

# **Title 10 DEPARTMENT OF HEALTH AND MENTAL HYGIENE**

## **Subtitle 12 ADULT HEALTH**

### **Chapter 02 Rape and Sexual Offenses—Physician and Hospital Charges**

**Authority: Health-General Article, §§2-104(b) and 15-127, Annotated Code of Maryland**

#### **01 Scope.**

These regulations outline the requirements for the collection of evidence in cases of alleged rape, sexual offense, and child sexual abuse and for reimbursement to hospitals, laboratories, and physicians for the physical examination of, the collection of evidence from, and the emergency treatment of individuals for physical injuries directly resulting from the alleged rape or sexual assault and for an initial assessment, and information and evidence collection, of a victim of alleged child sexual abuse.

#### **02 Definitions.**

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Child" means any individual younger than 18 years old.

(2) "Department" means the State Department of Health and Mental Hygiene.

(3) "Emergency hospital treatment" means the provision of those services which are medically necessary to treat the victim's physical health or alleviate the victim's severe pain or discomfort.

(4) "Examination" means a medical examination, including the necessary tests, for the purpose of establishing and gathering information and evidence as to the alleged rape or sexual offense only.

(4-1) "Forensic nurse examiner" means a registered nurse examiner certified by the Maryland Board of Nursing.

(5) Initial Assessment.

(a) "Initial assessment" means an appraisal for the purpose of establishing and gathering information and evidence as to alleged child sexual abuse.

(b) "Initial assessment" includes a:

(i) Psychological evaluation;

(ii) Parental interview; and

(iii) Medical evaluation.

(6) "Interdisciplinary team expert in the field of child abuse" means a licensed physician, psychologist, social worker, nurse practitioner, nurse, or mental health professional working in a setting that specializes in child abuse.

(7) "Mental health professional" means a board-eligible or board-certified psychiatrist, a licensed psychologist, or a person with a minimum of a master's degree and clinical training in an accepted mental health field, including the fields of counseling, nursing, occupational therapy, psychology, and social work.

(8) "Physician" means a person licensed to practice medicine in Maryland.

(9) "Provider" means a physician, hospital, or laboratory.

(10) "Qualified hospital health care personnel" means a licensed employee of a hospital licensed by the State.

(11) "Rape" means a criminal act of vaginal intercourse as defined under Criminal Law Article, §§3-303 and 304, Annotated Code of Maryland.

(12) Sexual Abuse.

(a) "Sexual abuse" means an act that involves sexual molestation or exploitation of a child whether or not the sexual molestation or exploitation of the child is by a parent or other person who has permanent or temporary care, or custody or responsibility for supervision of a child, or by a household or family member.

(b) "Sexual abuse" includes, but is not limited to:

(i) Incest, rape, or sexual offense in any degree;

(ii) Sodomy; and

(iii) Unnatural or perverted sexual practices.

(13) "Sexual offense" means a criminal sexual act or sexual contact as defined under Criminal Law Article, §§3-305—3-308, Annotated Code of Maryland.

(14) "Victim" means a person who is alleged to be the subject of rape, sexual offense, or child sexual abuse.

### **03 Alleged Rape or Sexual Offense Victim Care.**

A. The victim shall be considered an emergency patient with special needs. The victim shall be taken immediately to a quiet private area where tests and examinations will be performed on the victim. The following measures are indicated under certain circumstances:

(1) Prophylactic medication shall be discussed and offered to the victim who is at risk for pregnancy as a result of the alleged rape or sexual assault;

(2) Prophylactic medication shall be discussed and offered to the victim who is at risk for sexually transmitted infections and recommended initial tests and follow-up tests shall be performed, if indicated;

(3) After the victim has been properly informed as to the significance of testing for the presence of the human immunodeficiency virus (HIV), the victim shall be referred to the appropriate anonymous or confidential, and free HIV counseling and test sites for potential baseline and follow-up testing and support services;

(4) Injuries suffered by the victim shall be treated with appropriate consultation, as necessary; and

(5) Tetanus prophylaxis may be administered, if indicated.

B. Sexual Assault.

(1) A sexual assault forensic examination shall be performed if:

(a) The victim is seen within 120 hours of the alleged sexual offense; and

(b) Either:

(i) A police report has been filed with the appropriate law enforcement jurisdiction; or

(ii) A property-held number is assigned to the case in the event that a victim does not wish to file a police report immediately but still seeks to have evidence collected and held.

(2) A sexual assault forensic examination shall be performed only by a:

(a) Physician; or

(b) Forensic nurse examiner.

(3) When performing a sexual assault forensic examination, a physician or a forensic nurse examiner shall use the Maryland State Police victim sexual assault evidence collection kit or a comparable evidence collection kit and shall follow the kit instructions including:

(a) Packaging the victim's clothing in paper bags; and

(b) Collecting the following specimens:

(i) Blood sample (lavender cap);

(ii) Vaginal swabs (a minimum of four);

(iii) Oral swabs (a minimum of two);

(iv) Pubic hair combings;

(v) Pulled pubic hair;

(vi) Pulled head hair; and

(vii) If indicated, anal swabs, bite mark swabs, and fingernail scrapings.

C. A physician or forensic nurse examiner shall follow the procedures as indicated to establish evidence of alleged rape or sexual offense, depending on the specifics of the crime as described by the victim:

(1) Obtain from each of the following areas, if indicated, a smear to be fixed and stained according to the Papanicolaou technique:

(a) Endocervical canal;

(b) Vaginal pool;

(c) Vulva;

(d) Mouth; and

(e) Anal area;

(2) Obtain culture for gonorrhea from cervix, rectum, and nasopharynx, if indicated, and plate it immediately;

- (3) Obtain vaginal, oral, or rectal aspirate for acid phosphatase testing, if indicated;
  - (4) Obtain a blood sample for syphilis testing and refer patient to a healthcare provider of choice for repeat sample in 4—6 weeks;
  - (5) Obtain X-rays necessary to establish evidence of physical injuries sustained as a direct result of the alleged rape or sexual offense; and
  - (6) Obtain either a urine sample or a blood sample for beta subunit of human chorionic gonadotropin for a pregnancy test and recommend and refer the victim to a healthcare provider of choice for a second test in 4—6 weeks, if indicated.
- D. A physician or forensic nurse examiner shall submit the evidence collected to the appropriate law enforcement jurisdiction.

#### **04 Alleged Child Sexual Abuse Victim Care.**

- A. The professional involved in the care of the victim of alleged child sexual abuse shall make every effort to minimize additional physical or emotional trauma to the child.
- B. The following protocol is recommended for the initial assessment:
- (1) A history of the child shall be obtained from the parent, guardian, or custodian separately from the child, if possible, and shall:
    - (a) Minimize repetitive questioning of the child;
    - (b) Recognize that the child is often threatened and afraid to tell; and
    - (c) Include a review of behavior relevant to sexual abuse;
  - (2) A physician or forensic nurse examiner shall perform a thorough pediatric physical examination on the child in the presence of a supportive adult not suspected of being party to the abuse and a physician or forensic nurse examiner shall:
    - (a) Use gentleness, time, sedation, or general anesthesia if absolutely necessary;
    - (b) Note evidence of physical abuse and injuries;
    - (c) Avoid internal anogenital examinations except when internal injuries are suspected;
    - (d) Perform a gender specific examination on the male child to include:
      - (i) Examining thighs, penis, scrotum, testes, and anus for evidence of injury and infection, and

(ii) Noting Tanner stage;

(e) Perform a gender specific examination on the female child to include:

(i) Examining thighs, labia majora and minora, clitoris, urethra, hymen and vaginal wall (especially posteriorly) for evidence of injury and infection and noting horizontal hymenal opening diameter;

(ii) Maintaining a frog-leg position during the examination; and

(iii) Noting Tanner stage;

(f) Perform a routine pelvic examination on the postpubertal female child only if the victim has had a previous pelvic examination;

(3) Depending on the specifics of the individual case and exercising best professional judgment, a physician or forensic nurse examiner may perform a rape examination if the child is seen within 120 hours of alleged sexual abuse, and the examination shall:

(a) Include only applicable parts of the rape kit; and

(b) Maintain the chain of custody of evidence;

(4) The physician or forensic nurse examiner shall obtain laboratory tests when the tests are indicated from information obtained through the child's history or physical examination;

(5) A psychological assessment shall include:

(a) A review of what happened to the child from the child's perspective;

(b) The use of play, dolls, or drawings as a way for the younger child to communicate what happened to the child;

(c) An assessment of the effect of the alleged sexual abuse on the child; and

(d) A developmentally age-appropriate description of the psychological findings and any indications for follow-up care;

(6) An interview with a parent, guardian, or custodian shall include a:

(a) Review from the parent's, guardian's, or custodian's understanding of the alleged child abuse;

(b) Description of any behavioral manifestations that may be observed in the child such as fears, clinging, sleep disturbances, bed-wetting, somatic complaints, or school problems; and

(c) Discussion of anticipated medical or investigative follow-up, or both, pursuant to Family Law Article, Title 5, Subtitle 7, Annotated Code of Maryland;

(7) Professionals qualified to gather information and evidence as part of the initial assessment include:

(a) A physician;

(b) Qualified hospital health care personnel;

(c) A mental health professional; and

(d) An interdisciplinary team expert in the field of child abuse.

## **05 Reimbursements.**

A. Restrictions. A provider:

(1) May not charge the victim or the victim's family of an alleged rape, sexual offense, or child sexual abuse for a physical examination or an initial assessment for the purpose of establishing and gathering information and evidence as to the alleged crime or for emergency hospital treatment and follow-up medical testing performed up to 90 days after the initial physical examination;

(2) May not bill a victim of an alleged rape, sexual offense, or child sexual abuse, or the victim's family or private insurance, for any difference between charges and Department reimbursement; and

(3) Shall accept the Department's reimbursement as payment in full.

B. Physicians Providing Services to Victims of Alleged Rape or Sexual Offense.

(1) The Department shall pay a physician the physician's usual and customary fee not to exceed \$80 for examination and collection of evidence, if the following are submitted to the Department of Health and Mental Hygiene, Center for Health Promotion, 300 West Preston Street, Suite # 410, Baltimore, MD 21201:

(a) The forms found in the Maryland State Police sexual assault kit, or comparable evidence collection kit, which are:

(i) Filled out completely;

(ii) Typed or legibly written;

(iii) Signed and dated by the examining physician; and

(iv) Bearing the police central complaint number or a similar police case identifier or a property-held number in accordance with Regulation .03B(1)(b) of this chapter; and

(b) A completed DHMH form 2923, as developed by the Department, containing the signature of the victim or the victim's representative, indicating informed consent for medical examination, collection of evidence, and release of information.

(2) The Department shall pay the physician's usual and customary fee for consultation and for rendering emergency hospital treatment and necessary follow-up medical testing obtained within 90 days of the initial physical examination, for injuries sustained as a result of alleged rape or sexual assault.

(3) If there is a physician's fee component in the emergency room rate as established by the Health Services Cost Review Commission, there is no additional payment for the physician.

#### C. Physicians Providing Services to Victims of Alleged Child Sexual Abuse.

(1) The Department shall pay a physician the physician's usual and customary fee or the customary fee of those individuals under the physician's supervision, qualified to participate in the gathering of information and evidence through an initial assessment as defined under Regulation .02B of this chapter, not to exceed \$80 per hour for up to 5 hours. The Department shall pay a physician only if a report:

(a) Is filled out completely as to the assessment done;

(b) Is typed or legibly written;

(c) Is signed and dated by the physician or cosigned by the physician and other qualified professionals providing services;

(d) Includes the police central complaint number, a property-held number, or other case identifier; and

(e) Includes either a completed DHMH Form 2923 or 4456, as developed by the Department.

(2) If there is a physician's fee component in the emergency room or outpatient clinic rate as established by the Health Services Cost Review Commission, there is no additional payment for the physician.

D. Hospital. The Department shall pay the established rate as determined by the Health Services Cost Review Commission for the use of the emergency room or outpatient clinic and the daily in-hospital rate in case of hospitalization for physical injuries directly resulting from the alleged sexual assault or abuse.



E. Laboratory. The Department shall pay the established rate as defined by the Health Services Cost Review Commission for laboratory tests necessary to establish and gather information and evidence of the crime, and for screening of the victim for pregnancy and sexually transmitted infections.

#### F. Billing.

(1) Except as provided in §F(3) of this regulation, in order to get paid a provider shall submit itemized bills to the Department within 90 days of the rendering of care.

(2) If a provider submits a bill more than 90 days but less than 180 days after the initial physical examination, the provider shall submit a written request for payment stating the specific reasons why the itemized bills were not timely submitted in accordance with §F(1) of this regulation.

(3) The Department may pay bills received more than 90 days but less than 180 days after the initial physical examination if the Department determines that the provider has set forth a legitimate explanation for not submitting the bill within 90 days of rendering care.

(4) To identify the alleged sexual offense, a bill submitted by a provider under this chapter shall contain:

(a) A police central complaint number or other case identifier; or

(b) A property-held number assigned in accordance with Regulation .03B(1)(b)(ii) of this chapter when there is no police central complaint number or similar police case identifier because a criminal prosecution is not being pursued.

(5) The provider of services shall secure signed informed consent for examination and collection of evidence in cases of alleged rape or sexual offense with authorization for release of information on such forms (DHMH form 2923 or form 4456) as are developed by the Department. The providers shall supply the Department with any information requested concerning services rendered.

G. Payment under this chapter is contingent on the availability of funds according to State Finance and Procurement Article, §§7-234 and 7-235, Annotated Code of Maryland.

#### Administrative History

##### *Effective date:*

**Regulations .01—.04 adopted as an emergency provision effective July 1, 1978 (5:14 Md. R. 1133), expired November 11, 1978; adopted permanently effective December 15, 1978 (5:25 Md. R. 1854)**

**Regulations .01—.04 amended effective December 11, 1989 (16:24 Md. R. 2620)**

**Regulation .01 amended effective March 2, 1992 (19:4 Md. R. 473)**

**Regulation .02 amended effective March 2, 1992 (19:4 Md. R. 473)**

**Regulation .03A amended effective March 2, 1992 (19:4 Md. R. 473)**

**Regulations .03B and .04A, E, F amended effective November 14, 1980 (7:23 Md. R. 2166)**

**Regulation .04 amended and recodified to Regulation .05 and new Regulation .04 adopted effective March 2, 1992 (19:4 Md. R. 473)**

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**Chapter revised effective July 5, 2004 (31:13 Md. R. 993)**

**Regulation .03 amended effective December 29, 2008 (35:26 Md. R. 2249)**

**Regulation .04B amended effective December 29, 2008 (35:26 Md. R. 2249)**

**Regulation .05B, F amended effective December 29, 2008 (35:26 Md. R. 2249)**