



## 2020 South Dakota Legislature

# House Bill 1211

Introduced by: **Representative Reed**

1 **An Act to change the payment process for forensic medical examinations.**

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

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

4 **22-22-26. Insurance or county to pay for forensic medical examinations.**

5 A physician, hospital, or clinic who performs a forensic medical examination may  
 6 request authorization from the victim of the alleged rape or sex offense to allow payment  
 7 for the examination from the victim's insurer, unless the examination is for an unreported  
 8 sexual assault. This authorization may only be requested after the examination has been  
 9 performed. When seeking authorization, the physician, hospital, or clinic shall inform the  
 10 victim that if the victim does not give authorization, the county is required to pay for the  
 11 examination and the victim is not liable for examination costs or obligated to give  
 12 authorization. Nothing in this section limits the duties, responsibilities, or liabilities of any  
 13 insurer, except that a hospital may only seek payment from insurance for a forensic  
 14 medical examination if authorized by the victim.

15 The county where an alleged rape or sexual offense occurred shall pay, excluding  
 16 any costs covered by the victim's insurance, the cost of any forensic medical examination  
 17 performed by a physician, hospital, or clinic on the victim of the alleged rape or sexual  
 18 offense. For purposes of the provisions of §§ 22-22-26 to 22-22-26.2, inclusive, the term,  
 19 forensic medical examination, includes:

- 20 (1) Examination of physical trauma;  
 21 (2) Patient interview, including medical history, triage, and consultation; and  
 22 (3) Collection and evaluation of evidence, including any photographic documentation;  
 23 preservation and maintenance of the chain of custody of evidence; medical  
 24 specimen collection; and any alcohol- or drug-facilitated sexual assault assessment  
 25 and toxicology screening deemed necessary by the physician, hospital, or clinic.

26 **Section 2.** That § 22-22-26.1 be AMENDED:

1           **22-22-26.1. Cost of forensic medical examination--Convicted defendant to**  
 2           **reimburse insurance and county.**

3           A person who is convicted of a rape or sexual offense shall be required as part of  
 4           the sentence imposed by the court to reimburse the victim's insurer, the county, or both,  
 5           for the cost of any forensic medical examination performed under § 22-22-26 resulting  
 6           from the rape or sexual offense for which the defendant is convicted. The cost of a forensic  
 7           medical examination to be paid ~~by the county~~ under § 22-22-26 and reimbursed ~~to the~~  
 8           ~~county~~ under this section shall include:

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

20           **Section 3.** That § 22-22-26.2 be AMENDED:

21           **22-22-26.2. Coordination of payment of cost of forensic medical**  
 22           **examinations--Notice to victim--Victim not required to participate.**

23           Each physician, hospital, and clinic conducting an examination under § 22-22-26  
 24           shall coordinate with the county to establish a payment process by which the county shall  
 25           pay for the cost of any forensic medical examination performed under § 22-22-26 and to  
 26           notify any victim of rape or sexual offense of the availability of a forensic medical  
 27           examination at no cost to the victim. A victim of rape or sexual offense is not required to  
 28           participate in the criminal justice system or to cooperate with law enforcement to be  
 29           provided with a forensic medical examination without cost to the victim.

30           The amount paid to a physician, hospital, or clinic for a forensic medical exam  
 31           performed under § 22-22-26 may not exceed the actual cost of the forensic medical  
 32           examination or an amount established by the secretary of the Department of Social  
 33           Services, whichever is less. The amount established by the secretary under this section  
 34           shall be based on Medicaid payment methodology. A physician, hospital, or clinic may not

1 maintain a claim against a victim's insurer or a county for any amount that exceeds the  
2 usual ordinary and reasonable charge for a forensic medical examination, including an  
3 amount that is less than the actual cost of the forensic medical examination. If the  
4 physician, hospital, or clinic performs forensic medical examinations, or any portion of a  
5 forensic medical examination, to persons who are medically indigent residing in the county  
6 in which the physician, hospital, or clinic is located at a cost less than the amount provided  
7 for in this section, the physician, hospital, or clinic shall furnish the forensic medical  
8 examination, or any applicable portion of the forensic medical examination, at the lower  
9 cost.