

# Medical Forensic Exam Payment for Immigrant Survivors

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## VAWA Prohibits Charging Victims Out-of-Costs for Medical Forensic Exams (MFEs):

- VAWA, initially enacted in 1994, mandates that states are only eligible to receive STOP grant funding if the state or another government entity pays for the full out-of-pocket costs of forensic medical exams for victims of sexual assault<sup>1</sup> without regard to whether the victim decides to make a police report, cooperates with law enforcement, or participates in the criminal justice system.<sup>2</sup>
- VAWA 2013 prohibits states from charging for rape kits and later reimbursing the victim for the out-of-pocket expenses for the exam.<sup>3</sup>
- Health care providers are also required to coordinate with other health care providers to notify victims of sexual assault of the availability of rape exams at no cost to the victims.<sup>4</sup>
- Should a state require or ask victims to submit charges for rape exams to a private insurance company, states are required to ensure any co-payments or deductibles are charged to the state entity that pays for rape exams, not the victim.<sup>5</sup>

## Immigration Status and Medical Forensic Exam Payment:

- Immigration status is irrelevant for exam payment, which means, immigrant sexual assault survivors are treated the same as any sexual assault survivor and under VAWA cannot be charged any out-of-pocket expenses related to Medical Forensic Exams (MFEs).<sup>6</sup>

## When The Rape Occurs in One Location and the Medical Forensic Exam Takes Place in Another:

- The vast majority of states pay for Medical Forensic Exams performed in the state without regard to whether or not the sexual assault took place in that state.<sup>7</sup>
- A few states have laws or policies that only pay for forensic exams when the sexual assault took place in the state or when the Medical Forensic Exam was performed in the state.<sup>8</sup> When these laws conflict, under VAWA, the states are responsible working together to ensure that the victim is not billed for any out-of-pocket costs for the Medical Forensic Exam.<sup>9</sup>
- If the sexual assault occurred in another country or if the location where the sexual assault occurred is not covering the costs of the forensic exam, the state in which the Medical Forensic Exam is performed is responsible for covering the costs to ensure that the victim is not billed for out-of-pocket costs associated with the Medical Forensic Exam to be compliant with VAWA.<sup>10</sup>

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## Gaps on the Coverage and out-of-pocket expenses:

- What services and costs are considered to be part of the Medical Forensic Exams performed vary by state.<sup>11</sup>
  - The Medical Forensic Examination includes at a minimum staff time, equipment and supplies associated with:<sup>12</sup>
    - Gathering information from the patient for the forensic medical history;
    - Head-to-toe examination of the patient;
    - Documentation of biological and physical findings; and
    - Collection of evidence from the patient.
- Sexual assault survivors often have important needs for continued physical and mental healthcare services that go beyond what the state covers related to the Medical Forensic Exam (MFE).<sup>13</sup> Coverage for services beyond rape kits varies by state, with survivors incurring costs not included in the MFE for STI testing, completing Post-exposure prophylaxis (PEP) treatment to protect against HIV, emergency contraception, oral or injected medications (e.g. antibiotics), or injury-related services.<sup>14</sup>
- When these services are not included in the Medical Forensic Exam, victims are often charged the out-of-pocket costs for these important post-sexual assault healthcare services.<sup>15</sup>

## Where Immigrant Survivors Can Access to Health Care Regardless of Immigration Status:

- Payment for out-of-pocket expenses for health care costs that are not considered to be part of the Medical Forensic Exam can be an issue for immigrants that do not have access to private medical insurance or subsidized health care.<sup>16</sup>
- Not all immigrants are eligible to purchase health insurance on the healthcare exchanges, even if they have pending or approved immigration applications.<sup>17</sup>
  - The Affordable Care Act<sup>18</sup> and HHS implementing regulations<sup>19</sup> provide a list of immigrants considered lawfully present who are eligible to purchase health insurance on the state and federal healthcare exchanges.<sup>20</sup>
- See the **Health Care Options for Immigrant Survivors Factsheet** for more information on the options available to immigrants for accessing health care treatments and other public benefits.

<sup>1</sup> 34 U.S.C § 10449(a)(1)(A); 34 U.S.C § 10449(b); OFFICE OF VIOLENCE AGAINST WOMEN (OVW), FREQUENTLY ASKED QUESTIONS (FAQS) ABOUT STOP FORMULA GRANTS, 37 (Oct. 2017), <https://www.justice.gov/ovw/page/file/1008816/dl?inline>

<sup>2</sup> 34 U.S.C § 10449(d)(1); Effective January 5, 2009 states will not be in compliance with VAWA and will be ineligible to receive STOP program funds if the victim must either cooperate with law enforcement or participate in the criminal justice system in order to be provided a Medical Forensic Exam or receive payment for these exams. OFFICE OF VIOLENCE AGAINST WOMEN (OVW), FREQUENTLY ASKED QUESTIONS (FAQS) ABOUT STOP FORMULA GRANTS, 39 (Oct. 2017), <https://www.justice.gov/ovw/page/file/1008816/dl?inline> As a result, in most cases when the victim does not choose to report the assault to law enforcement or to participate with the criminal justice process, a state that

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receives STOP funds will still be responsible for payment. See SAFETA.ORG, *Recommendations at a Glance for Jurisdictions to Facilitate Payment for the Sexual Assault Medical Forensic Exam* (last access May 22, 2024), <https://www.safeta.org/page/paymentvawal/>; See Peter Daub et al., *Coverage for Forensic Costs for Immigrant crime Victims: Medical Coverage and Services*, NIWAP (May 4, 2024) <https://niwaplibrary.wcl.american.edu/pubs/ch17-2-forensiccoverageimmvictims/> (A clear majority of states have laws that do not require sexual assault victims to report to or cooperate with law enforcement or prosecutors to for a state-funded Medical Forensic Exam. Only 9 states or territories continue to impose a reporting requirement with some providing victims an opportunity for a waiver: AL(unless good cause shown), DE (may be waived), HI, ID, MI, ND, SC (may be waived), SD, and VI).

<sup>3</sup> OFFICE OF VIOLENCE AGAINST WOMEN (OVW), FREQUENTLY ASKED QUESTIONS (FAQS) ABOUT STOP FORMULA GRANTS , 42 (Oct. 2017), <https://www.justice.gov/ovw/page/file/1008816/dl?inline>

<sup>4</sup> 34 U.S.C § 10449(a)(1)(B); OFFICE OF VIOLENCE AGAINST WOMEN (OVW), FREQUENTLY ASKED QUESTIONS (FAQS) ABOUT STOP FORMULA GRANTS , 37 (Oct. 2017), <https://www.justice.gov/ovw/page/file/1008816/dl?inline>

<sup>5</sup> OFFICE OF VIOLENCE AGAINST WOMEN (OVW), FREQUENTLY ASKED QUESTIONS (FAQS) ABOUT STOP FORMULA GRANTS , 30 (Oct. 2017), <https://www.justice.gov/ovw/page/file/1008816/dl?inline>

<sup>6</sup> Peter Daub et al., *Coverage for Forensic Costs for Immigrant crime Victims: Medical Coverage and Services*, NIWAP (May 4, 2024) <https://niwaplibrary.wcl.american.edu/pubs/ch17-2-forensic-coverage-immvictims/>, (States generally have no immigration status or residency requirements. Texas is the only state that requires TX or US residency as a requirement to cover rape kit expenses. Tex. Code Crim. Proc. Art. 56B.003); See more Amrutha Ramaswamy et al., *Out-of-Pocket Charges for Rape Kits and Services for Sexual Assault Survivors*, Women's Health Policy (Mar. 18, 2022).

<sup>7</sup> See generally, Peter Daub et al., *Coverage for Forensic Costs for Immigrant crime Victims: Medical Coverage and Services*, NIWAP (May 4, 2024) <https://niwaplibrary.wcl.american.edu/pubs/ch17-2-forensiccoverageimmvictims/>

<sup>8</sup> Peter Daub et al., *Coverage for Forensic Costs for Immigrant crime Victims: Medical Coverage and Services*, NIWAP (May 4, 2024) <https://niwaplibrary.wcl.american.edu/pubs/ch17-2-forensiccoverage-immvictims/>

<sup>9</sup> OFFICE OF VIOLENCE AGAINST WOMEN (OVW), FREQUENTLY ASKED QUESTIONS (FAQS) ABOUT STOP FORMULA GRANTS , 40 (Oct. 2017), <https://www.justice.gov/ovw/page/file/1008816/dl?inline>

<sup>10</sup> OFFICE OF VIOLENCE AGAINST WOMEN (OVW), FREQUENTLY ASKED QUESTIONS (FAQS) ABOUT STOP FORMULA GRANTS , 40 (Oct. 2017), <https://www.justice.gov/ovw/page/file/1008816/dl?inline>

<sup>11</sup> See Peter Daub et al., *Coverage for Forensic Costs for Immigrant crime Victims: Medical Coverage and Services*, NIWAP (May 4, 2024) <https://niwaplibrary.wcl.american.edu/pubs/ch17-2-forensiccoverage-immvictims/> (For a detailed state-by-state report on what is covered in the state funded Medical Forensic Exam).

<sup>12</sup> OFFICE OF VIOLENCE AGAINST WOMEN (OVW), FREQUENTLY ASKED QUESTIONS (FAQS) ABOUT STOP FORMULA GRANTS , 37 (Oct. 2017), <https://www.justice.gov/ovw/page/file/1008816/dl?inline>

<sup>13</sup> Amrutha Ramaswamy et al., *Out-of-Pocket Charges for Rape Kits and Services for Sexual Assault Survivors*, WOMEN'S HEALTH POLICY (Mar. 18, 2022).

<sup>14</sup> See Peter Daub et al., *Coverage for Forensic Costs for Immigrant crime Victims: Medical Coverage and Services*, NIWAP (May 4, 2024) <https://niwaplibrary.wcl.american.edu/pubs/ch17-2-forensiccoverage-immvictims/> (For a detailed state-by-state report on what is covered in the state funded Medical Forensic Exam).

<sup>15</sup> Amrutha Ramaswamy et al., *Out-of-Pocket Charges for Rape Kits and Services for Sexual Assault Survivors*, WOMEN'S HEALTH POLICY (Mar. 18, 2022)(66% of privately insured women who received post-assault care were charged out-of-pocket costs, including costs that are typically included in the minimum standard rape kit services as defined by the US Department of Justice.)

<sup>16</sup> See, *All State Public Benefits Charts and Interactive Public Benefits Map* (2022) <https://niwaplibrary.wcl.american.edu/all-state-public-benefits-charts/> (to look up by immigration status or pending immigration case type which immigrant survivors of sexual assault are eligible to purchase health insurance on the healthcare exchanges in each states).

<sup>17</sup> Carly Erickson & Leslye Orloff, *U-Visa Victim Benefits Under the Affordable Care Act (ACA)*, NIWAP (June 18, 2014), <https://niwaplibrary.wcl.american.edu/pubs/u-visa-healthcare-aca/>; See also, *NIWAP Newsletter: Healthcare*, NIWAP (Apr. 2015), <https://niwaplibrary.wcl.american.edu/pubs/healthcare-newsletter-april-2015/>.

<sup>18</sup> The Patient Protection and Affordable Care Act, Pub. L. 111–148 (enacted on March 23, 2010). The Healthcare and Education Reconciliation Act of 2010, Pub. L. 111–152 (enacted on March 10, 2010) (amended and revised several

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provisions of the Patient Protection and Affordable Care Act). In this article, the two statutes are referred to collectively as the “Affordable Care Act”.

<sup>19</sup> Centers for Medicare and Medicaid Services (CMS), Department of Health and Human Services (HHS), *Clarifying the Eligibility of Deferred Action for Childhood Arrivals (DACA) Recipients and Certain Other Noncitizens for a Qualified Health Plan through an Exchange, Advance Payments of the Premium Tax Credit,*

*Cost-Sharing Reductions, and a Basic Health Program*, 89 Fed. Reg. 90, 39392 (May 8, 2024)(to be codified at 42 C.F.R. pts 435, 457, 600), <https://niwaplibrary.wcl.american.edu/pubs/2024-final-aca-daca-fed-reg/>.

<sup>20</sup> 45 C.F.R. § 155.20 (Defining lawfully present immigrants); 42 CFR § 435.4 (Defining qualified immigrants). For a detailed list of lawfully present immigrants eligible under federal law to purchase health insurance on the exchanges, who may also be eligible for federal or state funded healthcare subsidies, see, Leslye E. Orloff, *Health Care Access for Lawfully Present Immigrants – Definitions* (May 27, 2024) <https://niwaplibrary.wcl.american.edu/pubs/lawfully-present-healthcare/>; Leslye E. Orloff, *Annotated Statutes Related to Public Benefits Eligibility for Immigrant Survivors of Domestic Violence, Child Abuse and Human Trafficking* (May 27, 2024) <https://niwaplibrary.wcl.american.edu/pubs/1641-1631-benefits-laws-annotated/>; Leslye E. Orloff, *Annotated Violence Against Women Act (VAWA) Self-Petition Definition INA 101(a)(51)* (May 27, 2024) <https://niwaplibrary.wcl.american.edu/pubs/vawa-self-petitioner-annotated-ina-101a51/>.