



2026 South Dakota Legislature

Senate Bill 87

Introduced by: **Senator Reed**

1 **An Act to clarify and establish requirements related to forensic medical**
 2 **examinations.**

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 **Section 1. That § 22-22-26 be AMENDED:**

5 **22-22-26.** The county where an alleged rape or sexual offense occurred ~~must~~ shall
 6 pay the cost of any forensic medical examination performed ~~by a physician, hospital, or~~
 7 ~~clinic~~ on the victim of the alleged rape or sexual offense.

8 The cost of a forensic medical examination includes:

- 9 (1) ~~Physician~~Provider, hospital, or clinic services directly related to the ~~forensic medical~~
 10 examination;
- 11 (2) Necessary forensic supplies;
- 12 (3) Scope procedures directly related to the ~~forensic medical~~ examination, including
 13 anoscopy and colposcopy;
- 14 (4) Laboratory testing directly related to the ~~forensic medical~~ examination, including
 15 drug screening, urinalysis, pregnancy screening, syphilis screening, chlamydia
 16 culture, gonorrhea coverage culture, HIV screening, hepatitis B and C screening,
 17 herpes culture, and any other sexually transmitted disease testing directly related
 18 to the examination;
- 19 (5) Any medication provided during the ~~forensic medical~~ examination; and
- 20 (6) Any radiology service directly related to the ~~forensic medical~~ examination.

21 **Section 2. That § 22-22-26.2 be AMENDED:**

22 **22-22-26.2.** Each ~~physician, hospital, and clinic conducting an~~ that provides a
 23 forensic medical examination under § 22-22-26 shall coordinate with the county to
 24 establish a payment process by which the county shall pay for the cost of ~~any forensic~~
 25 ~~medical~~ the examination performed under § 22-22-26, and to notify any victim of rape or

1 sexual offense of the availability of ~~a forensic medical~~ an examination at no cost to the
 2 victim. A victim of rape or sexual offense is not required to participate in the criminal
 3 justice system or to cooperate with law enforcement to be provided with a forensic medical
 4 examination ~~without cost to the victim.~~

5 The amount paid to ~~a physician,~~ hospital, or clinic for a forensic medical ~~exam~~
 6 examination performed under § 22-22-26 may not exceed the actual cost of the ~~forensic~~
 7 ~~medical~~ examination or an amount established by the secretary of the Department of
 8 Social Services, whichever is less. The amount established by the secretary under this
 9 section ~~shall~~ must be based on ~~Medicaid~~ medicaid payment methodology. A ~~physician,~~
 10 hospital, or clinic may not maintain a claim against a county for any amount that exceeds
 11 the usual, ordinary, and reasonable charge for a forensic medical examination, ~~including~~
 12 ~~an~~ even if the amount ~~that~~ is less than the actual cost of the ~~forensic medical~~ examination.
 13 If the ~~physician,~~ hospital, or clinic ~~performs~~ provides forensic medical examinations, or
 14 any portion of ~~a forensic medical~~ an examination, to persons who are medically indigent
 15 residing in the county in which the ~~physician,~~ hospital, or clinic is located, at a cost less
 16 than the amount provided for in this section, the ~~physician,~~ hospital, or clinic ~~shall~~ must
 17 furnish the ~~forensic medical~~ examination, or any applicable portion of the ~~forensic medical~~
 18 examination, at the lower cost.

19 **Section 3. That § 22-22-26.3 be AMENDED:**

20 **22-22-26.3.** A minor age sixteen or older may consent to a forensic medical
 21 examination, ~~as defined under § 22-22-26.5.~~ The minor's consent is not subject to
 22 disaffirmance because of minority, and consent of a parent or guardian is not required
 23 under this section. The ~~physician,~~ hospital, or clinic shall take reasonable steps to notify
 24 a minor's parent or guardian that an examination has taken place, unless the parent or
 25 guardian is the suspected perpetrator.

26 **Section 4. That § 22-22-26.4 be AMENDED:**

27 **22-22-26.4.** A ~~physician,~~ hospital, or clinic may provide a forensic medical
 28 examination, ~~as defined under § 22-22-26.5,~~ without the consent of a guardian of a
 29 protected person, as those terms are defined under § 29A-5-102, to any protected person
 30 who provides informed consent. If a patient has a guardian, the ~~physician,~~ hospital, or
 31 clinic must make a good faith effort to notify the guardian, before the forensic medical
 32 examination, that the patient provided informed consent for the examination and the
 33 examination will take place, unless the guardian is the suspected perpetrator.

1 If the attending physician, physician assistant, nurse practitioner, or sexual assault
 2 nurse examiner makes a good faith determination that a patient is incapable of giving
 3 informed consent under this section, neither the physician, physician assistant, nurse
 4 practitioner, or nurse examiner, nor the hospital or clinic, may be subject to criminal
 5 prosecution, civil liability, or professional discipline for failing to follow the patient's
 6 direction or for making the determination.

7 If the attending physician, physician assistant, nurse practitioner, or sexual assault
 8 nurse examiner makes a good faith determination that a patient is capable of giving
 9 informed consent under this section, neither the physician, physician assistant, nurse
 10 practitioner, or nurse examiner, nor the hospital or clinic, may be subject to criminal
 11 prosecution, civil liability, or professional discipline for following a patient's direction or for
 12 making the determination.

13 For purposes of this section, the term "informed consent" means consent
 14 voluntarily, knowingly, and competently given without any element of force, fraud, deceit,
 15 duress, threat, or other form of coercion after conscientious explanation of all information
 16 that a reasonable person would consider significant to the decision in a manner reasonably
 17 comprehensible to general lay understanding.

18 **Section 5. That § 22-22-26.5 be AMENDED:**

19 **22-22-26.5.** For the purposes of §§ 22-22-26 to 22-22-26.4, inclusive, and
 20 sections 6 to 8, inclusive, of this Act, the term "forensic following terms mean:

21 (1) "Forensic medical examination," includes a medical assessment, administered in
 22 accordance with section 6 of this Act, with the following components:

- 23 ~~(1)~~(a) Examination of physical trauma;
- 24 ~~(2)~~(b) Patient interview, determination of medical history, triage, and
 25 consultation; and
- 26 ~~(3)~~(c) Collection and evaluation of any evidence, including any photographic
 27 documentation; preservation and maintenance of the chain of custody of
 28 evidence; medical specimen collection; and any assessment of whether an
 29 alcohol-facilitated sexual assault or a drug-facilitated sexual assault
 30 occurred and any toxicology screening deemed necessary by the attending
 31 physician, physician assistant, nurse practitioner, or sexual assault nurse
 32 examiner;

- 1 (2) "Sexual assault nurse examiner," a registered nurse, licensed in accordance with
- 2 chapter 36-9, who has completed specialized education and clinical training in the
- 3 medical forensic care of patients who have experienced sexual assault; and
- 4 (3) "Sexual assault response team," a multidisciplinary, interagency group of law
- 5 enforcement officials, health care providers, victim advocates, and representatives
- 6 from state's attorney offices, who collaborate to provide a coordinated response to
- 7 sexual assault and to improve health and judicial outcomes for victims.

8 **Section 6. That a NEW SECTION be added to chapter 22-22:**

9 A forensic medical examination may be administered only by a:

- 10 (1) Physician licensed in accordance with chapter 36-4;
- 11 (2) Physician assistant licensed in accordance with chapter 36-4A;
- 12 (3) Nurse practitioner licensed in accordance with chapter 36-9A; or
- 13 (4) Sexual assault nurse examiner.

14 Except as otherwise provided in this section, a hospital or clinic that provides
15 forensic medical examinations shall ensure that the physician, physician assistant, or
16 nurse practitioner who administers the examination has completed at least two hours of
17 training through a program or course based on the minimum training recommendations
18 set forth in Appendix C of the second edition of the National Training Standards for Sexual
19 Assault Medical Forensic Examiners, published by the United States Department of Justice
20 (August 1, 2018).

21 A physician, physician assistant, or nurse practitioner may administer a forensic
22 medical examination without completing the training required by this section if a sexual
23 assault nurse examiner, or a physician, physician assistant, or nurse practitioner, who has
24 completed the training, utilizes telehealth to observe and advise the on-site provider
25 regarding the administration of the examination.

26 **Section 7. That a NEW SECTION be added to chapter 22-22:**

27 A hospital licensed in accordance with chapter 34-12, except a specialized hospital,
28 shall establish and maintain policies and procedures regarding the administration of
29 forensic medical examinations. The policies and procedures must:

- 30 (1) State whether the hospital provides forensic medical examinations on-site, and if
- 31 so, identify the types of providers who administer the examinations;
- 32 (2) If the hospital does not provide examinations on-site, or if a provider is not
- 33 available:

- 1 (a) Identify a hospital or clinic to which a patient may be referred or transferred
 2 for an examination;
 3 (b) Specify the timeframe, after presentation, within which a patient must be
 4 referred or transferred for an examination; and
 5 (c) Ensure transfers and referrals are timely, safe, and preserve the integrity
 6 of forensic evidence;
 7 (3) If the hospital provides examinations on-site, address how the hospital coordinates
 8 with law enforcement agencies in:
 9 (a) The collection, preservation, storage, and transportation of evidence;
 10 (b) The administration and processing of sexual assault kits in accordance with
 11 chapter 23-5C; and
 12 (c) The maintenance of the chain of custody of evidence;
 13 (4) Address how the hospital coordinates with the sexual assault response team that
 14 provides services to the county in which the hospital is located, if applicable;
 15 (5) Address how the hospital provides information, to a patient requesting an
 16 examination, on the availability of and resources from victim advocates;
 17 (6) Incorporate trauma-informed care practices; and
 18 (7) Ensure patient privacy and dignity.
 19 The hospital shall publish the policies and procedures on the hospital's website.
 20 The hospital shall provide an informational sheet that summarizes the policies and
 21 procedures to a patient upon request.

22 **Section 8. That a NEW SECTION be added to chapter 22-22:**

- 23 If a clinic provides forensic medical examinations, the clinic must establish and
 24 maintain policies and procedures regarding the administration of the examinations. The
 25 policies and procedures must:
 26 (1) Identify the types of providers who administer the examinations;
 27 (2) If a provider is not available:
 28 (a) Identify a hospital or clinic to which a patient may be referred or transferred
 29 for an examination;
 30 (b) Specify the timeframe, after presentation, within which a patient must be
 31 referred or transferred for an examination; and
 32 (c) Ensure transfers and referrals are timely, safe, and preserve the integrity
 33 of forensic evidence;
 34 (3) Address how the clinic coordinates with law enforcement agencies in:

- 1 (a) The collection, preservation, storage, and transportation of evidence;
- 2 (b) The administration and processing of sexual assault kits in accordance with
- 3 chapter 23-5C; and
- 4 (c) The maintenance of the chain of custody of evidence;
- 5 (4) Address how the clinic coordinates with the sexual assault response team that
- 6 provides services to the county in which the clinic is located, if applicable;
- 7 (5) Address how the clinic provides information, to a patient requesting an
- 8 examination, on the availability of and resources from victim advocates;
- 9 (6) Incorporate trauma-informed care practices; and
- 10 (7) Ensure patient privacy and dignity.
- 11 The clinic shall publish the policies and procedures on the clinic's website. The clinic
- 12 shall provide an informational sheet that summarizes the policies and procedures to a
- 13 patient upon request.