



Who Pays for Sexual Assault Medical Forensic Exams?

It Is Not the Victim's Responsibility

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SEXUAL ASSAULT MEDICAL FORENSIC EXAMS AND VAWA 2005 BRIEF I
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If a victim chooses to undergo a sexual assault medical forensic exam (often referred to as a rape kit), it can be the first step in addressing their medical needs and having evidence collected for a criminal investigation. It has two major components: medical services and forensic evidence collection. The medical services are intended to treat minor injuries and concerns around possible pregnancy or sexually transmitted infections. Serious injuries are cared for separately by medical professionals. Forensic evidence collection services are intended to build the criminal case through documentation of injuries and other indicators of force or coercion, such as drugging, and to establish sexual contact and the identity of the offender through biological evidence. The exam can also serve as a valuable link to additional assistance such as medical, counseling and advocacy services.

The Violence Against Women Act (VAWA) of 1994 required that as a condition of eligibility for the federal STOP (Services*Training*Officers*Prosecutors) grant program—a major federal avenue for funding violence against women programs, services, and criminal justice strategies—the state or another entity must bear the full out-of-pocket costs for sexual assault medical forensic exams. Although the provision of free sexual assault medical forensic exams was part of the original VAWA legislation, the law permitted states to condition free exams based on victim cooperation with law enforcement. Within a few years after VAWA passed, it became clear that not all victims were being provided free exams and that, in many places, victims were required to report assaults to police before gaining access to exams.

This was amended in VAWA 2005 to provide that the state has to ensure the exam is paid for regardless of whether the victim reports to law enforcement or participates with the criminal justice system. States were given until January 5, 2009, to meet this federal requirement, though some had already had systems in place.

The Urban Institute, George Mason University, and the National Sexual Violence Resource Center collaborated to learn about the payment policies and practices that have been set up to address this requirement. During this study, we learned several things:

- Victim compensation funds are by far the largest designated source of funds to pay for medical forensic exams across the United States, and compensation fund administrators are most likely to be the designated paying agency (whether using compensation funds or a special funding source). Two-thirds of states use compensation funds to pay for at least some exams, and more than one-third use *only* these funds to pay for exams. No other funding source is tapped so heavily for this purpose.
- STOP funds are the funding source least likely to be designated to cover exams. STOP administrative offices are the least likely to pay bills. This is surprising, because the state's STOP program eligibility is at stake when the VAWA 2005 requirement is not met.
- Sufficient funds to pay for exams are a major concern. Although many areas reported seamless payment systems at the time we collected data, worries over money remained. The level of continued funding for designated payers to cover the costs of exams each year and caps imposed on payments to providers might jeopardize these seemingly successful systems.

Who Pays?

Table 1 shows designated funding sources and the agencies that administer those funds to cover the costs of medical forensic exams in the 50 states and the District of Columbia.¹ As we collected the data for this study, it became clear that when we asked about exam payment, some respondents answered with who (or which agency) paid the bills, while others answered with which funding sources were used. As a result, we take special care to describe both designated funding sources and designated payers. Because some states use a combination of funding sources—or blended models of payment—there are more than 51 entries in the table. The bold numbers in the bulleted list, representing the funding-source designees, total 51.

Table I. Designated Funding Sources for Medical Forensic Exams and the Agencies Administering the Funds

| Designated sources for MFEs | Public Agency That Administers Payments | | | | |
|--|---|---|--|------------------------------------|--|
| | Crime victim compensation program | State depts. of health, mental health, human services | Victim service office or state-level coalition | Law enforcement and/or prosecution | County-level designee (varies by county) |
| Crime victim compensation funds | 34 | | | | |
| State health, mental health, or human services funds | | 1 | 1 | | |
| Law enforcement and/or prosecution funds | | | | 11 | |
| STOP funds | | | 2 | | |
| Special dedicated medical forensic exam funds | 10 | 1 | 1 | 3 | |
| County funds (varies by county) | | | | | 3 |

Notes: Sample size is 51; states include the District of Columbia. Six states use blended-funding models based on whether a victim participates in the criminal justice system, and 10 states that have compensation fund administrators administer the program use both compensation and special funds. These designees are shown twice in the table.

Here is what we found:

- Thirty-four states use victim compensation funds distributed by the compensation fund administrator to pay for exams or parts of exams.
 - **19** of those *only* use victim compensation funds.
 - **10** combine both compensation funds and special funds (e.g., a state budget line item specific to exam payment). Sometimes these funds are kept distinct and tracked separately; in other cases, there is no distinction, and the two sources are simply combined and used to cover the costs of exams as needed.
 - **6** states use blended models to pay for exams, five of which involve victim compensation administrators and/or funds. For example, some may use law enforcement or prosecution funds for victims who report their assaults, but use compensation or special funds for nonreporting victims. Another example is states that use one funding source (e.g., law enforcement) for the forensic portion of the exam and another funding source (e.g., victim compensation funds) for the medical portion of the exam.
- Eleven states use law enforcement or prosecution funds administered by those agencies.
 - **7** of those states *only* use law enforcement or prosecution funding. The other four use such funding in blended models, so these sources are not paying for medical portions of the exam (in some cases) or for exams for nonreporting victims (in other cases).
- Three states use a county-by-county model whereby individual localities designate funding sources and payment agencies. Thus, in some counties in these states, law enforcement and/or prosecution funds may be designated for exams, as well as county departments of health or social services. Regardless of the funding source designated, county payers may vary based on specific local arrangements regarding how these exams get paid. For example, a county’s prosecution agency may contract with the local sexual assault nurse examiner (SANE) program to provide payments to providers for exams, as is the case for a county within one of our case-study states. In this case, the *source* of exam funding is prosecution and the independent SANE program is the *payer* that responds to bills submitted by hospitals and pays its own staff as appropriate.
- Three designate special funds only to cover the costs of exams (administered by various agencies).
- Two designate monies from state departments of human services, health, and/or mental health.
- Two states designate STOP funds to cover exams.
 - **1** uses *only* STOP funds to cover the costs. The other uses STOP funds in a blended-funding model.

What Is Paid For?

As defined in VAWA 2005, an exam should at a minimum include (1) examining physical trauma, (2) determining penetration or force, (3) interviewing the patient, and (4) collecting and evaluating evidence. In practice, each state (or local jurisdiction, in the case of non state-level paying systems) decides what it will cover as part of the free exam. Some states cover *only* what is required by federal mandate, and other states provide more free services to victims.

We took a closer look by learning what is happening in six states across 19 jurisdictions that represent various models of funding sources and payers. We conducted case studies in each jurisdiction by interviewing local stakeholders, including law enforcement personnel, prosecutors, community-based victim service agency staff, SANEs, and other hospital billing personnel, as well as conducting focus groups with sexual assault victims.

- Five states used statewide mechanisms of payment for exams.
 - Three case-study states designated victim compensation funds to cover the cost of exams administered by the fund administrator.
 - One designated STOP funds administered by a grants administration agency.
 - One designated other state-level funding administered by the statewide victim service agency.
- The sixth state used a county-determined model for which most counties, although not all, designated either law enforcement or prosecution funds to pay for exams administered by various agencies. Some large-population counties designated other funding streams, such as special line items in county budgets or the department of human services. Therefore, some site respondents in this state estimated that though more than half of *counties* in the state designated prosecution or law enforcement funds to pay for exams, the vast majority of *exams* were paid by non-criminal-justice agency staff. This was because the most populous counties paid for exams through agencies other than criminal justice ones.

All six case-study states cover forensic evidence collection procedures, which often includes facilities' fees, emergency room triage, emergency room doctor fees, SANEs' fees, colposcopy and endoscopy, and other photographic imaging. In addition, all six states cover testing for pregnancy and sexually transmitted infections, and five cover treatment and prophylaxis for pregnancy and sexually transmitted infections. Two states cover prophylaxis for HIV: one covers the first three days of the treatment, and the other covers the treatment only under certain circumstances. States cover ambulance fees and alcohol and drug testing under certain circumstances. In one state, testing for drug-facilitated rape requires approval from a prosecutor to be covered by the designated payer.

Beyond the services stated above, states cover other services in varied ways or not at all. Only one case-study state routinely covers testing or treatment for injuries (e.g., X-rays, computed tomography scans [CT or CAT scans], treatment for broken bones) that occurred during the assault, but only a small portion. Another state covers treatment of injuries only under certain circumstances.

In this state and others, the remaining costs for these services are paid in several ways. The victim's insurance, if she has any, might be billed for those additional treatments. Victims can also access compensation funds to cover other medical interventions if they have reported the assault to the police (though the victim's insurance still might be billed because victim compensation is the payer of last resort). In some states, having had an exam, regardless of whether the assault is reported to the police, satisfies the condition to qualify for compensation. Similarly, as is the situation in one case-study state, health care providers that perform exams are considered adjunct criminal justice agencies; therefore, having an exam meets the condition of cooperation with the criminal justice system to qualify for compensation. In addition, many respondents across case-study states indicated that some hospitals typically absorb any remaining cost of the exams and medical treatments as part of their community service efforts. In one state, respondents said this could be between \$700 and \$2,500 for every exam.

Four case-study states had specified maximum amounts (payment caps) the designated payer would provide for allowable exams services. These caps were either overall total amounts for all allowable

services (e.g., a maximum payment of \$750 or \$1,200) or specific caps for specific services (e.g., \$150 for medical services). According to site-level respondents, exams often cost more than the payment caps. With prohibitions in some states against billing the victim's insurance (either at all or for the balance of the bill), the exam provider is faced with the choice of covering the remaining costs or billing victims for services specified in state legislation as part of an exam. Based on feedback from respondents in the case-study states, victims are typically not being billed for the uncovered costs of the services specified as part of the exams or covered by the public payer under state statutes. However, they might be billed for other services that are not covered by the public payer as specified in state statutes. This distinction may be lost on victims—a bill is a bill.

In addition, in the case-study state employing a county-administered payment program, individual counties negotiated designated funding sources and payers, as well as the particular services that are covered for an exam payment. The counties must cover *at least* what is required by state statute (doctor/SANE fees, facilities' fees, emergency room doctor triage, colposcopy, endoscopy, pregnancy testing, and STI testing); some counties have negotiated additional services to be included in standard exam payments (see Negotiating Medical Forensic Exam Payment box). Thus, victims in some portions of the state have many more services paid for via designated exam payers than do victims in other portions of the state.

Negotiating Medical Forensic Exam Payment

One county in the county-administered case-study state appears to have an approach to medical forensic exam payment that focuses primarily on the victims' needs. The designated payer (a government-based victim agency) negotiated a payment process with the local hospital that conducts all the MFEs in that region through a hospital-based SANE program. The contract between the county and the hospital is that the county will pay for all reasonable services conducted during an MFE, some of which are not legally required to be paid, and the hospital will give the county a 50 percent discount on all such services. Thus, the county pays for 50 percent of the initial exam, testing, and services provided during the first visit to the program. In addition, the agreement includes payment for one follow-up visit, up to \$500. The hospital representatives reported they write off about \$500 to \$700 per exam as a result of this agreement; however, there are limitations to this agreement. The county will not pay for victim injuries and the cost of a hospital stay. When this occurs, either the victim's insurance is billed or the hospital writes off the additional treatment costs.

Are Funding Levels High Enough?

A common theme that we heard in our case studies was that funds available for exams are frequently insufficient. Whether federal, state, local, or a combination of these monies are used, funds allocated for exam payment may be exhausted, so funds must be obtained from other sources to cover obligations. For example, one state's annual allocation for exam payment covered only 75 percent of the funds needed, so additional funds had to be reallocated.

Voices of Victims: Importance of Free Exams

"I was told that it would be paid for by the state; that it wasn't going to be no cost at all to me, and that was such a big relief. That was such a big burden."

"I love that they did everything free, and that they [addressed...] STDs and HIV and AIDS and whatnot, and checked for all that, and I think that was great."

"Where I went, they had a contract with the state where I never paid for the exam . . . They mentioned that there was no cost, like I don't have to pay for it."

"I was prepared to pay for whatever it cost. But they didn't bill me."

To spread funds as far as possible, states have set caps on provider payments. The caps may be a flat fee per exam, regardless of services provided, or they may be set fees for each service, requiring itemized bills. Whichever cap system was used, we frequently heard that these caps often fall far short of covering providers' actual expenses. Exam providers said shortfalls range from several hundred to several thousand dollars per exam, depending on the services provided and the area of the state (providers in rural areas with lower pay scales and other operating expenses may have more of their expenses covered,

even within payment caps). Some providers bill the victim's insurance (when she or he has insurance) to make up the shortfalls, but many simply write off these costs and absorb the losses. In the short term, this practice spreads state or local funds to provide at least partial coverage for a larger number of exams than could be paid at full coverage levels; however, the potential long-term consequences may be dire. It is difficult for a health care agency, even a nonprofit, to continue providing services on which they take a financial loss. In addition, other providers may be discouraged from offering this service when they stand to lose money each time they provide it.

What Does It Mean to Have Crime Victim Compensation as the Primary Funder of Exams?

During our discussions with case study respondents, we found that there are distinct advantages to having victim compensation programs pay for exams. For one, compensation programs already evaluate and pay claims for victims' crime-related expenses, including medical expenses, and are well positioned to expand this responsibility to exam expenses. These programs have the staff, systems, and procedures in place. As the compensation administrator in one state put it, "the fix was in," and the choice of compensation was inevitable because of the efficiency of using a system already in place rather than building a new one from scratch.

Another advantage is that use of compensation is a very effective way to leverage state funds to attract federal funds. The Office for Victims of Crime in the US Department of Justice distributes federal Crime Victim Funds allocations to state victim compensation programs on a 60 percent matching basis, so every dollar of state funds is matched in a future year with 60 cents of federal funds. Thus, 38 percent of all funds spent by states on compensation are federal funds. The more of its own funds a state spends, the more federal money it brings in. Increasing total compensation spending by paying for exams increases federal allocations to match state dollars spent. States that use compensation funds for exams expand, on average, about 15 percent of their total compensation payments on exams.²

However, adding exam payments to compensation programs' responsibilities does not necessarily increase state spending on compensation. Funds are stretched thinner if compensation programs are expected to pay for exams in addition to all their other obligations, using current funding levels rather than receiving an additional allotment of state funds to cover exam costs (which is more often the case). In fact, personnel in several states reported that their compensation funds are stretched, and it can be difficult to pay for exams in addition to other services. This produces a situation in which funds spent on exams cannot be spent on other services to victims, effectively pitting obligations against each other in competition for scarce resources.

This brings up a philosophical objection to the use of victim compensation funds for medical forensic exams that was discussed during our case studies. Victim compensation is intended to pay for services that directly benefit victims. These victims have most often been subjected to violent crimes, including sexual assault, as well as physical assault, domestic violence and stalking, homicide, child physical and sexual abuse, drunk driving, and robbery. The most common types of expenses compensated are medical and dental services, mental health counseling, lost wages, and funeral or burial expenses. It is clear that the medical services provided in an exam directly benefit victims and are in keeping with the mission of compensation. Further, the exam can serve as an important link to additional medical services as well as referrals to counseling, advocacy, and other services to directly benefit victims.

However, some have questioned—through this study and otherwise—whether funds intended to benefit victims should be used to pay for forensic evidence collection intended to build a criminal case. Is forensic evidence collection a benefit to victims, or is it a benefit to the justice system? Victims who have had negative experiences with the justice system might say that it is no benefit to victims at all. No other evidence collection activities (such as autopsies, crime scene processing, and ballistics analysis) are paid for with funds meant for services to victims. When compensation funds are tight and every dollar spent on forensic evidence collection cannot be spent on services that directly benefit victims, the issue moves beyond the philosophical to the very practical.

What Should Be Done?

These findings lend themselves to implications for policy and practice in several ways, including the following:

- *Ensure funding levels are adequate for designated payers.*
 - *Funds dedicated to payment of medical forensic exams should be provided whenever possible.* In states that use compensation funds to pay for all or some portion of exams, it is important to ensure that this obligation does not compete with funding for other services to victims. When compensation funds are tight and every dollar spent on forensic evidence collection cannot be spent on other services to directly benefit victims, the issue of whether exam payment is a suitable use of compensation funds deserves consideration.
- *Routinely examine if payment levels or caps imposed on payments to providers are adequate.* The cost of an exam can vary throughout a state for various reasons. In states that impose a cap on the amount paid for an exam, hospitals in certain geographic areas may often provide these services at a loss. Routinely conducting statewide reviews (e.g., surveys and audits) to ensure that payment levels are adequate is important.
- *Consider exploring ways to use law enforcement and prosecution funds to pay for medical forensic exams for victims while preserving the smooth operations that statewide payment procedures for providers seem to afford.* Our data show that very few states use law enforcement or prosecution funds to cover the costs of medical forensic exams. Given that these agencies benefit from the evidence collection to build a criminal case, it may make sense to explore ways to use such funds for medical forensic exams. For example, statewide agencies that have experience in providing payments such as these (such as compensation administrators) could be provided funding by criminal justice agencies to pay for medical forensic exams, without having to use designated crime victim compensation funds.
- *Train medical providers and hospital personnel on the VAWA 2005 requirement and the states' or localities' process for paying for medical forensic exams.* When we heard about challenges related to victims being billed, they typically stemmed from misunderstandings on the part of hospital and administrators about who should be billed. Training this group on payment policies and practices might prevent future problems.
- *Consider broadening definitions of what should be paid for as part of the medical forensic exam process.* The services covered as part of an exam vary widely from state to state, and in some cases from jurisdiction to jurisdiction. States and localities that employ narrow definitions of what should be paid for through designated payers might consider expanding their covered services, perhaps including treatments for pregnancy (e.g., emergency contraception), sexually transmitted infections and HIV (e.g., screening, testing, prophylaxis, and counseling), and injuries.

Notes

1. Data for this table were compiled via surveys conducted with State STOP administrators, representatives from state-level sexual assault coalitions and state victim compensation fund administrators. In some cases, we did follow-up phone calls to states where responses were unclear. Additional sources of information include the Indiana Victim Compensation survey of state fund administrators (unpublished data) and AEquitas' report, *Rape and Sexual Assault Analyses and Laws* (Washington, DC: AEquitas, 2013).
2. "Office of Victims of Crime," Office of Justice Programs, <http://www.ojp.usdoj.gov/ovc/>.

