.4. The prosecuting attorney shall forward as quickly as possible, but in any event within a reasonable time, the invoice and completed certification form to the WV Prosecuting Attorneys Institute at its regular business address, Attention: Forensic Medical Examination Fund.

~~5.1.5. Upon approval by the State Auditor, the Prosecuting Attorneys Institute may accept faxed transmittals of the certification form and first original invoice. When transmitting documents by fax, the Prosecuting Attorney shall keep the original documents on file in his or her office.~~

§168-1-5. §168-1-6. Responsibilities of Prosecuting Attorneys Institute.

56.1. Upon receipt of certification that an examination was performed and an

~~original invoice and a Prosecuting Attorney's certificate in proper form the Prosecuting Attorneys Institute shall promptly transmit, at intervals no less often than monthly, all necessary documentation, in a form acceptable to the Auditor, to the Department of Administration for computer entry and further payment processing.~~

6.2. Upon receipt of a ~~faxed documents from the offices of the Prosecuting Attorneys, the Prosecuting Attorney's Institute shall:~~

56.2.1. ~~Identify the source of the transmission by verifying that it originated from the office of a Prosecuting Attorney;~~

~~6.2.2. Authenticate the Prosecutor's signature on the transmission by comparing it with an original signed exemplar on file with the Prosecuting Attorney's Institute; and~~

~~6.2.3. Affix to the certificate a stamp and original signature of authorized staff of the Prosecuting Attorneys Institute, attesting that the source of the transmission has been identified and the signature authenticated.~~

§168-1-6 §168-1-7. Limitations on Use of Fund.

67.1. A licensed medical facility performing a forensic medical examination must conduct the exam within a reasonable time of the alleged sexual assault in order to be eligible for reimbursement from the Fund. Generally, in order to obtain usable evidence, a reasonable time is as soon as possible and should not exceed ninety-six (96) seventy-two (72) hours after the time of the alleged assault. If, however, in the judgment of the prosecuting attorney or law enforcement officer, in the judgment of the physician, sexual assault nurse examiner (SANE), physician assistant working under the direct supervision of a physician or the

advanced practice nurse, special circumstances exist and the forensic examination should be authorized and conducted even after the passage of ninety-six ~~seventy-two~~ hours, the judgment of the prosecuting attorney or law enforcement officer will determine whether the time elapsed after the alleged assault is such examination will be considered to be conducted within a reasonable time. This section does not impose any time limitation within which a licensed medical facility must bill in order to obtain reimbursement from the fund.

67.2. Medical exams are primarily restricted to the collection of forensic evidence.

67.3. The West Virginia Forensic Medical Examination Fund covers only the cost of forensic medical exams. The Fund does not cover the cost of any treatment of injuries, pregnancy prevention or additional testing for pregnancy or sexually transmitted diseases.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 168CSR1

Type of Rule: ☒ Legislative ☐ Interpretive ☐ Procedural

Agency: West Virginia Prosecuting Attorneys Institute

Address: The Cambridge Building, Suite 202
90 MacCorkle Ave., SW
South Charleston, WV 25303

Phone Number: (304) 558-3348 Email: philip.w.morrison@wv.gov

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure
will have on costs and revenues of state government.

These changes will have no fiscal impact

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of
Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: _____

Rule Title: 168CSR1

3. Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues.

Don't foresee any short or long term impact.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

These changes will have no fiscal impact because they do not change the amount reimbursed to forensic examination providers. They only change the process by which the providers are reimbursed. (streamlining the process)

Date: June 8, 2009

Signature of Agency Head or Authorized Representative



JOE MANCHIN, III
GOVERNOR

ROBERT W. FERGUSON, JR.
CABINET SECRETARY

PHILIP W. MORRISON, II
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June 9, 2009

MARK A. SORSAIA
CHAIRPERSON

EXECUTIVE COUNCIL
CHRISTOPHER D. CHILES
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CARL L. HARRIS
PATRICK N. WILSON
W. KENT CARPER
DAVID SIMS

Via Hand-Delivery

The Honorable Natalie E. Tennant
Secretary of State
Building 1, Suite 157K
1900 Kanawha Boulevard, East
Charleston, WV 25305

Re: Legislative Rules

Dear Secretary Tennant,

I am enclosing an original and one copy of the documents listed below for filing. The proposed rules are being filed in an effort to conform the existing rules with the amendments in the governing statute. I will provide a copy of the enclosed documents to the Legislative Rule Making Review Committee once they are marked filed by your office.

The documents enclosed consist of the following:

1. Notice of Comment Period on a Proposed Rule,
2. Statement of Circumstance and Brief Summary,
3. Proposed Rules, and
4. Fiscal Note for Proposed Rules.

Thank you very much for your assistance. If you have any questions, or need any additional information, please do not hesitate to give me a call.

Sincerely,

Philip W. Morrison, II
Executive Director, WVP AI

Enclosures