

6. Payment for the Examination Under VAWA

Recommendations at a glance for jurisdictions to facilitate payment for the sexual assault medical forensic exam:

- Understand the scope of the VAWA provisions related to exam payment.
- Victims should be notified of exam facility and jurisdictional policies regarding payment for medical care and the medical forensic exam, as well as if and how their reporting decisions will affect payment. Relevant government entities are strongly encouraged to pay for medical forensic exams without requiring sexual assault victims to report to law enforcement.

Understand the VAWA provisions related to exam payment. Under the Violence Against Women Act (VAWA), grantees of the STOP Violence Against Women Formula Grant Program must meet certain requirements concerning payment for the forensic medical exam in order to receive funds. The STOP Program is a formula grant program which provides funds to all States, Territories, and the District of Columbia.⁹⁵

Each of these entities certifies each year that it is in compliance with the requirements of VAWA. Specifically, the State, Territory, or the District of Columbia must certify that it or another governmental entity "incurs the full out-of-pocket cost of forensic medical exams" for victims of sexual assault. If one part of a State or Territory, such as a county or city, is forcing victims to incur these costs, then the State or Territory will not be able to certify and will be ineligible for the grant funds.⁹⁶

Definitions under VAWA. For the purpose of the VAWA requirement, the term "forensic medical examination" means "an examination provided to a sexual assault victim by medical personnel trained to gather evidence of a sexual assault in a manner suitable for use in a court of law."⁹⁷ According to regulations of the STOP Program, the exam should include, at a minimum, "i) examination of physical trauma; ii) determination of penetration or force;⁹⁸ iii) patient interview; and iv) collection and evaluation of evidence."⁹⁹ The inclusion of additional procedures (e.g., testing for STIs) to obtain evidence may be determined by the State, Indian tribal government, or unit of local government in accordance with its current laws, policies, and practices.¹⁰⁰

By regulation, "full out-of-pocket cost" means "any expense that may be charged to a victim in connection with a medical forensic examination for the purpose of gathering evidence of a sexual assault."¹⁰¹ Examples of such expenses may include the full cost of the exam or a fee established by the facility conducting the exam. Often, medical services that are not related to evidence gathering will not be covered by this requirement.

It is important that victims are advised of jurisdictional policies regarding payment for the medical forensic examination. Victims must be aware of exam facility and jurisdictional policies regarding payment for other medical care related to the sexual assault. Typically, all costs related to the exam and to medical care are not paid for by government entities even if a report is made. Thus, involved responders are encouraged to

⁹⁵ Its purpose is to assist these jurisdictions in developing and strengthening law enforcement and prosecution strategies to combat violence against women, as well as in developing and strengthening victim services in cases involving violence against women.

⁹⁶ Under 42 U.S.C. § 10607, for Federal cases, the Federal investigating agency that investigates the sexual assault shall pay for the cost of a forensic exam "which an investigating officer determines was necessary or useful for evidentiary purposes."

⁹⁷ 28 C.F.R. § 90.2(b). Note that the term "medical forensic examination" is used throughout the protocol, rather than "forensic medical examination" as used in the VAWA requirements.

⁹⁸ The analysis of evidence gathered during the exam, along with examiner documentation of findings, may help determine whether penetration occurred or force was used. Examiners, however, are not responsible for drawing conclusions about how injuries were caused or whether an assault occurred or not, although they can note consistency between patients' statements and injuries they identify.

⁹⁹ 28 C.F.R. § 90.2(b) (1).

¹⁰⁰ 28 C.F.R. § 90.2(b) (2).

¹⁰¹ 28 C.F.R. § 90.14(a).

assist victims in identifying and accessing jurisdictional resources to cover the costs of the exam.¹⁰² For example, responders can help them apply for crime victims' compensation (if available) or arrange a payment plan with the exam facility.¹⁰³ When victims are billed by the exam facility for costs that are their responsibility, procedures to protect their privacy should be incorporated into the billing process. Personnel in facility billing departments should be educated regarding coding and billing practices in these cases, as determined by facility and/or jurisdictional policy.

Reporting to law enforcement. States, Territories, the District of Columbia, and tribes are strongly encouraged to pay for sexual assault medical forensic exams without requiring victims to report the assault to law enforcement. Some victims are unable to make a decision about whether they want to report to law enforcement in the immediate aftermath of the assault. Recognizing that evidence is lost as time progresses, victims should be encouraged to have the evidence collected right away, and then have time to decide about reporting the crime.

See www.ojp.usdoj.gov/vawo/faqforensic.htm for more information on the STOP Formula Grant Program medical forensic exam payment requirement.

¹⁰² Victims in Federal cases should first apply to the State or Territory crime victims' compensation program for reimbursement of costs that are their responsibility. If they are unable to obtain reimbursement via this channel, they should work with victim-witness specialists in the Federal agency investigating or prosecuting the case to identify other possible sources of funding or reimbursement.

¹⁰³ Exam facilities are sometimes willing to waive some related medical care costs that are not covered by government entities.