

# Forensic Nursing in the Commonwealth

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Virginia General Assembly's  
Joint Commission on Health Care

Presentation given to Virginia State Crime Commission

(for a complete version of presentation please visit:

<http://jchc.virginia.gov/meetings.asp>  
<http://jchc.virginia.gov/Forensic%20Nursing%20Revised.pdf>)

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## Forensic nursing is a subspecialty of nursing

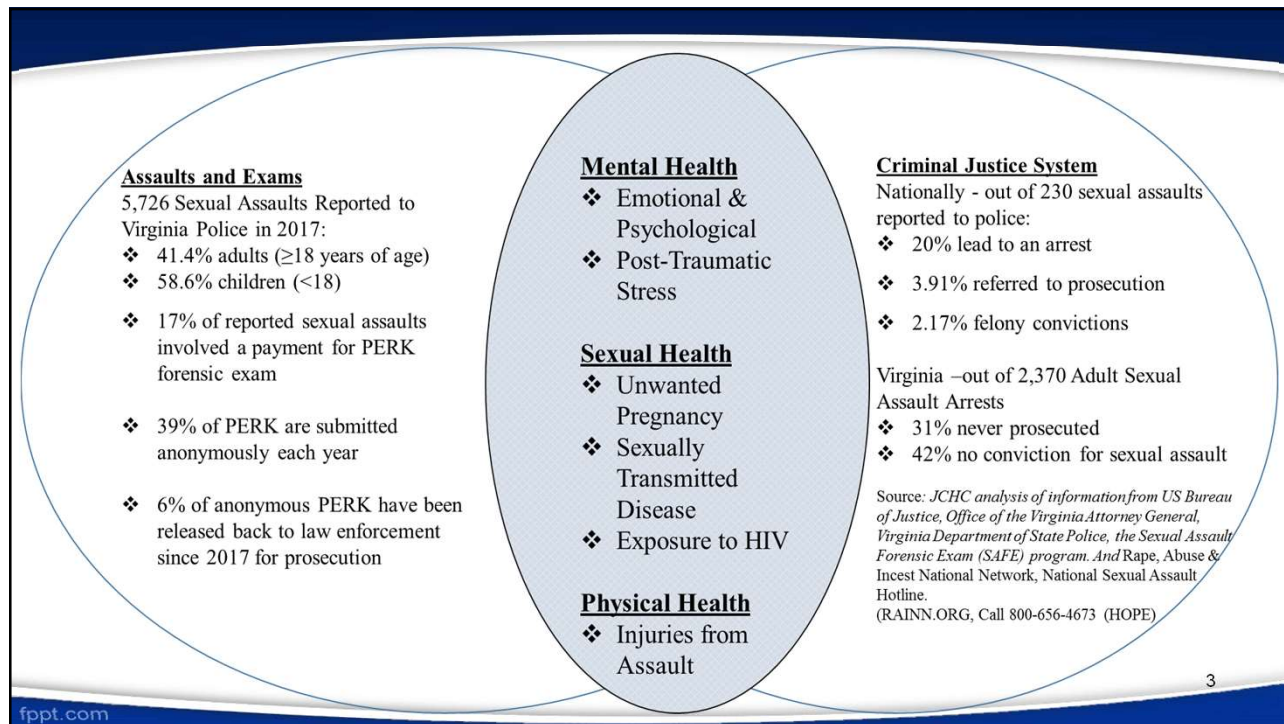
### Patients are victims of a crime

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| <ul style="list-style-type: none"> <li>• Sexual Assault               <ul style="list-style-type: none"> <li>– Adults</li> <li>– Children</li> </ul> </li> <li>• Human trafficking</li> </ul> | <ul style="list-style-type: none"> <li>• Domestic Violence</li> <li>• Intimate Partner Violence</li> <li>• Elder abuse</li> </ul> |
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- Largest subspecialty of forensic nursing is sexual assault
- Sexual assault exams
  - patients age 18 and above do not have to report to law enforcement
  - patients age 13 through 17 may be subject to reporting, determined by program (VA definition of sexual assault includes close-in-age exemption for 13-15 and 15-17)
- A sexual assault forensic exam can be with or without a Physical Evidence Recovery Kits (PERK) – VA Code § 19.2-11.5 et. seq.
  - law enforcement can approve non-PERK exams for patients ages 13 through 17
  - patient is responsible for cost of exam if PERK not used
  - patients can stop exam at any point; or decline any parts exam
- PERK can be submitted anonymously – VA Code § 19.2-11.6 (B), § 19.2-165.1
  - stored at the Division of Consolidated Labs for a minimum of 2 years; victim can request 10 additional years to prevent destruction of PERK
  - can report to law enforcement any time within storage period for investigation or prosecution
  - patients cannot be charged for a sexual assault forensic exam with a PERK, or the cost of collecting or storing a PERK

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RECOMMENDATION	
<p><b>Standardize Training:</b> Forensic nurse training should be standardized; forensic nurses should be a recognized subcategory of registered nurses</p> <p><b>Purpose:</b> insure that all nurses meet a minimum set of standards regardless of where they practice; create an opportunity to “flag” any medical claims filed that include a forensic nurse exam so that the claim can be processed seamlessly while at the same time insuring patient privacy through system edits related to services provided</p>	
<ul style="list-style-type: none"> <li>• Recommended training guidelines</li> <li>• International Association of Forensic Nurses (IAFN), US Department of Justice and the American Nurse Credentialing Center (ANCC)             <ul style="list-style-type: none"> <li>– Registered Nurse (RN) or Advanced Practice Registered Nurse (APRN)</li> <li>– two years experience – preferably emergency, critical, and/or maternal child health</li> <li>– 41 hours of online training/classroom</li> <li>– 40 hours clinical experience with guidance of a physician, advanced practice nurse, or a SANE</li> <li>– may include court and law enforcement observation</li> </ul> </li> <li>• Once fully trained, a registered nurse can be             <ul style="list-style-type: none"> <li>– credentialed as a SANE-A and/or SANE-P</li> <li>– certified by the IAFN</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• In Virginia: Provided at hospitals or programs where forensic nurses are employed</li> <li>• Generally follow IAFN guidelines and the Forensic Nursing Core Curriculum</li> <li>• Use of online training depends on program             <ul style="list-style-type: none"> <li>✓ free tribal training course - limited availability throughout the year</li> <li>✓ IAFN training courses                 <ul style="list-style-type: none"> <li>– Adult - \$350/\$500 (IAFN member/nonmember)</li> <li>– Pediatric - \$450/\$600 (IAFN member/nonmember)</li> </ul> </li> </ul> </li> <li>• JCHC survey found the following about clinical training:             <ul style="list-style-type: none"> <li>✓ can take between 2 months to a year, or longer</li> <li>✓ length of training depends on employment status of nurse – full, part time, or a PRN (as needed), and patient volume</li> <li>✓ some programs require 10, others up to 50, supervised pelvic exams</li> <li>✓ some programs require court observations; some require “ride-alongs” with police</li> <li>✓ hospitals and programs generally but not always cover costs of nurse training</li> </ul> </li> </ul>

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## RECOMMENDATION

**Hospital referral protocol:** Hospitals license requirements should include requirements for forensic examination referral protocol

**Purpose:** to make certain that hospitals without a forensic nurse examiner program refer patients to a hospital that not only has a program but also a nurse available to do the exam. And, to determine exactly where the forensic nurse examiner programs are located

- A current list of hospitals that perform forensic examinations does not exist
- Knowledge of programs are based on an informal network of forensic nurses, Commonwealth's Attorneys and a list posted on the IAFN website
- JCHC analysis identified
  - 16 hospitals providing various forensic nursing medical exam services
    - both adult and pediatric sexual assault, domestic and intimate violence, human trafficking, elder abuse
    - 1 hospital only provides pediatric forensic nurse services
  - 1 non-hospital based mobile forensic nursing service
    - 13 hospitals (Virginia Beach, Norfolk, Portsmouth, Chesapeake, Suffolk, Franklin, Southampton County)
  - Programs start with sexual assault and expand into other services - child sexual assault and abuse, domestic violence
- 11 of the 16 forensic medical exam hospitals have Trauma Care designations
  - 8 of the 19 Trauma Care hospitals in Virginia do not offer forensic examinations

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- Law enforcement agencies report being turned away from hospitals when seeking a forensic exam

Law Enforcement Survey	Responses
Number that reported being sent away	13 of 34
<ul style="list-style-type: none"> <li>• no staff on duty</li> <li>• do not do forensic exams</li> </ul>	10
No assistance finding another hospital	3
Went to more than one hospital	8
	7
<i>JCHC survey of Virginia sheriffs and police departments (May/June 2019); 34 (20%) of the 169 law enforcement agencies responded</i>	

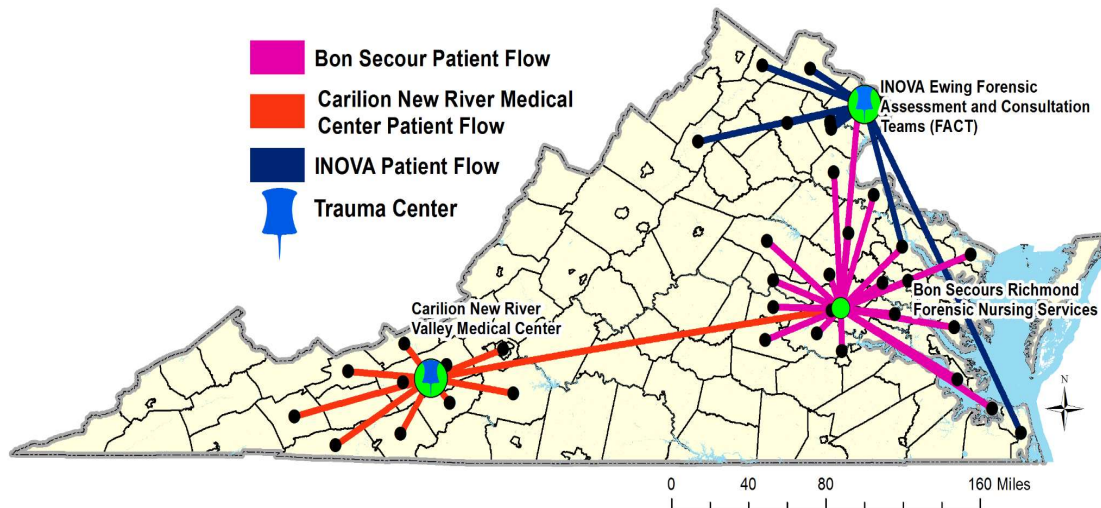
- EMS destination data reviewed to determine if the reason for the call was clearly a sexual assault or domestic violence incident
  - 16 hospitals were identified and surveyed to determine if they performed forensic examinations

Hospital survey based on EMS Ambulance Destination Data	Responses
Number of hospitals responding to survey concerning availability of forensic exam	9 of 16
<ul style="list-style-type: none"> <li>• Reported no forensic nurse program</li> </ul>	9
Hospitals that refer patients to other hospitals	7
Hospital that transfer patients but will collect evidence if necessary	1
Programs that call in a SANE Nurse to do the exam	1
<i>Source: JCHC analysis of VDH Office of Emergency Medical Services data.</i>	

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### Examples of patient-tracking from location of assault to a forensic exam program



Includes 3 of the 16 hospital-based programs to illustrate the distances traveled for a forensic exam  
Source: JCHC analysis of 2018 SAFE payment claims. Map prepared by Virginia Department of Health

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### If you build it.....

- In 2016 Fairfax INOVA
  - changed program, converting forensic nurses from part-time to full-time
  - exams increased 52%
- Office added in Loudon County, 2018
  - number of exams increased 87.43%
  - domestic violence forensic exams increased 500%

Fairfax INOVA Loudon County Office Opened April-2018 - Forensic Exam Patient Originating in Loudon County -			
	2016	2018	% Change
Total Number	74	139	87.83%
Domestic Violence	5	30	500%

Fairfax INOVA Forensic Nurse Program Annual Change Before and After Converting P/T Forensic Nurses to F/T in 2016			
Type of Exam	2015	2018	Percent Change
Adult Acute Sexual Assault	221	294	33%
Domestic Violence	66	141	114%
Pediatric Acute Sexual Assault	72	139	93%
Pediatric Chronic Sexual Assault *	96	137	43%
Child Abuse	69	69	0%
Follow up & Suspect Exams	89	154	73%
<b>Totals</b>	<b>613</b>	<b>934</b>	<b>52%</b>

\* Chronic pediatric exams (non-acute) - assault occurred outside of the timeframe for evidence collection but something forensically significant, e.g. a sexually transmitted infection or old injury, can be found or identified.

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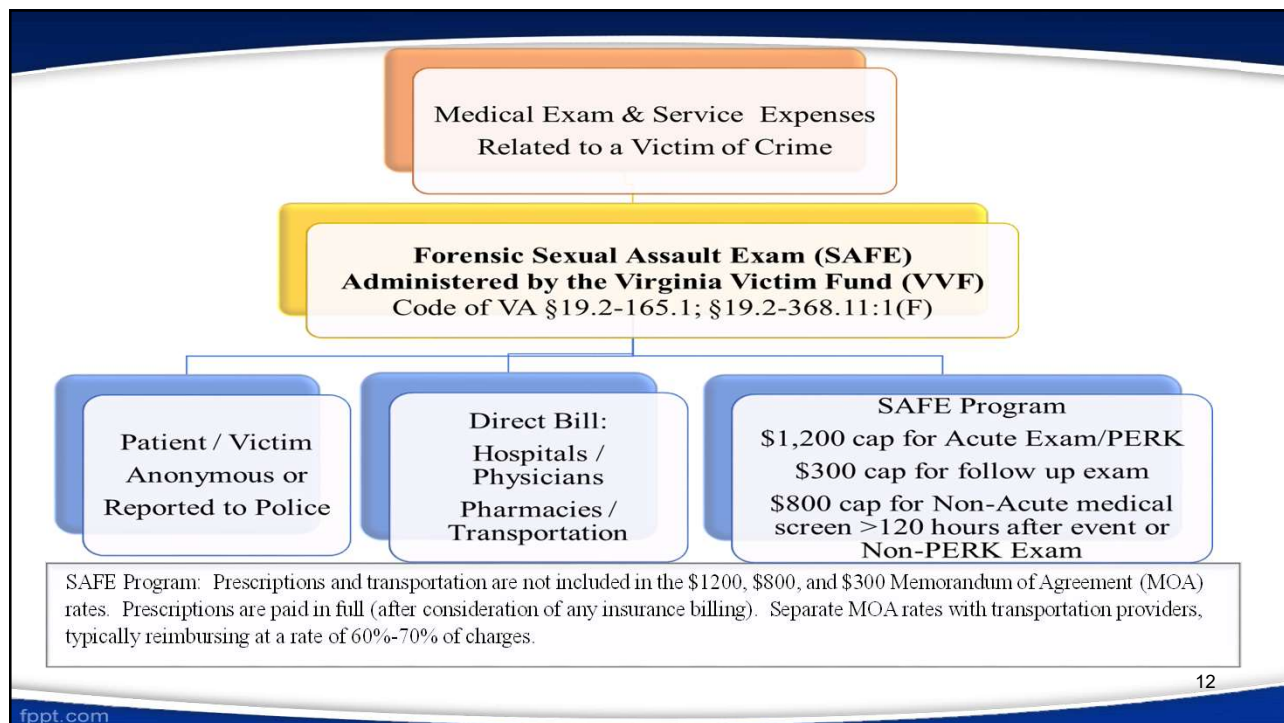


### Forensic Sexual Assault Exam (SAFE) Payment Program

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| <ul style="list-style-type: none"> <li>• Administered by the Virginia Victim Fund (VVF) at the Virginia Workers Compensation Commission (WCC)             <ul style="list-style-type: none"> <li>– Code of VA §19.2-165.1; §19.2-368.11:1(F)</li> </ul> </li> <li>• Patients incur no cost for sexual assault exams             <ul style="list-style-type: none"> <li>– exam has to be within 120 hours of assault</li> <li>– assault occurred in Virginia</li> <li>– must include PERK</li> <li>– anonymous or report to police, or authorized by Commonwealth Attorney</li> </ul> </li> <li>• Patients incur no cost for follow up exams             <ul style="list-style-type: none"> <li>– must be directly related to initial exam</li> <li>– or authorized by Commonwealth Attorney if reported</li> </ul> </li> <li>• In 2018 the SAFE program paid \$1.44 million             <ul style="list-style-type: none"> <li>– 1,513 claims for 968 patients                 <ul style="list-style-type: none"> <li>✓ vacant position within program delayed \$400,000 in provider payments until 2019</li> </ul> </li> </ul> </li> </ul> | <ul style="list-style-type: none"> <li>• <u>Patient is responsible for all costs</u> <ul style="list-style-type: none"> <li>– after 120 hours <u>unless reported and authorized by Commonwealth Attorney</u> (non-acute exam)</li> <li>– exam does not include PERK <u>unless reported and authorized by Commonwealth Attorney</u> (non-acute exam)</li> <li>– treatment of injuries, even if they occurred during assault</li> <li>– treatment of existing medical conditions, even if made worse by assault</li> <li>– follow-up appointments, medications, lab work not directly related to initial forensic exam</li> <li>– medications filled after forensic exam</li> <li>– counseling</li> </ul> </li> </ul> |
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## RECOMMENDATION

**Sexual assault victims access to funds:** Sexual assault patients receiving a forensic exam should be able to access all funds available for medical expenses

**Purpose:** sexual assault exam claims should be handled seamlessly like all other health care claims so that any service provided as a result of the assault is paid for and the patient does not have to “jump” through hoops or be forced to file a police report just to get her medical expenses covered

In addition to the SAFE program, victims may access other funds for medical services not covered by SAFE

- VVF administered by WCC
  - requires report to police and cooperation with investigation
  - requires patient to apply and submit medical expenses
    - Anonymous PERK
      - 39% of sexual assault exams
      - eliminates the ability of a patient to access VVF
      - patient is responsible for medical bills not covered by SAFE program
    - No PERK Exam
      - eliminates providers from filing a SAFE claim unless patient reports to police
      - or authorized by Commonwealth’s Attorney
    - Of the 968 unique patient claims paid by SAFE program (2018)
      - only 77 (8%) filed claims from other victim funds
- The Criminal Fund administered by Office of Executive Secretary of Supreme Court
  - authorized by Commonwealth’s Attorney, funds used to pay for medical evidence necessary to establish a crime has occurred

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## RECOMMENDATION

**Amend Explanation of Benefits Code:** The Bureau of Insurance should establish regulations to protect the privacy of patients who are dependents and can consent to their own care as well as patients who are victims of sexual assault and domestic or intimate partner violence

**Purpose:** The age of dependent coverage is now 26. Under current Virginia law all explanation of benefits (EOBs) are sent or made available to the “owner” of the health insurance policy. A mechanism should be created in VA Code to insure that adult-dependents covered under someone else’s health insurance policy can maintain their privacy when they are receiving their health care. For sexual assault and domestic violence victims this is more critical. College students will not file a report or even get a complete forensic nurse exam if they think their parents will find out what happened. Victims of domestic violence will not seek medical attention if they think the perpetrator will find out they went for any kind of help

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| <ul style="list-style-type: none"> <li>• Explanation of Benefits (EOB)               <ul style="list-style-type: none"> <li>– sent to policy holders not person receiving covered medical services</li> <li>– VA Code § 38.2-3407.4 (explanation of benefits) does not protect patients who are victims of assault, violence or abuse</li> </ul> </li> <li>• Spouse, and children through age 26, covered by another person               <ul style="list-style-type: none"> <li>– college students</li> <li>– domestic / intimate partners</li> </ul> </li> <li>• College students do not want parents or others to know               <ul style="list-style-type: none"> <li>– refuse exam</li> <li>– may only request prevention services (e.g., sexually transmitted diseases, unwanted pregnancy)</li> </ul> </li> </ul> | <ul style="list-style-type: none"> <li>• Victims of domestic and/or intimate partner violence               <ul style="list-style-type: none"> <li>– refuse services out of fear</li> </ul> </li> <li>• Virginia law on EOBs needs to be updated               <ul style="list-style-type: none"> <li>– reflect coverage of adult dependents</li> <li>– recognize privacy needs of victims of assault and abuse</li> </ul> </li> <li>• HIPAA provides for a right to request restriction (45 CFR § 164.522)               <ul style="list-style-type: none"> <li>– individual can request restrictions on protected health information for treatment, payment, or use &amp; disclosure</li> <li>– state law can require carriers to accept a request through use of a common form</li> </ul> </li> </ul> |
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## RECOMMENDATION

**Current reimbursements do not cover costs:** The reimbursement rate for forensic exams should be increased and the reimbursement process should be improved

**Purpose:** Hospitals and other health care providers, even non-profits, are businesses. Forensic nurse examinations need to be priced based on the full costs of the exam and in a similar way that all other health care services are priced. The exams are labor intensive, time consuming and low patient volume. By increasing the reimbursements to cover the actual costs, hospitals in all areas of the state may get more involved in having a forensic nurse exam program and more health care providers in general may be more accessible for follow up care

- All forensic nurse programs reported
  - exams last between 4 and 6 hours, up to 12 hours
  - condition of the patient lengthens exam time
  - involvement of a companion, family member or other support person(s) adds to time

Current Program Description	SAFE Payment
Acute medical forensic exam – within first 120 hours with PERK	\$1,200
Non-Acute medical forensic exam – after 120 hours, authorized by Commonwealth Attorney	\$800
Follow-up forensic exam	\$300
Transportation covered for travel to initial forensic exam but not follow-up Medications for STI, unwanted pregnancy and HIV post prevention covered at time of exam	Memo. of Agreement with providers / vouchers

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## SAFE program reimbursements should be increased

## Increase reimbursement to estimated actual cost

- acute exam \$2,823
- non-acute (no PERK) \$1,560
- follow up \$1,046
- HIV follow up \$913 (if necessary)
- court requirements \$1,641

## Alternative recommendation using hospital inflation adjustment

- acute exam \$1,773
- non-acute \$1,183
- follow up \$443
- court cost should be added

Source: <http://www.in2013dollars.com/Hospital-services/price-inflation/2010-to-2019?amount=1200>

- Workers Compensation Commission (WCC) approved SAFE administrators to pursue rate increases with the Department of Planning and Budget (August 27, 2019)
  - acute exam \$2,900
  - non-acute (no PERK) \$1,800
  - follow up \$1,500
- Fiscal impact \$6 million
- Proposal also includes: explore payment of injuries at time of assault, include 5 trauma-informed counseling sessions consistent with Virginia Victim Fund

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## RECOMMENDATION

**Examine feasibility of moving programs to DMAS:** An Implementation Work Group should be established to determine the feasibility of transferring the Sexual Assault Forensic Examination (SAFE) program and all medical expenses from the Virginia Workers Compensation Commission to the Department of Medical Assistance Services

**Purpose:** DMAS has a medical claims processing computer system in place that can accept all claims as medical claims, implement edits to insure privacy, process and coordinate other health insurance that may be available (Medicaid, Medicare and Tri-care) because their system is designed to process health insurance claims whether they are complex or not. In addition, DMAS has a relationship with most health care providers in the state, does provider training on a regular basis, performs audit functions to prevent fraud and abuse and has the ability to process claims seamlessly so that the patient is not responsible for any expenses associated with the assault. DMAS already provides medical claims processing services for 2 state-only programs (Temporary Detention Order (TDO) and Uninsured Medical Catastrophe Fund)

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| <ul style="list-style-type: none"> <li>• Patient and provider friendly               <ul style="list-style-type: none"> <li>– electronic filing and payment process by health care providers</li> <li>– modifier designating forensic nurse examine</li> <li>– appropriate level of reimbursement</li> <li>– suppress EOB</li> <li>– provider training</li> </ul> </li> </ul> | <ul style="list-style-type: none"> <li>• Department of Medical Assistance Services               <ul style="list-style-type: none"> <li>– expertise in processing medical claims</li> <li>– coordinates benefits with third parties</li> <li>– has extensive access to health care provider community for outreach and training</li> <li>– can suppress EOBs electronically</li> </ul> </li> </ul> |
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## APPENDIX I

## Court transfers are the source of funds for SAFE program

Budget Bill - HB1700 (Chapter 854, 2019)	Amount of Transfer
Circuit Courts (Item 40.3)	\$880,000
General District Courts (Item 41.E.)	\$40,000
Juvenile and Domestic Relations (Item 42.E.)	\$870,000
Combined District Court (Item 43.E.)	\$95,000
<b>Total</b>	<b>\$1,885,000</b>

- 6-month vacancy at WCC within SAFE program caused delays and backlog of \$400,000 of provider payments in 2018
  - backlog eliminated during 2019

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## APPENDIX II

### Examples of states with forensic nurse training and supervision in state law

- Illinois Attorney General Office
  - 40 hours classroom
  - 8 hours clinical
  - Observation at Criminal Trial Proceedings
- Maryland Board of Nursing
  - 40 hours classroom
  - 40 hours clinical rotation - Board maintains a list of approved training locations
- North Carolina Board of Nursing
  - 40 hours classroom
  - 16 hours minimum clinical -Board maintains a list of approved training locations
- Texas Office of Attorney General
  - 80 hours training in approved program, includes clinical
  - 15 pelvic exams
  - 16 hours courtroom observation

*(MA, NJ and KY also have state forensic nurse training requirements in state law)*

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## APPENDIX III

### Examples of states with EOB laws that protect patient privacy

- California (SB 138, 2013)
  - allows covered individuals to submit a “confidential communications request” to their health insurer
  - requires insurers to comply if the request involves sensitive services defined by the law, such as sexual assault services, and/or if the information that might be revealed could endanger the patient
- Maryland (SB 790, 2014)
  - permits patients to submit a form developed by the Insurance Commissioner that requests EOBs go to an alternative address
- Massachusetts (S. 2296, 2018)
  - permits patients to require their insurance carriers to send their medical information only to them as opposed to the policyholder
  - requires insurance carriers to use a common summary of payments form to be developed by the Massachusetts Division of Insurance
  - if no further payments are required a person may request that a common summary of payments form not be sent for specific services or procedures

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## APPENDIX IV

### Illinois Comprehensive Sexual Assault Act (HB 5245, 2018)

- Requires
  - medical forensic exam for sexual assault survivors (if assault occurred within 7 days)
    - ✓ done by “Qualified Medical Provider” (QMP) – trained as a sexual assault nurse examiner or sexual assault forensic examiner
    - ✓ SANE training for the nurses provided free by Office of Attorney General
  - only SAFEs and SANEs can collect evidence using sexual assault kit
  - pediatric patients (under 13) - QMPs must be child abuse pediatricians or pediatric SANEs
  - QMP must be available within 90 minutes from a patient arrival
  - QMP requirement for hospitals begin January 1, 2022
- Every provider doing a medical forensic exam needs to offer photo documentation of injuries
- All licensed hospitals are required to
  - create areawide and hospital based sexual assault treatment plan
  - choose a classification
    - ✓ treatment hospital – adult and pediatric medical forensic services
    - ✓ treatment hospital with approved pediatric transfer - adults and adolescents, transfer pediatric patients after a screening exam and stabilization
    - ✓ transfer hospital - medical screening exam and appropriate stabilization, patients are transferred for forensic medical exam
- All emergency room clinical providers required to do 2 hours of sexual assault training, repeated every 2 years

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