



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bills 152 and 153 (as passed by the Senate)
Sponsor: Senator Tonya Schuitmaker (S.B. 152)
Senator Rebekah Warren (S.B. 153)
Committee: Judiciary

Date Completed: 1-8-18

RATIONALE

In 2008, Michigan enacted several measures related to sexual assault medical forensic examinations (which include physical examinations of sexual assault victims, the collection of evidence, and the provision of various services). In particular, Public Acts 391 and 392 amended the crime victim's compensation Act to allow health care providers to apply directly to the Crime Victim Services Commission, in the Department of Health and Human Services (DHHS), for compensation of costs related to sexual assault medical forensic exams. This legislation also set a total limit on the amount that the Commission may pay to a health care provider for the costs of performing such an exam. The total includes separate limits on payment for the use of an emergency or examination room, laboratory services, and pharmaceutical items. These reimbursements are supported by funding from the Crime Victim's Rights Fund.

Evidently, the amounts allowed by statute for sexual assault medical forensic exams were based on projections made when the 2008 legislation was enacted, and are not sufficient to pay for the current costs. As a result, providers must pay for or absorb the amount not reimbursed from the Fund. To address this issue, it has been recommended that the total reimbursement amount be increased, and that the caps for specific components be raised or eliminated.

In addition, Public Act 546 of 2008 enacted a new statute to create the Sexual Assault Victims' Medical Forensic Intervention and Treatment Fund and allow the Domestic Violence Prevention and Treatment Board (also in the DHHS) to spend money in the Fund. The Act requires at least 80% of the money to be distributed to entities that perform procedures required by sexual assault evidence kits, which include sexual assault medical forensic exams. To receive a grant, an entity must meet certain criteria. Among other things, a recipient essentially must have an existing program that performs the procedures. It has been pointed out that this requirement prevents the Board from making grants to entities that do not currently perform the procedures but are in the process of developing a program or could partner with another provider that has one. Thus, some have suggested that such entities should be eligible for funding.

CONTENT

Senate Bill 152 would amend Section 5a of the crime victim's compensation Act to do the following:

- **Require the Crime Victim Services Commission to pay a maximum of \$1,200, rather than \$600, to a health care provider for the cost of performing a sexual assault medical forensic examination and related services.**
- **Revise the specific services for which that payment may be made.**
- **Permit the Department of Health and Human Services to determine reimbursement rates for laboratory services and the cost of dispensing pharmaceuticals under Section 5a.**

- **Specify that the administration of a sexual assault evidence kit would satisfy the requirements for a victim's prompt law enforcement reporting and cooperation, to qualify for payments authorized under Section 5a and for payments made to claimants under the Act.**

Senate Bill 153 would amend the Sexual Assault Victims' Medical Forensic Intervention and Treatment Act to require at least 80% of the money in the Sexual Assault Victims' Medical Forensic Intervention and Treatment Fund to be distributed to entities that perform required services (as currently provided) or demonstrate immediate capacity to perform those services, and allow entities to subcontract particular services.

Each bill would take effect 90 days after enactment.

Senate Bill 152

Payments to Health Care Providers

The crime victim's compensation Act provides that a health care provider is eligible to be paid for a sexual assault medical forensic examination that includes: the collection of a medical history; a general medical examination, including the use of laboratory services and the dispensing of pharmaceutical items; a detailed oral, anal, and/or genital exam; and the administration of a sexual assault evidence kit. A health care provider may not submit a bill to the victim of the sexual assault for any of the costs of a sexual assault medical forensic examination. A health care provider may seek payment from the Crime Victim Services Commission or another entity if reimbursement cannot be obtained from the victim's insurance or insurance is unavailable.

The Act requires the Commission to pay a health care provider not more than \$600 for the cost of performing a sexual assault medical forensic exam. The bill would increase the maximum payment to \$1,200.

Currently, the Commission's payment to a health care provider may include, but is not limited to, the cost of one or more of the following:

- Not more than \$400 for the use of an emergency room, clinic, or examination room, and the sexual assault medical forensic exam and related procedures, other than services and items described below.
- Not more than \$125 for laboratory services.
- Not more than \$75 for dispensing pharmaceutical items related to the sexual assault.

The bill would revise those limits as follows:

- Increase to \$600 the maximum payment for use of an emergency room, clinic, or examination room, and the sexual assault medical forensic exam and related procedures.
- Allow a payment of up to \$150 for colposcopy or high-resolution digital photography, or both, to document injury or other evidence related to the sexual assault.
- Delete the \$125 limit on the payment for laboratory services, and refer to laboratory services related to the sexual assault.
- Delete the \$75 limit on the payment for dispensing pharmaceutical items related to the sexual assault.

The bill would authorize the Department of Health and Human Services to determine reimbursement rates to a health care provider for laboratory services and the cost of dispensing pharmaceuticals in accordance with the reimbursement rates allowed under Medicare for similar services and expenses.

Reporting Requirement

The Act states that a victim of sexual assault is not required to participate in the criminal justice system or cooperate with law enforcement as a condition of being administered a sexual assault medical forensic examination. For payments authorized to be made to a health care provider under Section 5a, the victim's request for a sexual assault medical forensic exam satisfies the requirements for prompt law enforcement reporting and victim cooperation under Sections 6 and 10 of the Act. Under the bill, for payments authorized to providers under Section 5a, or for payments made to claimants under Section 6, the administration of a sexual assault evidence kit would satisfy these requirements.

(Section 6 requires the investigation and examination of a claim accepted for filing under the Act, to determine the validity of the claim.

Under Section 10, an award may not be made unless the investigation of the claim verifies certain facts, including that police records show that the crime was reported promptly to the proper authorities. An award may not be made if the police records show that the report was made more than 48 hours after the crime occurred, except under specific circumstances, including payment under Section 5a.)

Senate Bill 153

The Sexual Assault Victims' Medical Forensic Intervention and Treatment Act created the Sexual Assault Victims' Medical Forensic Intervention and Treatment Fund and provides for the Domestic Violence Prevention and Treatment Board to spend money from it, as appropriated. At least 80% of the money must be distributed to entities that do all of the following:

- Perform the procedures required by sexual assault evidence kits.
- Provide specialized assistance to victims.
- Operate under the auspices of or in partnership with a local sexual assault crisis center.
- Comply with the standards of training and practice of the International Association of Forensic Nurse Examiners or a similar organization designated by the Board in consultation with the DHHS.
- Provide access to medical forensic intervention and treatment services 24 hours a day.

Under the bill, instead, not less than 80% of the money would have to be distributed to entities that did, or demonstrated immediate capacity to do, all of the following:

- Perform, or subcontract with another entity through an agreement approved by the Board to perform, the procedures required by sexual assault evidence kits in a manner that complied with the standards of training and practice of the International Association of Forensic Nurses or a similar organization designated by the Board in consultation with the DHHS.
- Provide specialized assistance to victims.
- Operate under the auspices of or in documented partnership with a local sexual assault crisis center.
- Provide, or subcontract with another entity through an agreement approved by the Board to provide, access to medical forensic intervention and treatment services 24 hours a day.

MCL 18.355a (S.B. 152)
400.1535 (S.B. 153)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

A sexual assault medical forensic exam is important for the victim's long-term health, provides a gateway to additional services, and is the sole way that evidence is gathered from the victim's body. This evidence may be essential to the investigation of the crime and the prosecution of the offender. While physicians and physician's assistants sometimes perform the exams, most are conducted by sexual assault nurse examiners (SANEs). These are registered nurses who have received specialized training in the medical, psychological, and forensic examination of a sexual assault victim. In addition to conducting medical forensic exams, SANEs can serve as witnesses in criminal prosecutions.

It has been almost 10 years since legislation was enacted to provide for direct payments to SANEs and other health care professionals who perform sexual assault medical forensic exams, and to establish caps on the amount of reimbursement for various services. While those limits might have been reasonable nearly a decade ago, the amounts set by statute no longer are sufficient to cover providers' costs. This means that, if the Crime Victim's Rights Fund reimburses \$600 but the exam costs \$1,200, another source must pay for or absorb the difference. In many cases, the costs are covered by a nonprofit organization that provides services to victims of domestic abuse or sexual assault. To the extent that the entity must pay for sexual assault exams, it has less funding available for other services, such as shelter, counseling, advocacy, and education. In other cases, a hospital is responsible for the unreimbursed costs of an exam. Depending on the size and economy of a particular community, these costs can be burdensome to a nonprofit entity or health care facility.

Senate Bill 152 would bring the law up to date by doubling the total payment allowed per exam, increasing the maximum payment for use of a room and exam procedures and for the exam itself, deleting the limits for laboratory services and pharmaceutical items, and allowing reimbursement for specific procedures that can document injury or other evidence of sexual assault. In particular, by deleting the limit on pharmaceuticals, which have increased significantly in cost over the past decade, the bill would improve patients' access to existing medication, such as emergency HIV prophylaxis (medication administered to prevent the victim from becoming infected). The bill also would allow a payment for colposcopy (a procedure that examines the cervical and vaginal areas) and high-resolution digital photography to document and preserve evidence--procedures not covered by the current pricing. Overall, the increased limits would give providers greater flexibility to pay for new treatments or tests as they become available.

These changes would help ensure that victims receive the services they need and deserve. In addition, the amendments would improve prosecutors' access to evidence that can bring perpetrators to justice. Since there is a sufficient balance in the Crime Victim's Rights Fund to support the proposed increases, it would be appropriate to use the money for this purpose.

Supporting Argument

Senate Bill 152 would expand compensation to sexual assault victims for injuries related to the assault, under certain circumstances. The law requires a crime victim to report promptly to law enforcement authorities, in order to receive an award from the Crime Victim's Rights Fund. If a sexual assault victim requests a forensic medical exam, the request satisfies that requirement and the victim will receive a basic health examination, evidence collection, and medication. Although a victim also may be reimbursed from the Fund for other health expenses related to the sexual assault, such as a broken arm, the victim must report the assault to law enforcement. Under the bill, the administration of a sexual assault medical forensic exam would satisfy the reporting requirement under both sets of circumstances. As a result, the Crime Victim Services Commission would no longer be in the position of paying for services provided by the medical forensic exam while denying payment for related health services, if a victim did not report to law enforcement. The amendment also would protect the privacy of sexual assault victims who suffered additional injuries.

Supporting Argument

Under the law, money is available in the Sexual Assault Victims' Medical Forensic Intervention and Treatment Fund for grants to entities that perform the procedures required by sexual assault evidence kits, including medical forensic exams. This money can help support SANE programs, and pay for positions such as program coordinators. Evidently, however, some entities that are eligible for a grant do not apply for one, while others would like funding but do not qualify. A hospital might perform the procedures but not have a SANE program, or might have a SANE program, but not apply for a grant due to the "red tape" involved. At the same time, a community-based sexual assault service provider might want a grant that could support a sexual assault nurse examiner, but cannot receive funding because it does not have a program in place to perform the procedures. In many communities, there may be entities that meet some of the criteria for a grant, and other entities that meet some of the other criteria, but no single entity that meets all of them. Although hospitals are required to perform sexual assault medical forensic exams, they do not necessarily provide other services to victims, such as crisis counseling and advocacy. A sexual assault crisis center might provide those services, but not have the capability to perform the procedures. As a result, none of them is currently eligible for a grant. Under Senate Bill 153, these different entities essentially could join forces and qualify for funding, with the victims' service provider serving as the grantee. The bill would encourage partnerships between hospitals and community-based providers, and would make funding available to start-up programs. Ultimately, sexual assault victims would have increased access to medical forensic exams and services.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

Senate Bill 152

The bill would increase State expenditures by possibly \$1.4 million to \$1.6 million or more, and have no effect on local units of government. Compensation to health care providers for sexual assault forensic examinations totaled \$726,207 for 1,661 exams in FY 2014-15, and \$842,522 for 1,855 examinations in FY 2015-16. This resulted in an average cost per case of \$437.21 in FY 2014-15 and \$454.19 in FY 2015-16.

The bill would increase the limit on total per-exam compensation from \$600 to \$1,200. Assuming no growth in the number of sexual assault forensic examinations, at \$1,200 per exam, the total cost in FY 2016-17 for 1,855 exams would have been \$2.2 million, an increase of \$1.4 million. Assuming an equivalent 11.7% growth in the number of sexual assault forensic examinations as seen between FY 2014-15 and FY 2015-16, at \$1,200 per exam, the total cost in FY 2016-17 for 2,072 exams would have been \$2.5 million, an increase of \$1.6 million.

The cost of this bill could be greater than \$1.6 million. According to the Uniform Crime Report, more than 6,300 incidents of criminal sexual conduct were reported to Michigan police in 2015. Additionally, this count does not include cases that were never reported; however, these unreported cases are still eligible for sexual assault forensic exam reimbursement under Section 5a of the Act.

Currently, the SAFE Response program pays for all sexual assault medical forensic examinations out of the Crime Victim's Rights Fund. Since FY 2011-12, the Fund has seen revenue exceed expenditures, with a surplus close to \$7.0 million each year since FY 2012-13. An increase in expenditures related to the bill would not strain the Fund unless it exceeded that \$7.0 million mark.

Senate Bill 153

The bill would have an indeterminate negative fiscal impact on the State, and no fiscal impact on local units of government. Under the bill, the State could face a cost increase resulting from an expansion of the number of entities that demonstrated the capacity to fulfill the requirements of the Act. By extending the distribution of Fund money to entities that may not be able to fulfill the

requirements themselves, but are able to subcontract with another entity that can, the bill could lead to an increase in the Board's distributions from the Sexual Assault Victims' Medical Forensic Intervention and Treatment Fund. Additionally, the Board could face a minor increase in administrative expenses from the requirement that it approve agreements between entities that cannot fulfill the requirements of the Act and subcontractors who can.

Fiscal Analyst: Ellyn Ackerman

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.