APA- 4
11/96

CERTIFICATION OF EMERGENCY RULES
FILED WITH LEGISLATIVE REFERENCE SERVICE
JERRY L. BASSETT, DIRECTOR

Pursuant to Code of Alabama 1975, §§41-22-5(b) and 41-22-6(c)(2)a. and b.

I certify that the attached emergency (amendment, new rule, new chapter, repeal or adoption by reference) is a correct copy as promulgated and adopted on the 9th day of September 2016.

AGENCY NAME: Alabama Crime Victims' Compensation Commission

RULE NO. AND TITLE: 262-x-11-.01, Sexual Assault Examination Payment Program.

EFFECTIVE DATE OF RULE: September 9, 2016

EXPIRATION DATE (If less than 120 days): _____

NATURE OF EMERGENCY:

Adoption of this rule is necessary to provide a 28-day HIV prophylaxis regimen and payment of additional drugs for HIV prophylaxis to at risk victims of sexual violence through its Sexual Assault Examination Payment Program.

STATUTORY AUTHORITY: § 15-23-5(14), Code of Alabama (1995)

SUBJECT OF RULE TO BE ADOPTED ON PERMANENT BASIS X YES ____ NO

NAME, ADDRESS, AND TELEPHONE NUMBER OF PERSON TO CONTACT FOR COPY OF RULE:

Kim Martin
P.O. Box 231267
Montgomery, AL 36123-1267
334.290.4420

REC'D & FILED

SEP 09 2016

LEGISLATIVE REF SERVICE

Cassie T. Jones, Ed.D.
Signature of officer authorized to promulgate and adopt rules and regulations or his or her deputy

FILING DATE
(For APA Use Only)

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.

1) 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.

2) 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.

3) 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.

4) 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.

iii) 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.

iv) 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 or Victims of Sexual Assault*, the charges will be denied for payment.

v) If the charges are determined to be excessive, the hospital or medical clinic will be contacted to negotiate the submitted expenses.

vi) 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.

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*.

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.

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.

5) 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.

6) 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.

7) FALSE REPORTS

i) 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.

8) 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.

9) PAYMENT LIMITS FOR SEXUAL ASSAULT EXAMINATION PAYMENT PROGRAM

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)	Epivir (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.

10) HIV PROPHYLAXIS

a) The Commission may consider payment for the cost of providing HIV prophylaxis for victims of sexual violence through its Sexual Assault Examination Payment Program.

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 ~~three to seven day starter pack~~ 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 the remainder of the 28-day HIV prophylaxis is prescribed for a victim of sexual violence at the follow-up medical visit, the Commission may provide payment for the remainder of the 28-day HIV prophylaxis regimen to a SANE facility, hospital, medical clinic, pharmacy, or victim of sexual violence.~~

iv) 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.

Author: Dr. Cassie T. Jones
Statutory Authority: *ALA. CODE* § 15-23-5(14) (1995)
History: Filed September 9, 2016

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 propounded rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree?	No
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?	No
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 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 Procedures Division of the Legislative Reference Service.

Signature of certifying officer Cassie T. Jones Cassie T. Jones, Ed.D.

Date 9/9/16

REC'D & FILED

SEP 09 2016

LEGISLATIVE REF SERVICE

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 for payment of a 28-day HIV prophylaxis regimen and payment of additional drugs for HIV prophylaxis to at risk victims of sexual violence through its Sexual Assault Examination Payment Program.

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 November 7, 2016. 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

Cassie T. Jones, Ed.D.
Executive Director

APA-6
11/96

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 ____X_Amend_____Repeal_____Adopt by Reference

_____This rule has no economic impact.

____X__This rule has an economic impact, as explained below:

1. NEED/EXPECTED BENEFIT OF RULE:

This rule will further provide for payment of HIV prophylaxis and a 28-day drug regimen for at risk victims of sexual violence.

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 insure that HIV prophylaxis is available for at risk victims of sexual violence.

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, it is only promulgated to assist victims of violent crime.

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:

It will further provide for payment of HIV prophylaxis and a 28-day drug regimen for at risk victims of sexual violence.

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 help prevent at risk victims of sexual violence from contracting the HIV virus.

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

At risk victims of sexual violence will be at an increased risk of contracting the HIV virus.

****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.

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c) Sexual Assault Nurse Examiner Fee: Fee paid for the professional services of a Sexual Assault Nurse Examiner.

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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.

3) 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:

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10) HIV PROPHYLAXIS

a) The Commission may consider payment for the cost of providing HIV prophylaxis for victims of sexual violence through its Sexual Assault Examination Payment Program.

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 ~~three to seven-day starter pack~~ 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 the remainder of the 28-day HIV prophylaxis is prescribed for a victim of sexual violence at the follow-up medical visit, the Commission may provide payment for the remainder of the 28-day HIV prophylaxis regimen to a SANE facility, hospital, medical clinic, pharmacy, or victim of sexual violence.~~

iv) 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.

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