

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control _____ Department or Agency Crime Victims' Compensation Commission
Rule No. 262-X-11-.01
Rule Title: Sexual Assault Examination Payment Program.
 New X Amend Repeal Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? Yes

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? Yes

Is there another, less restrictive method of regulation available that could adequately protect the public? No

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree? N/A

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule? N/A

Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? Yes

Does the proposed action relate to or affect in any manner any litigation which the agency is a party to concerning the subject matter of the proposed rule? No

Does the proposed rule have an economic impact? Yes

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Services Agency.

Signature of certifying officer Cassie T. Jones Cassie T. Jones, Ed.D.
Date 2/15/2019

(DATE FILED)
(STAMP)

ALABAMA CRIME VICTIMS' COMPENSATION COMMISSION

NOTICE OF INTENDED ACTION

RULE NO. & TITLE: 262-X-11-.01, Sexual Assault Examination Payment Program.

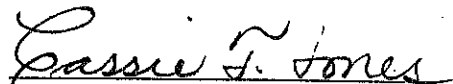
INTENDED ACTION: Amend

SUBSTANCE OF PROPOSED ACTION: The Commission proposes to amend the current rule to provide payment limitations for sexual assault examination payments.

TIME, PLACE, MANNER OF PRESENTING VIEWS: Interested persons may present their views in writing to the Alabama Crime Victims' Compensation Commission, 5845 Carmichael RD; Post Office Box 231267, Montgomery, Alabama 36123-1267, or oral comments at 334.290.4420.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE: Written comments shall be received until the close of record at 5:00 p.m. on April 5, 2019. All comments should be addressed to the contact person listed below or oral comments at 334.290.4420.

CONTACT PERSON AT AGENCY: Kim Martin, General Counsel, Alabama Crime Victims' Compensation Commission, 5845 Carmichael Rd; Post Office Box 231267, Montgomery, Alabama 36123-1267.



Cassie T. Jones, Ed.D.
Executive Director

ECONOMIC IMPACT STATEMENT
FOR APA RULE
(Section 41-22-23(f))

Control No. _____ Department or Agency Crime Victims' Compensation Commission

Rule No: 262-X-11-01

Rule Title: Sexual Assault Examination Payment Program.

_____ New Amend _____ Repeal _____ Adopt by Reference

_____ This rule has no economic impact.

This rule has an economic impact, as explained below:

1. NEED/EXPECTED BENEFIT OF RULE:

This rule will provide cost containment to ensure the solvency of the Crime Victims Fund and the availability of benefits for future victims of violent crime.

2. COSTS/BENEFITS OF RULE AND WHY RULE IS THE MOST EFFECTIVE, EFFICIENT, AND FEASIBLE MEANS FOR ALLOCATING RESOURCES AND ACHIEVING THE STATED PURPOSE:

It will allow the Commission to ensure that funds remain available to provide crime victims' compensation benefits in the future.

3. EFFECT OF THIS RULE ON COMPETITION:

No effect.

4. EFFECT OF THIS RULE ON COST-OF-LIVING AND DOING BUSINESS IN THE GEOGRAPHICAL AREA WHERE THE RULE IS TO BE IMPLEMENTED:

No effect.

5. EFFECT OF THIS RULE ON EMPLOYMENT IN THE GEOGRAPHICAL AREA WHERE THE RULE IS TO BE IMPLEMENTED:

No effect on employment is foreseen.

6. SOURCE OF REVENUE TO BE USED FOR IMPLEMENTING AND ENFORCING THIS RULE:

Court-ordered fines, fees and restitution. Federal grant money will also be used. No general fund money will be used in the implementation of this rule.

7. THE SHORT-TERM/LONG-TERM ECONOMIC IMPACT OF THIS RULE ON AFFECTED PERSONS, INCLUDING ANALYSIS OF PERSONS WHO WILL BEAR THE COSTS AND THOSE WHO WILL BENEFIT FROM THE RULE:

This rule will provide cost containment for the Sexual Assault Examination Payment Program. The long-term effect of this rule is to ensure that funds will be available to assist victims of violent crime in the future.

8. UNCERTAINTIES ASSOCIATED WITH THE ESTIMATED BENEFITS AND BURDENS OF THE RULE, INCLUDING QUALITATIVE/QUANTITATIVE BENEFITS AND BURDEN COMPARISON:

No uncertainties are foreseen or anticipated.

9. THE EFFECT OF THIS RULE ON THE ENVIRONMENT AND PUBLIC HEALTH:

It will ensure that funds will be available to assist victims of violent crime in the future.

10. DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE RULE IS NOT IMPLEMENTED:

The Crime Victims Fund will be diminished without this rule.

**Additional pages may be used if needed.

262-X-11-.01 Sexual Assault Examination Payment Program.

Program Description: This section provides for payment of the initial forensic examination which is performed on victims of sexual violence for the purpose of obtaining evidence to potentially pursue criminal charges against sexual assault offenders and for the prevention and treatment of venereal disease. ~~Expenses incurred for processing sexual assault evidence collection kits are eligible. Child sexual assault examinations and prophylaxis shall also be eligible for payment pursuant to this section.~~ Adult and child sexual assault examinations may be paid pursuant to the below sections.

AUTHORITY

Code of Alabama § 15-23-5 (24) (1995), which provides:

The commission shall have all the powers and privileges of a corporation and all of its business shall be transacted in the name of the commission. In addition to any other powers and duties specified elsewhere in this article, the commission shall have the power to: Provide for the cost of medical examinations for the purpose of gathering evidence and treatment for preventing venereal disease in sexual abuse crimes and offenses.

1) DEFINITIONS

- a) Sexual Assault Nurse Examiner: a registered nurse who has received specialized training or certification that qualifies him/her to conduct sexual assault examinations for adult and child victims of sexual assault for the purpose of gathering and preserving evidence for potential use in a criminal prosecution. A Sexual Assault Nurse Examiner may also administer prophylaxis against venereal disease.
- b) Sexual Assault Examination: a physical examination performed by a registered nurse or physician in a hospital or medical clinic or a Sexual Assault Nurse Examiner in a SANE facility on adult ~~and child~~ victims of sexual assault for the purpose of gathering and preserving evidence for potential use in a criminal prosecution and the treatment and prevention of venereal disease.
- c) Sexual Assault Nurse Examiner Fee: Fee paid for the professional services of a Sexual Assault Nurse Examiner.
- d) SANE Facility: A community or hospital-based program that provides for the collection and preservation of evidence in cases of sexual violence, as well as the treatment and prevention of venereal disease in a compassionate, victim-sensitive setting.

e) ~~SANE Facility Fee: Fee paid for a SANE facility's cost of providing a sexual assault examination room which includes prorated (if the SANE facility is not the only program housed in the building) operating and overhead costs related to the SANE facility; administrative costs related to SANE facility; supplies for the sexual assault examination; equipment for the sexual assault examination; equipment maintenance; clothing for the victim; and any other expense directly related to providing a sexual assault examination and a sexual assault examination room. The SANE facility fee does not include any item contained in the *Sexual Assault Evidence Collection Kit* which is provided free of charge by the Alabama Department of Forensic Sciences.~~

e) Child Sexual Assault Examination: a physical examination performed by a registered nurse or physician in a hospital or medical clinic or a Sexual Assault Nurse Examiner in a SANE facility on a child victim of sexual assault who is less than eighteen years of age for the purpose of gathering and preserving evidence for potential use in a criminal prosecution and the treatment and prevention of venereal disease.

2) COLLATERAL SOURCE

a) Any expense associated with a sexual assault examination covered or paid by a collateral source will not be reimbursed by the Commission.

b) Code of Alabama § 15-23-3 (13) (1995) defines collateral source as follows:

(a) COLLATERAL SOURCE. Source of income, financial or other benefits or advantages for economic loss other than the compensation paid by the compensation commission which the claimant has received or is entitled to receive or is readily available to the claimant, from any one or more of the following:

- a. The offender.
- b. The government of the United States or any agency thereof, in the form of benefits, such as Social Security, Medicare and Medicaid, a state or any of its political subdivisions or an instrumentality of two or more states, unless the law providing for the benefits or advantages makes them excessive or secondary to benefits under this article.

- c. Any temporary nonoccupational disability insurance.
 - d. Workers' compensation.
 - e. Wage continuation programs of any employer.
 - f. Proceeds of a contract of insurance payable to the claimant for loss which the victim sustained because of the criminally injurious conduct.
 - g. A contract providing prepaid hospital and other health care services or benefits for disability.
- c) Any collateral source available for the payment of a sexual assault examination must be utilized prior to submitting a sexual assault examination to the Commission's Sexual Assault Examination Payment Program.
- i) A hospital, medical clinic, or SANE facility should not bill the victim of sexual violence for the sexual assault examination. Alabama Attorney General Troy King's *Protocol for the Examination and Treatment of Victims of Sexual Assault* states "victims should not be billed for sexual assault examinations." *Alabama Attorney General Troy King's Protocol for the Examination and Treatment of Victims of Sexual Assault*, page 20.

3) ELIGIBILITY AND PAYMENT PROCEDURES

- a) Sexual assault examinations performed on or after July 27, 1995, may be considered for payment.
- b) Exams Performed in Hospitals and Medical Clinics
- i) Sexual assault examinations performed by a registered nurse or physician in a hospital or medical clinic for the purpose of gathering evidence and treating and preventing venereal disease will be considered for payment.
 - (1) Hospitals and medical clinics must submit the current version of an UB form, itemized bill, and medical records.
 - ii) Sexual assault examinations performed in a hospital or medical clinic will be reviewed to determine the reasonableness and eligibility of the charges.
 - (1) If after the Commission's review of the charges, they are found to be charged at an excessive rate and/or not rendered for the purpose of gathering evidence and/or treating and preventing venereal disease, the charges will be denied for payment.
 - iii) If after the Commission's review of the charges, it is determined that they do not comply with the Alabama Attorney General's *Protocol for the Examination and Treatment of Victims of Sexual Assault*, the charges will be denied for payment.

- ~~iv) If the charges are determined to be excessive, the hospital or medical clinic will be contacted to negotiate the submitted expenses.~~
- ~~v) A facility fee shall not be paid when a sexual assault examination is performed at a hospital, medical clinic or any facility other than a SANE facility.~~
- c) Exams Performed by a Sexual Assault Nurse Examiner (SANE).
 - i) Each itemized bill or statement for a sexual assault examination will be considered for payment in the order that it is received.
 - ii) ~~Each itemized bill or statement will be reviewed for accuracy and any unsupported or ineligible charges will not be reimbursed.~~ Each itemized bill or statement will be reviewed for accuracy and to determine the appropriate payment category. The itemized bill or statement will be paid based upon the payment category the Commission determines is appropriate.
 - iii) The Commission will provide reimbursement for "Jane Doe" sexual assault examinations performed on adult victims.
 - iv) The Commission will not reimburse for "Jane Doe" sexual assault examinations for children.
 - v) Each itemized bill or statement must identify the International Classification of Diseases (ICD-9) code.
 - vi) Each billed procedure, service or supply/medication must be itemized.
 - vii) Each billed procedure, service or supply/medication must include the appropriate Physicians' Current Procedural Terminology (CPT) code.
 - viii) ~~The itemization for each billed procedure, service or supply/medication must include the charge for each line item.~~
 - ix) The initial forensic examination will be considered for payment. Only services rendered, and medications provided "for the purpose of gathering evidence and treatment for preventing venereal disease in sexual abuse crimes and offenses" will be considered pursuant to the Commission's Sexual Assault Examination Payment Policy.
 - x) Each itemized bill or statement must include a copy of the completed Sexual Assault Information Form (AL102) that is included in the State of Alabama Collection Kit provided by the Alabama Department of Forensic Sciences or equivalent

documentation. Alabama Department of Forensic Sciences provides collection kits free of charge and payment will not be provided for the kits.

- xi) Signed, written confirmation from an employee of the SANE facility that the sexual assault was reported to the Department of Human Resources (DHR) or law enforcement must be provided in cases in which the victim is a minor. If confirmation is not received, the sexual assault examination will not be considered for payment.

d) Referrals from Hospitals and Medical Clinics

- i) When a hospital or medical clinic refers a victim of sexual violence to a SANE facility, the SANE facility will be paid the Sexual Assault Nurse Examiner Fee for the cost of the sexual assault examination.
- ii) ~~When a hospital or medical clinic and a SANE facility perform a sexual assault examination for the same incident, the fee for any procedure that is performed at both facilities will be paid to the SANE facility. The fees for duplicate procedures performed by the hospital or medical clinic may be considered on an original compensation claim that must be filed by the claimant or victim.~~ When a hospital or medical clinic and a SANE facility perform a sexual assault examination for the same incident, the SANE facility will be paid for the cost of the sexual assault examination. If the hospital or medical clinic administered medication and the SANE facility did not administer medication, the hospital or medical clinic may be paid the difference between the cost of an exam with medication and the cost of an exam without medication for the appropriate payment category.
- iii) ~~The fees for any medications or procedures performed by the hospital or medical clinic and not duplicated by the SANE facility may be considered for payment through the Sexual Assault Examination Payment Program.~~
- iv) The Commission will not pay a hospital or medical clinic and a SANE facility a duplicate fee for the same incident through the Sexual Assault Examination Payment Program.

4) COLLECTION OF EVIDENCE WITHIN 72 HOURS

- a) If it is determined that the sexual assault took place more than 72 hours prior to the sexual assault examination, the use of an evidence collection kit may not be necessary. *Alabama Attorney General' Alabama Protocol for the Examination and Treatment of Victims of Sexual Assault.*
- i) The reasonableness of the charges for sexual assault examinations performed after 72 hours will be determined on a case-by-case basis.
 - (1) The age, mental capacity, and the victim's ability to seek a sexual assault examination within 72 hours of the assault will be considered when making a determination regarding the reasonableness of a sexual assault exam performed more than 72 hours after the sexual assault.

5) INELIGIBLE EXPENSES

- a) The following expenses are not eligible pursuant to the Commission's Sexual Assault Examination Payment Program:
 - i) treatment for injuries;
 - ii) medication for any purpose other than the treatment and prevention of venereal disease;
 - iii) hospital admissions.
- b) All sexual assault victims should be provided a crime victims' compensation application. Expenses that are ineligible pursuant to the Commission's Sexual Assault Examination Payment Program may be eligible for crime victims' compensation benefits.

6) FALSE REPORTS

a) The Commission will not compensate for a sexual assault examination if it is determined that a rape or sexual assault did not occur. Examples of false reports include, but are not limited to, consensual sexual contact and no sexual contact.

7) SEXUAL ASSAULT EXAMINATIONS CONDUCTED ON ALLEGED PERPETRATORS/OFFENDERS

(1) The Commission does not provide for the cost of sexual assault examinations performed on alleged perpetrators/offenders.

8) PAYMENT LIMITS FOR SEXUAL ASSAULT EXAMINATION PAYMENT PROGRAM SEXUAL ASSAULT EXAMINATION PAYMENT CATEGORIES

- a) Sexual Assault Nurse Examiner Fee: _____ \$300
- b) SANE Facility Fee: _____ \$150
- c) Medication Limitations
 - i) One gram azithromycin (Zithromax) or equivalent drug: _____ \$39.50 each
 - ii) 500 mg ciprofloxin or equivalent drug: _____ \$12 each
 - iii) 100 mg doxycycline or equivalent drug: _____ \$1 each
 - iv) 500 mg metronidazole (Flagyl) or equivalent drug: _____ \$5.50 each
 - v) Ofloxacin or equivalent drug: _____ \$12 each
 - vi) 250 mg Ceftriaxone or equivalent drug: _____ \$90.36 each
 - vii) Ceftriaxone drug administration fee: _____ \$10
 - viii) Ovral or equivalent drug: _____ \$4.50 each
 - ix) 12.5 mg promethazine (Phenergan) or equivalent drug: _____ \$2.50 each
 - x) 10 mcg Recombivax or equivalent drug: _____ \$40 each
 - xi) Zovia or equivalent drug: _____ \$10 each

xii) Truvada (28-day supply):	\$1,546.52
xiii) Isentress 400 mg (28-day supply):	\$1,473.72
xiv) Retrovir (28-day supply):	\$554.60
xv) Efavir (28-day supply):	\$498
xvi) Tivicay (28-day supply):	\$1825.99

d) Procedure Limitations

i) Suspected drug-facilitated screening:	\$95
ii) Colposcope exam	\$50
iii) UV light screening	\$20
iv) Pregnancy test	\$10
v) Venipuncture	\$10
vi) Microscopic sperm screening	\$32
vii) 14 Fr Foley hymenal exam	\$20
viii) Body forensic photography	\$20
ix) Basic metabolic panel	\$31.63
x) Complete blood count without differential	\$11.50
xi) Hepatic function panel	\$21.85
xii) Chlamydia test	\$28.75
xiii) Gonorrhea test	\$26.45

e) Medications and procedures not listed in this section will be examined on a case-by-case basis for eligibility.

f) Generic drugs should be prescribed when available.

a) Child Sexual Assault Examination Without Medication - \$400

- i) This fee includes exam, nurse examiner fee, pregnancy test, microscopic sperm screening, 14 Fr Foley Hymenal Exam, and drug screen.
- ii) If the itemized bill is less than \$400, the lesser amount of the itemized bill will be paid.

b) Adult Sexual Assault Examination Without Medication - \$400

- i) This fee includes exam, nurse examiner fee, pregnancy test, microscopic sperm screening, 14 Fr Foley Hymenal Exam, and drug screen.
- ii) If the itemized bill is less than \$400, the lesser amount of the itemized bill will be paid.

c) Adult Sexual Assault Examination with Medication - \$550

- i) This fee includes exam, nurse examiner fee, pregnancy test, microscopic sperm screening, 14 Fr Foley Hymenal Exam, drug screen, and all medications except HIV prophylaxis.
- ii) If the itemized bill is less than \$550, the lesser amount of the itemized bill will be paid.

- d) Child Sexual Assault Examination with Medication - \$550
 - i) This fee includes exam, nurse examiner fee, pregnancy test, microscopic sperm screening, 14 Fr Foley Hymenal Exam, drug screen, and all medications except HIV prophylaxis.
 - ii) If the itemized bill is less than \$550, the lesser amount of the itemized bill will be paid.
- e) Sexual Assault Examinations Conducted Away from Office/Clinic Base - \$300
- f) Lab Processing Fee - \$50
 - i) A lab processing fee may be paid for testing for venereal diseases for sexual assault examinations performed at a hospital or SANE Clinic. Documentation of the testing must be provided in order to issue payment for a lab processing fee.
 - (1) The Commission does not provide compensation for lab or specimen collection fees.

9) HIV PROPHYLAXIS

- ii) The Commission may consider payment for the cost of providing HIV prophylaxis for victims of sexual violence through its Sexual Assault Examination Payment Program. Payment for HIV prophylaxis may be reduced when payment is made by insurance or other collateral sources.
- i) If it is determined that a victim of sexual violence is at risk for exposure to HIV, the Commission may provide payment for a 28-day drug regimen of HIV prophylaxis to a SANE facility, hospital, medical clinic, pharmacy, or victim of sexual violence.
- ii) The Commission may provide payment for one follow-up medical visit to monitor tolerance of the HIV prophylaxis by a victim of sexual violence. The amount of payment for this expense will be decided on a case-by-case basis and it will be determined based on the reasonableness of the charges. (Additional medical care may be considered for payment if the victim of sexual violence files a regular crime victims' compensation application.)
- iii) If a victim of sexual violence has health insurance, the pharmacy, hospital, or medical clinic filling the prescription for HIV prophylaxis must first seek payment of the expense from the health insurance provider.
- b) The Commission will not reimburse for HIV prophylaxis if the nature of the assault does not support this treatment protocol.
- c) The Commission recognizes that HIV prophylaxis is costly. Sexual assault examinations that exceed \$2,000 must be presented to the three-member Commission for approval

pursuant to section 15-23-5 (13) of the *Code of Alabama*. Sexual assault examinations that exceed \$2,000 may take longer to process for payment.

d) HIV Prophylaxis Payment Limitations

i) <u>Truvada (28-day supply):</u>	<u>\$1,546.52</u>
ii) <u>Isentress 400 mg (28-day supply):</u>	<u>\$1,473.72</u>
iii) <u>Retrovir (28-day supply):</u>	<u>\$554.60</u>
iv) <u>Epivir (28-day supply):</u>	<u>\$498</u>
v) <u>Tivicay (28-day supply):</u>	<u>\$1825.99</u>

Author: Dr. Cassie T. Jones

Statutory Authority: ALA. CODE § 15-23-5(14) (1995)

History: Filed February 15, 2019