

2026 South Dakota Legislature

Senate Bill 87**AMENDMENT 87B
FOR THE INTRODUCED BILL**

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 ~~appropriate~~ training ~~through a program or course based on the minimum training~~
 18 ~~recommendations set forth in Appendix C of the second edition of the National Training~~
 19 ~~Standards for Sexual Assault Medical Forensic Examiners, published by the United States~~
 20 ~~Department of Justice (August 1, 2018), as determined by the hospital or clinic, to conduct~~
 21 ~~the examination.~~

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

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

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

- 32 (1) State whether the hospital provides forensic medical examinations on-site, ~~and if~~
 33 ~~so, identify the types of providers who administer the examinations;~~

1 (2) If the hospital does not provide examinations on-site, or if a provider is not
 2 available:

3 ~~(a) Identify a hospital or clinic to which a patient may be referred or transferred for an~~
 4 ~~examination;~~

5 ~~(b) Specify the timeframe, after presentation, within which a patient must be referred~~
 6 ~~or transferred for an examination; and~~

7 ~~(c) Ensure, address timely transfers and referrals are timely, safe, and to another~~
 8 ~~hospital or clinic that provides examinations, in order to best preserve the integrity~~
 9 ~~of forensic evidence;~~

10 (3) If the hospital provides examinations on-site, address how the hospital coordinates
 11 with law enforcement agencies in:

12 ~~(a) The collection, preservation, storage, and transportation of evidence;~~

13 ~~(b) The administration and processing of sexual assault kits in accordance with chapter~~
 14 ~~23-5C; and~~

15 ~~(c) The for the processing, storage, and maintenance of the chain of custody of~~
 16 ~~evidence;~~

17 (4) Address how the hospital coordinates with the sexual assault response team that
 18 provides services to the county in which the hospital is located, if applicable; and

19 (5) Address how the hospital provides information, to a patient requesting an
 20 examination, on the availability of and resources from victim advocates;

21 ~~(6) Incorporate trauma-informed care practices; and~~

22 ~~(7) Ensure patient privacy and dignity.~~

23 ~~The hospital shall publish the policies and procedures on the hospital's website.~~

24 ~~The hospital shall provide an informational sheet that summarizes the policies and~~
 25 ~~procedures to a patient upon request.~~

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

27 If a clinic provides forensic medical examinations, the clinic must establish and
 28 maintain policies and procedures regarding the administration of the examinations. The
 29 policies and procedures must:

30 (1) Identify the types of providers who administer the examinations;

31 (2) If a provider is not available:

32 ~~(a) Identify a hospital or clinic to which a patient may be referred or transferred for an~~
 33 ~~examination;~~

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