

**WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION**

Form #5

Do Not Mark In This Box

FILED

2002 JUN -3 A 10:16

OFFICE WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY: Prosecuting Attorneys Institute TITLE NUMBER: 168-01

CITE AUTHORITY: W. Va. Code §61-8b-18

RULE TYPE: PROCEDURAL INTERPRETIVE

EXEMPT LEGISLATIVE RULE

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 1

TITLE OF RULE BEING PROPOSED: Payment for Costs of Forensic Medical Examination

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS July 3, 2002

A. B. A.
Authorized Signature

Willy Chul

SCANNED

\$4.00

West Virginia Prosecuting Attorneys Institute
168-01
Payment for Costs of Forensic Medical Examination

Comments received:

1. Reynolds Memorial Hospital expressed a concern that the "72 hour billing requirement" in §7.1 did not allow hospitals sufficient time to bill (see attached letter). CAMC made the same comment by phone.
2. The Center for Rape Crisis Information, through Deborah Bonasso, expressed a concern by telephone that the definition of "Licensed Medical Facility" might prohibit payment when a victim of sexual assault was taken to a hospital just across the state line. (The Fund currently pays these hospitals.)

Agency response:

1. Although the actual language of §7.1 required only **administering the rape kit examination** within a reasonable time after an assault, the agency concluded that the language was apparently subject to misinterpretation. Clarifying language was added to state that the section imposed no time limitation within which a hospital must bill.
2. The agency changed the definition of licensed medical facility to include out-of-state hospitals that accept W.Va. Medicaid patients, located in counties adjacent to the county where the assault occurred.

Amendments:

New clarifying language was added to §7.1, as follows:

7.1. 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 seventy-two (72) hours after the time of the alleged assault. If, however, in the judgment of the prosecuting attorney or law enforcement officer, special circumstances exist and the forensic examination should be authorized and conducted even after the passage of seventy-two hours, the judgment of the prosecuting attorney or law enforcement officer will ~~be given great weight in determining~~ determine whether the time elapsed after the alleged assault is reasonable. This section does not impose any time limitation within which a licensed medical facility must bill in order to obtain reimbursement from the fund.

New language was added to 2.2.2, as follows:

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.



APRIL 16, 2002

Reynolds Memorial Hospital, Inc.

800 Wheeling Avenue
Glen Dale, West Virginia 26038
Phone: 304 845-3211
FAX: 304-843-3202

WEST VIRGINIA PROSECUTING ATTORNEYS INSTITUTE
90 MACCORKLE AVENUE SW
SUITE 202
SOUTH CHARLESTON WV 25303

Attention: Bill Charnock
Executive Director

Dear Mr. Charnock:

This is in response to the proposed rules on forensic medical examinations. The Reynolds Memorial Hospital Emergency Disaster Committee reviewed the proposed ruling at our meeting this morning. We have concern over the 72 hour billing requirement specifically over a weekend when sexual assaults are more prevalent. As billing personnel are not available on the weekend to manually create a bill this would create an undue hardship on hospitals. If a time requirement for billing is necessary, we would suggest a minimum of five days to allow for weekends and holidays.

We appreciate the opportunity to respond on this ruling and will await to hear the final ruling.

Sincerely,

John J. Templeton, MD
Chairman, ER/Disaster Committee



Member of Voluntary Hospitals of America, Inc.®

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**TITLE 168
PROCEDURAL RULE
PROSECUTING ATTORNEYS INSTITUTE**

2002 JUN -3 A 10:16

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

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§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. --

1.4. Effective Date. --

§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. If an investigating officer is not present at the time the alleged victim arrives at the hospital, 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 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 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. 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.

3.1.7. Following the completion of a forensic medical examination, the hospital shall submit within a reasonable time of the date of examination an original invoice for the forensic medical examination to the 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 victim 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. 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 need not secure a victim's agreement to pursue prosecution of the case as a condition 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 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.

4.1.5. 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.

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

6.1. Upon receipt of 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:

6.2.1. 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.

§168-1-7. Limitations on use of fund.

7.1. 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 seventy-two (72) hours after the time of the alleged assault. If, however, in the judgment of the prosecuting attorney or law enforcement officer, special circumstances exist and the forensic examination should be authorized and conducted even after the passage of seventy-two hours, the judgment of the prosecuting attorney or law enforcement officer will determine whether the time elapsed after the alleged assault is reasonable. This section does not impose any time limitation within which a licensed medical facility must bill in order to obtain reimbursement from the fund.

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

7.3. 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.



STATE OF WEST VIRGINIA
DEPARTMENT OF ADMINISTRATION
OFFICE OF THE CABINET SECRETARY

BOB WISE
GOVERNOR

GREGORY A. BURTON
CABINET SECRETARY

June 3, 2002

Via Hand-Delivery

The Honorable Joe Manchin, III
Secretary of State
Building 1, Suite 157K
1900 Kanawha Boulevard, East
Charleston, WV 25305

Re: Legislative Rules

Dear Secretary Manchin,

I am enclosing an original and one copy of the documents listed below for filing. The proposed rules are to establish payment for the costs of forensic medical examinations by the Prosecuting Attorneys Institute. 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 Agency Adoption of a Procedural or Interpretive Rule or a Legislative Rule Exempt from Legislative Review,
2. Brief Summary of comments received, agency response, and amendments,
3. Proposed Rules,
4. Disc containing 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,

A handwritten signature in black ink, appearing to read "Donna M. Prunty".

Donna M. Prunty
Executive Coordinator

DMP:dp

Enclosures

cc: Gregory A. Burton, Cabinet Secretary