



**Office of
Victim Services**

**The Medical Provider
Forensic Rape Examination (FRE)
Direct Reimbursement Program**

Section 631(13) of the NYS Executive Law
Presented by: The Office of Victim Services - Legal Unit

Training Information

- This version of the Forensic Rape Examination (FRE) Direct Reimbursement Program training module was last updated on June 4, 2018.
- Please contact the Office of Victim Services (OVS) for the latest version.

History/Legislative Background

Executive Law Section 631(13)

- Dates back to 2005 and is designed to ease payment for forensic rape exams and to provide quality exams by knowledgeable practitioners.
- Designed to give the victim the ability to choose payment through this program or their own insurance coverage.

Recent Statutory Changes

- Governor Cuomo's 2018-19 Budget includes provisions to amend the Public Health, Executive and Insurance laws.
 - Private Insurance - In the event a sexual assault survivor assigns any private health insurance benefit, such coverage shall not be subject to annual deductibles, or coinsurance, or balance billing by the provider.
 - Effective date – all policies issued/renewed/ modified/alterd or amended on or after 01-01-19.

Recent Statutory Changes (cont.)

- Sexual Offense Evidence Collection/Storage - Extends the length of time sexual offense evidence collection kits are preserved. Previous legislation provided for a 30 day minimum retention period. Recent changes have extended that 30 day retention period to 20 years.
 - Effective immediately.

Recent Statutory Changes (cont.)

- Important time frames regarding storage:
 - Hospital responsible for storage until 4/1/21. Must notify victim of transfer from hospital to long term storage facility 10-30 days prior to transfer.
 - Beginning 4/1/18 Department of Health, Office of Victim Services, Division of Criminal Justice Services and New York State Police will jointly study, evaluate and make recommendations concerning the storage and monitoring of evidence for 20 years. Joint plan due to Legislature 12/1/19.
 - After 4/1/21 hospital must transfer evidence to longer term storage within 10 days of collection.
 - Victim must be notified that the evidence will be discarded at least 90 days prior to the 20 year storage period ending.

What is a “Forensic Rape Exam?”

- An examination performed by trained medical personnel **for the purpose of gathering evidence of a sexual assault** in a manner suitable for use in a court of law.

Statute Applies to:

- A New York State Accredited Hospital (any Article 28 facility with a DOH-issued operating certificate)
- A Sexual Assault Examiner certified by the Department of Health
- A licensed healthcare provider performing a forensic rape exam within the scope of the discipline in which the provider is licensed
 - Including those conducting exams within a Child Advocacy Center (CAC)

Application of the Statute

- Applies to forensic rape exams performed using the
 - Sexual Offense Evidence Collection kit (SOEC), or Drug Facilitated Sexual Assault kit AND/OR
 - *National Protocol for Sexual Assault Medical Forensic Examiners*

Providers Shall:

- Advise the victim of payment options to either bill the victim's insurance or bill OVS directly for forensic rape exam related services.
- Bill OVS directly for such services, if victim chooses not to use own insurance.
- Provide forensic rape exam services without charge to the victim.

Reimbursement Rate

- Shall be the amount of itemized charges, not exceeding the statutory cap of \$800.00.
- Rate cap was established in collaboration with the Department of Health, Division of Criminal Justices Services and Division of the Budget, among others, and is reviewed annually pursuant to statute.

Services Intended to be Covered by the FRE Direct Reimbursement Fee

- **Forensic Examiner Services**
- **Facility Services** related to the forensic rape exam
- **Labs and Pharmaceuticals** related to the forensic rape exam

Services not Included

- Unrelated medical services (e.g. suturing, broken limbs, inpatient services).
- Post exposure HIV prophylaxis beyond the 7-day supply and post exposure counseling services.
- NOTE: If the costs are not included on the bill submitted by the provider for FRE Direct Reimbursement, a victim must use their insurance to cover the costs of medical care beyond the forensic rape exam related costs but can apply to OVS for reimbursement of their out of pocket expenses; i.e. copays and deductibles, through the “regular” claim process.



A “Regular” OVS Claim Application Must be Filed by the Victim/Guardian for Follow-Up Medical Expenses and Other Benefits to be Considered by OVS

- Medical expenses; including the post exposure HIV prophylaxis beyond the 7-day supply
- Loss of earnings or support (up to \$30,000)
- Counseling expenses
- Loss of essential personal property (\$500)
- Reasonable court-transportation expenses in connection with the prosecution
- Costs for DV shelter residence and / or services
- Moving expenses (\$2,500)



How Does a Healthcare Provider Apply for FRE Direct Reimbursement?

- Claim forms are available online at www.ovs.ny.gov and included in the SOEC kit.
- No later than one year from the date of the exam, provider must submit the FRE Direct Reimbursement claim form with an itemized bill.
 - **New York State facility in which the exam took place files the claim; NOT the physician/examiner**
- OVS requires the **original** claim form – copies and faxes will be rejected.

What is considered an itemized bill?

- An itemized bill means one that includes:
 - **CPT codes** for each forensic rape exam related service performed,
 - the **charges** for each coded service,
 - the sum **total** of all charges billed, **and**
 - the primary **diagnosis** of “sexual assault” or “sexual abuse” or diagnostic code **Z04.41, Z04.42, Y04.8XXA, T74.21XA, T76.21XA, T74.22XA** or **T76.22XA**.



Claim Form

Claim Form – In General

- The claim form verifies a forensic rape exam was performed, indicates to whom reimbursement is to be paid and documents that the victim was advised of, and understands, payment options under New York State law.

Crime Date

- Can be a date certain, a month/year, a season/year or a date range. Cannot be “unknown.”
- Must be filled in and cannot be altered.
- Does not have to be the same date as the forensic rape exam.
- **OVS can reimburse only one forensic rape exam for each victim for each incident.**

Crime Location

- Must be filled in and cannot be altered.
- Cannot be “unknown.”

Social Security Number

- The Social Security Number (SSN) is used to identify duplicate billing and to link claims.
- The SSN field **cannot be left blank**.
- If no SSN is available, the billing provider must indicate the reason why. For example:
 - *“Does not have,”*
 - *“Does not know,”* or
 - *“Not available”* or *“N/A”*

Billing Provider Information

- Must be completed or your claim will be rejected.
- Billing Provider Federal ID Number is your tax ID number.
- Operator Certificate ID is your DOH issued ID number.
- Make sure that the address you list is where you can receive correspondence.
- Billing Department Contact should be someone with knowledge of the program, not just the billing office.

Signature Issues

- Victim/Guardian and forensic examiner signatures required.
- Must submit original signatures - **photocopies will be rejected.**
- Must be signed and dated at the time of services or after services rendered (cannot be before services are rendered).

Signature Issues (Cont'd)

- Victim/Guardian signature is an insurance waiver – triggers payment through the FRE Direct Reimbursement Program.
- Child in Foster Care – Guardian is Commissioner of Local Service Agency and he/she must sign the FRE Direct Reimbursement claim form.

Examiner License Numbers

- The examiner that performed the exam must include their **six digit license number** in the field designated.
- Claims will be randomly selected for license number validation – the name of the examiner must match the license number. Inconsistencies or inaccuracies will be cause for rejecting an FRE claim.
 - Helpful tip: Include the examiner's professional designation, i.e.; RN, MD, PA, NP, etc.
 - Helpful tip: Write neatly. If we cannot read it, we cannot enter it.



FRE FAQs

Is an Evidence Collection Kit Required for Reimbursement?

- No. There is no requirement that a victim consent to any portion of a Sexual Offense Evidence Collection (SOEC) kit to be eligible for exam reimbursement under the FRE Direct Reimbursement Program.

What if no Physical Medical Evidence of a Sexual Assault is Found?

- If a Sexual Offense Evidence Collection (SOEC) kit or Drug Facilitated Sexual Assault kit is used a diagnosis of sexual assault is presumed.
- If no kit is used, the bill must have a sexual assault diagnostic code or other indication of sexual assault.
- For an adult victim (18 years old or older) - the bill must have at least one lab coded service in addition to visit code provided and billed. (See OVS Website at www.ovs.ny.gov for instructions and acceptable codes)

Does a Victim Have to File the “Regular” Application with OVS to Ensure Payment for the Forensic Rape Exam?

- No.
- BUT – A victim MAY file a “regular” application if medical services, other than those related to the forensic rape exam, are needed, including HIV prophylaxis beyond the initial 7-day dose pack, or to recover reimbursement for additional follow-up medical care, loss of personal property, earnings or support, counseling expenses, crime scene cleanup, court transportation and rehabilitative services.

Is Follow-Up or Post-Exposure HIV Prophylaxis After the 7-Day Dose Pack Reimbursable Under the FRE Direct Reimbursement Program?

- No. Only costs for the initial 7-day supply of HIV prophylaxis are included under the FRE Direct Reimbursement Program.
- A “regular” OVS application may be filed by the victim/guardian to request reimbursement for additional expenses not covered under the FRE Direct Reimbursement Program.

Is it Necessary to File a Police Report to Qualify for FRE Direct Reimbursement?

- No. There is no requirement that a victim involve law enforcement to be eligible for exam reimbursement under the FRE Direct Reimbursement Program.
- Note: For sexual assault victims, OVS will accept the medical documentation of the sexual assault forensic examination in lieu of a police report if the victim files a “regular” claim with OVS and does not report to police.

Does a Victim Have to Have a Forensic Rape Exam Performed Right Away? What is the Timeframe?

- Generally, a forensic rape exam must be done within 96 hours according to DOH medical protocols to ensure that certain types of evidence can be recovered and preserved.
- OVS will cover exams conducted beyond 96 hours if victim is minor child OR for any victim if good cause is shown for delay.

Can the FRE Direct Reimbursement Program Pay for the Cost of a Forensic Rape Examination of a Minor?

- Yes. The FRE Direct Reimbursement Program will pay for the cost of a sexual assault forensic examination regardless of age.

Can a Minor Child Sign an FRE Direct Reimbursement Claim Form?

- A minor child may sign the FRE Direct Reimbursement claim form, but only if it is **reasonable to conclude that the child understands what he or she is signing and why.**

Does a Victim Have to Use Private Healthcare Insurance to Pay for the Forensic Rape Exam?

- No. The victim may decline to provide information about insurance, especially if it would interfere with personal privacy or safety.

Does a Victim Have to Use Medicaid to Pay for the Forensic Rape Exam?

- No. Victims do not have to use private insurance, Medicaid, Medicare, HMO or any other insurance program for the forensic rape exam.

Private Physician Conducts a Forensic Rape Exam in their Office without a Kit. Can they Still be Reimbursed?

- Yes, so long as the examination was conducted in accordance with Public Health Law §2805(i) and the National Protocol for Sexual Assault Medical Forensic Examiners and includes a diagnosis code indicating sexual assault/abuse.
- This applies to both acute and chronic cases.

Provider Performs a Forensic Rape Exam in a Hospital with Privileges, or on an On-Call Basis. How do they get Paid for their Services?

- OVS reimburses the hospital/facility in which the exam takes place by way of an unallocated (“global”) payment.
 - **New York State facility in which the exam takes place files the claim; NOT the physician/examiner**
- The facility is responsible for allocating expenses proportionately among service providers.

Can the Provider Balance Bill the Victim for Forensic Rape Exam Services After FRE Direct Reimbursement?

- No. A provider must accept the OVS reimbursement rate as payment in full for all services listed on the bill submitted with the provider's FRE Direct Reimbursement claim form.
- Providers should work with other service providers, such as ER physician, to ensure that no further billing of the victim occurs for forensic rape exam related services.

The Provider's FRE Direct Reimbursement Claim was Denied by OVS. Can they Bill the Victim or their Insurance?

- No. Once the victim chooses billing to OVS the provider can not bill the victim, or their insurance, regardless of the outcome of the provider's FRE Direct Reimbursement claim with OVS.

The Victim's Insurance did not Cover 100% of the Forensic Rape Exam Related Charges. Can the Provider Charge OVS for the Balance?

- No. Once private healthcare insurance is assigned, the FRE Direct Reimbursement Program is no longer available for forensic rape exam services.

Benefits

- For Victims:
 - Privacy – for crime victim
 - Safety – abusive spouse, relative, partner
 - Less paperwork – no financial affidavit, no claim application, no evidentiary inquiry
- For Providers:
 - Less paperwork
 - Less delay
 - Direct Payment

Housekeeping

- Bar code on the FRE Direct Reimbursement claim form is static and downloadable. **Please do not cover it or staple over it.**
- The claim form itself may be copied; BUT **signature fields must have original signatures.**
- Use **appropriate CPT codes.** We cannot accept “G” Codes.
- Use **appropriate diagnostic codes** Z04.41, Z04.42, Y04.8XXA, T74.21XA, T76.21XA, T74.22XA or T76.22XA to identify the exam as a sexual assault forensic exam.
- Include all codes and charges related to the forensic rape exam and **eliminate any charges not directly related to the forensic rape exam.**

Program Statistics

Calendar Year 2016

Received **6,469** FRE Direct Reimbursement claims

Paid **6,026** claims

Calendar Year 2017

Received **6,310** FRE Direct Reimbursement claims

Paid **5,757** claims

Supplemental Information

- For additional guidance please see our recently revised “Supplemental Information” document. This document is available on our website for viewing/printing.
 - <https://ovs.ny.gov/forensic-rape-examination-fre-direct-reimbursement-program>
- As part of our recent revisions, we are pleased to announce that the “Section Three - Victim Insurance Waiver” has been translated into seven (7) additional languages to assist those victims with limited English proficiency.

Who do I Contact for More Information About the Program or the Claim Form?

- www.ovs.ny.gov
- 1-800-247-8035
- New York State Office of Victim Services
Attn: FRE Processing
Alfred E. Smith State Office Building
80 South Swan St., 2nd Floor
Albany, New York 12210
- Shelby Foster,
Associate Attorney
- Shelby.Foster@ovs.ny.gov
- (518) 457-8068