



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

eFILED

5/1/2023 1:50:29 PM

Office of West Virginia
Secretary Of State

NOTICE OF PUBLIC COMMENT PERIOD

AGENCY: Prosecuting Attorneys Institute

TITLE-SERIES: 168-01

RULE TYPE: Procedural Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: PAYMENT FOR COSTS OF FORENSIC
MEDICAL EXAMINATION

CITE STATUTORY AUTHORITY: W. Va. Code §61-8b-18

COMMENTS LIMITED TO:

Written

DATE OF PUBLIC HEARING:

LOCATION OF PUBLIC HEARING:

DATE WRITTEN COMMENT PERIOD ENDS: 06/01/2023 11:00 AM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: Philip Morrison

ADDRESS: 1124 Smith Street, Suite 4500

Charleston, W.V. 25301

EMAIL: philip.w.morrison@wv.gov

PLEASE INDICATE IF THIS FILING INCLUDES:

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

INCORPORATED BY REFERENCE: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

PROVIDE A BRIEF SUMMARY OF THE CONTENT OF THE RULE:

Provides for reimbursement to licensed medical facilities for performing Forensic Medical Examinations upon victims/survivors of sexual assault.

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN THE RULE AND A STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE:

Only one substantive change; Changing \$350.00 to \$1000.00 in section 3.1.8

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

The legislature allotted an increase of over \$400,000.00 for this purpose in this line item in the 2023 Regular Session (FY24) Budget Bill. Beyond that there is no impact.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

no impact

C. ECONOMIC IMPACT OF THE RULE ON THE STATE OR ITS RESIDENTS:

no impact

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2023 Increase/Decrease (use "-")	2024 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	143,697.00	568,607.00
Personal Services	0	0	0
Current Expenses		143,697.00	568,697.00
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

The long range effect is non economic. It will help defray the cost to licensed medical providers of providing this service and increase the availability of this service to victims/survivors and keep WV in compliance with Federal guidelines that allow WV to draw down Violence Against Women Federal Grant Funding well in excess of the tax dollar cost listed above.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Philip W Morrison -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

**TITLE 168
PROCEDURAL RULE
PROSECUTING ATTORNEYS INSTITUTE**

**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. -- ~~September 23, 2009.~~

1.4. Effective Date. -- ~~November 1, 2009.~~

§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 an investigating officer is not present at the time the alleged victim arrives at the hospital, a law enforcement officer 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. 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 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. The invoice shall contain the name of the alleged victim and the date of the alleged offense.

3.1.8. Reimbursement from the Fund is limited to ~~\$350.00~~ \$1000.00 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.

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

4.1. When contacted an 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. The investigating officer may not require an alleged victim's agreement to pursue prosecution of the case as a condition precedent to 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.

4.1.3. 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 Prosecuting Attorneys Institute.

5.1. Upon receipt of certification that an examination was performed and an original invoice 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.

§168-1-6. Limitations on Use of Fund.

6.1. 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) hours after the time of the alleged assault. If, however, 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 conducted even after the passage of ninety-six (96) hours such examination will be considered to be conducted within a reasonable time.

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

6.3. 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.