



Office of
Victim Services

Forensic Rape Examination (FRE) Direct Reimbursement Program

Section 631(13) of the NYS Executive Law

History/Legislative Background

Executive Law Section 631(13)

- 2005: designed to ease payment for forensic rape exams and to provide quality exams by knowledgeable practitioners.
- Designed to give the victim the ability to choose payment through this program or their own insurance coverage.

Recent Statutory Changes

- Governor Cuomo's 2018-19 Budget Bill included provisions to amend the Public Health, Executive and Insurance laws.
 - Private Insurance - In the event a sexual assault survivor uses private health insurance benefits, they shall not be subject to annual deductibles, coinsurance, or balance billing by the provider.
 - Effective immediately (signed on 4/12/18) and applies to all policies issued/renewed/ modified/alterred or amended on or after 01-01-19.



Recent Statutory Changes (cont.)

- Sexual Offense Evidence Collection/Storage - Extends the length of time sexual offense evidence collection kits are preserved. Previous legislation provided for a 30 day minimum retention period. Recent changes have extended that 30 day retention period to 20 years.
 - Effective immediately (signed on 4/12/18).

Recent Statutory Changes (cont.)

- Important time frames regarding storage:
 - Hospital responsible for storage until 4/1/21. Must notify victim of transfer from hospital to long term storage facility 10-30 days prior to transfer.
 - Beginning 4/1/18 Department of Health, Office of Victim Services, Division of Criminal Justice Services and New York State Police will jointly study, evaluate and make recommendations concerning the storage and monitoring of evidence for 20 years. Joint plan due to Legislature 12/1/19.
 - After 4/1/21 hospital must transfer evidence to longer term storage within 10 days of collection.
 - Victim must be notified that the evidence will be discarded at least 90 days prior to the end of the 20-year storage period.

What is a “Forensic Rape Exam?”

- An examination performed by trained medical personnel **for the purpose of gathering evidence of a sexual assault** in a manner suitable for use in a court of law.

Statute Applies to:

- A New York State Accredited Hospital (any Article 28 facility with a DOH-issued operating certificate)
- A Sexual Assault Examiner certified by the Department of Health
- A licensed healthcare provider performing a forensic rape exam within the scope of the discipline in which the provider is licensed
 - Including those conducting exams within a Child Advocacy Center (CAC)

Application of the Statute

- Applies to forensic rape exams performed using the
 - Sexual Offense Evidence Collection kit (SOEC), or Drug Facilitated Sexual Assault kit AND/OR
 - *National Protocol for Sexual Assault Medical Forensic Examiners*

Providers Shall:

- Advise the victim of payment options to either bill the victim's insurance or bill OVS directly for forensic rape exam related services.
- Bill OVS directly for such services, if victim chooses not to use own insurance.
- Provide forensic rape exam services without charge to the victim.

Reimbursement Rate

- Shall be the amount of itemized charges, not exceeding the statutory cap of \$800.00.
- Rate cap was established in collaboration with the Department of Health, Division of Criminal Justice Services and Division of the Budget, among others, and is reviewed annually pursuant to statute.

Services Intended to be Covered by the FRE Direct Reimbursement Fee

- **Forensic Examiner Services**
- **Facility Services** related to the forensic rape exam
- **Labs and Pharmaceuticals** related to the forensic rape exam

Services not Included

- Unrelated medical services (e.g. suturing, broken limbs, inpatient services).
- Post exposure HIV prophylaxis beyond the 7-day supply and post exposure counseling services.
- NOTE: If the costs are not included on the bill submitted by the provider for FRE Direct Reimbursement, a victim must use their insurance to cover the costs of medical care beyond the forensic rape exam related costs but can apply to OVS for reimbursement of their out of pocket expenses; i.e. copays and deductibles, through the “regular” claim process.



A “Regular” OVS Claim Application Must be Filed by the Victim/Guardian for Follow-Up Medical Expenses and Other Benefits to be Considered by OVS

- Medical expenses; including the post exposure HIV prophylaxis beyond the 7-day supply
- Loss of earnings or support (up to \$30,000)
- Counseling expenses
- Loss of essential personal property (\$500)
- Reasonable court-transportation expenses in connection with the prosecution
- Costs for DV shelter residence and / or services
- Moving expenses (\$2,500)



How Does a Healthcare Provider Apply for FRE Direct Reimbursement?

- Claim forms are available online at www.ovs.ny.gov and included in the SOEC kit.
- No later than one year from the date of the exam, provider must submit the FRE Direct Reimbursement claim form with an itemized bill.
 - **New York State facility in which the exam took place files the claim; NOT the physician/examiner**
- OVS requires the **original** claim form – copies and faxes will be rejected.

Claim Form – In General

- The claim form verifies a forensic rape exam was performed, indicates to whom reimbursement is to be paid and documents that the victim was advised of, and understands, payment options under New York State law.

FRE FAQs

Is an Evidence Collection Kit Required for Reimbursement?

- No. There is no requirement that a victim consent to any portion of a Sexual Offense Evidence Collection (SOEC) kit to be eligible for exam reimbursement under the FRE Direct Reimbursement Program.

What if no Physical Medical Evidence of a Sexual Assault is Found?

- If a Sexual Offense Evidence Collection (SOEC) kit or Drug Facilitated Sexual Assault kit is used a diagnosis of sexual assault is presumed.
- The bill must have a sexual assault diagnostic code or other indication of sexual assault.
- For an adult victim (18 years old or older) - the bill must have at least one lab coded service in addition to visit code provided and billed. (See OVS Website at www.ovs.ny.gov for instructions and acceptable codes)

Does a Victim Have to File the “Regular” Application with OVS to Ensure Payment for the Forensic Rape Exam?

- No.
- BUT – A victim MAY file a “regular” application if medical services, other than those related to the forensic rape exam, are needed, including HIV prophylaxis beyond the initial 7-day dose pack, or to recover reimbursement for additional follow-up medical care, loss of personal property, earnings or support, counseling expenses, crime scene cleanup, court transportation and rehabilitative services.

Is Follow-Up or Post-Exposure HIV Prophylaxis After the 7-Day Dose Pack Reimbursable Under the FRE Direct Reimbursement Program?

- No. Only costs for the initial 7-day supply of HIV prophylaxis are included under the FRE Direct Reimbursement Program.
- A “regular” OVS application may be filed by the victim/guardian to request reimbursement for additional expenses not covered under the FRE Direct Reimbursement Program.

Is it Necessary to File a Police Report to Qualify for FRE Direct Reimbursement?

- No. There is no requirement that a victim involve law enforcement to be eligible for exam reimbursement under the FRE Direct Reimbursement Program.
- Note: For sexual assault victims, OVS will accept the medical documentation of the sexual assault forensic examination in lieu of a police report if the victim files a “regular” claim with OVS and does not report to police.

Does a Victim Have to Have a Forensic Rape Exam Performed Right Away? What is the Timeframe?

- Generally, a forensic rape exam must be done within 96 hours according to DOH medical protocols to ensure that certain types of evidence can be recovered and preserved.
- OVS will cover exams conducted beyond 96 hours if victim is minor child OR for any victim if good cause is shown for delay.

Can the FRE Direct Reimbursement Program Pay for the Cost of a Forensic Rape Examination of a Minor?

- Yes. The FRE Direct Reimbursement Program will pay for the cost of a sexual assault forensic examination regardless of age.

Can a Minor Child Sign an FRE Direct Reimbursement Claim Form?

- A minor child may sign the FRE Direct Reimbursement claim form, but only if it is **reasonable to conclude that the child understands what he or she is signing and why.**



Does a Victim Have to Use Private Healthcare Insurance to Pay for the Forensic Rape Exam?

- No. The victim may decline to provide information about insurance, especially if it would interfere with personal privacy or safety.

Does a Victim Have to Use Medicaid to Pay for the Forensic Rape Exam?

- No. Victims do not have to use private insurance, Medicaid, Medicare, HMO or any other insurance program for the forensic rape exam.



Private Physician Conducts a Forensic Rape Exam in their Office without a Kit. Can they Still be Reimbursed?

- Yes, so long as the examination was conducted in accordance with Public Health Law §2805(i) and the National Protocol for Sexual Assault Medical Forensic Examiners and includes a diagnosis code indicating sexual assault/abuse.
- This applies to both acute and chronic cases.

Provider Performs a Forensic Rape Exam in a Hospital with Privileges, or on an On-Call Basis. How do they get Paid for their Services?

- OVS reimburses the hospital/facility in which the exam takes place by way of an unallocated (“global”) payment.
 - **New York State facility in which the exam takes place files the claim; NOT the physician/examiner**
- The facility is responsible for allocating expenses proportionately among service providers.

Can the Provider Balance Bill the Victim for Forensic Rape Exam Services After FRE Direct Reimbursement?

- No. A provider must accept the OVS reimbursement rate as payment in full for all services listed on the bill submitted with the provider's FRE Direct Reimbursement claim form.
- Providers should work with other service providers, such as the ER physician, to ensure that no further billing of the victim occurs for forensic rape exam related services.

The Provider's FRE Direct Reimbursement Claim was Denied by OVS. Can they Bill the Victim or their Insurance?

- No. Once the victim chooses billing to OVS the provider can not bill the victim, or their insurance, regardless of the outcome of the provider's FRE Direct Reimbursement claim with OVS.

The Victim's Insurance did not Cover 100% of the Forensic Rape Exam Related Charges. Can the Provider Charge OVS for the Balance?

- No. Once private healthcare insurance is assigned, the FRE Direct Reimbursement Program is no longer available for forensic rape exam services.



Benefits

- For Victims:
 - Privacy – for crime victim
 - Safety – abusive spouse, relative, partner
 - Less paperwork – no financial affidavit, no claim application, no evidentiary inquiry
- For Providers:
 - Less paperwork
 - Less delay
 - Direct Payment

Program Statistics

Fiscal Year 2016 - 2017

Received **6,221** FRE Direct Reimbursement claims

Paid **5,755** claims

Fiscal Year 2017 - 2018

Received **6,498** FRE Direct Reimbursement claims

Paid **5,907** claims

Statistics

- Calendar Year 2018 FRE Claims Received
 - Under 13 – 2950
 - 13-17 – 1050
 - 18+ - 2482
 - Paid out = \$4,640,152

Challenges for States

- Financial: Sources of funding (state or federal)
 - Problems for agency of additional cost
 - How does agency get approval since not a (1) reimburseable eligibility informed comp cost or (2) a forensic cost?

Challenges

- Paying for HIV/PeP Meds
 - 28 days or starter
 - If starter – how many days?
 - Coupons from pharmaceutical companies?
 - Issues of confidentiality
 - Inconsistent cost
 - PP pays for Prep meds but not PeP



Challenges

- How is medication dispensed?
- How to get victims to return for medical checkup?
- Does program pay for follow up visits or treatment?
- Emergency Awards for meds?

Challenges

- Research
 - Health Outcomes
 - Toxicity of Drugs
 - Contracting HIV
 - Other negative/positive health outcomes



Challenges

- How to attract more RNs to SANE
- Hospitals billing victims
- Drug pricing is not consistent



Challenges

- Access
 - Transportation costs
 - Follow up Contact
 - Who contacts?
 - Form of contact?

Solutions

- Tiered Systems
 - Child victims (no kit, no meds)
 - Adult victims
 - Exam
 - Exam with kit
 - Exam with kit and meds



Solutions

- Using VOCA Assistance Funds

Rape Exams: Core Costs and Procedures; HIV nPEP Coverage

**Gail Fludd Washington
South Carolina
Office of the Attorney General
Department of Crime Victim Compensation (DCVC)**

Bridging THE *Gap*

**Between HIV Post Exposure Prophylaxis And Follow-Up
Treatment For Victims Of Sexual Assault**



Bridging THE Gap



CRITERIA

- ✓ **SANE, FNE, or ER Physician**
- ✓ **72 Hours**
- ✓ **Identified as a “High Risk”**
- ✓ **Crime Happened in SC**
- ✓ **Not Incarcerated**



Centers for Disease Control and Prevention



Medication Regimen for Patients who Meet High Risk Criteria

Follow-Up Evaluation and Services

Bridging THE *Gap*

Setting Up Services:

- Hospitals
- Clinics
- Pharmacies
- Laboratories
- Rape Crisis Center



Collaboration

- Major Hospitals
- Immunology Centers
- Pharmacy (In-Out)
- Laboratories
- Rape Crisis Centers
- SANE/FNE
- Infectious Disease
(medical) Specialist
- Public Awareness Campaigns
- Recruitment



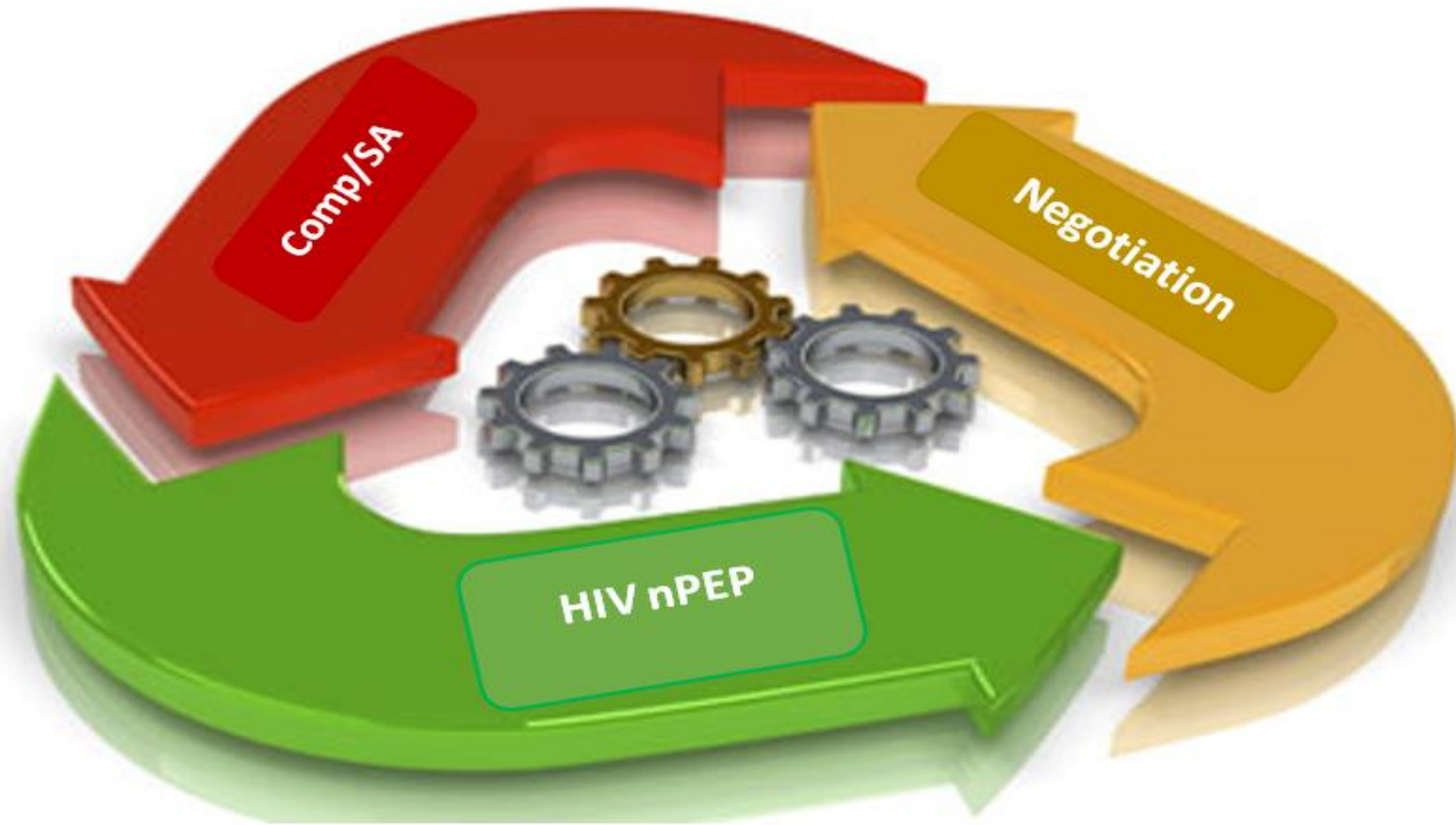


DCVC's Internal Procedures

- **Public Awareness**
- **SART Meetings**
- **LEVA Meetings**
- **Recruitment**
- **Manage Logistical Issues With Each Provider**
- **Additional Staff**



COST CONTROL



Payment for Services Rendered

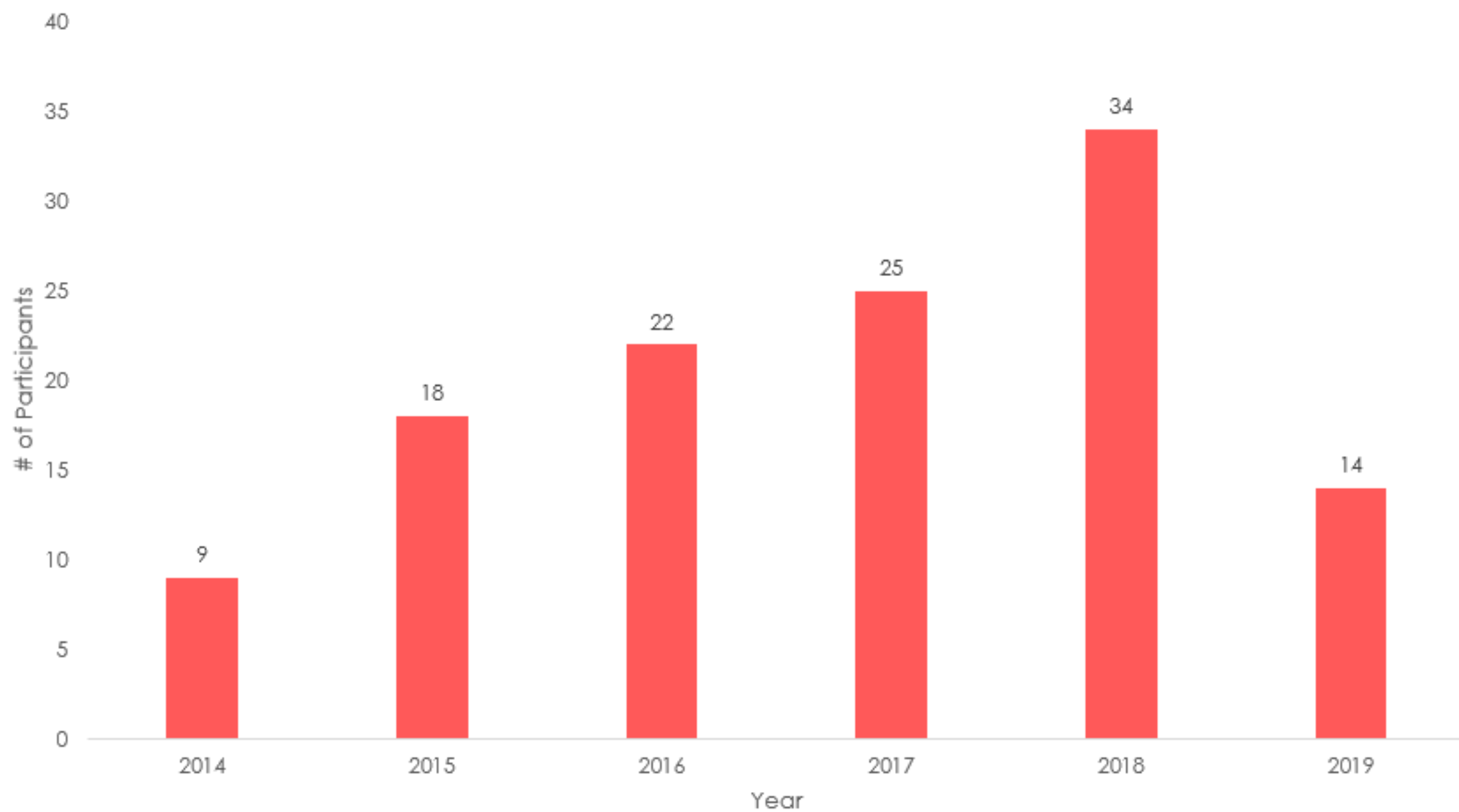
- **Established Fees**
- **Create Application**
- **Create Claim Forms**
- **Develop Memorandum of Understanding**



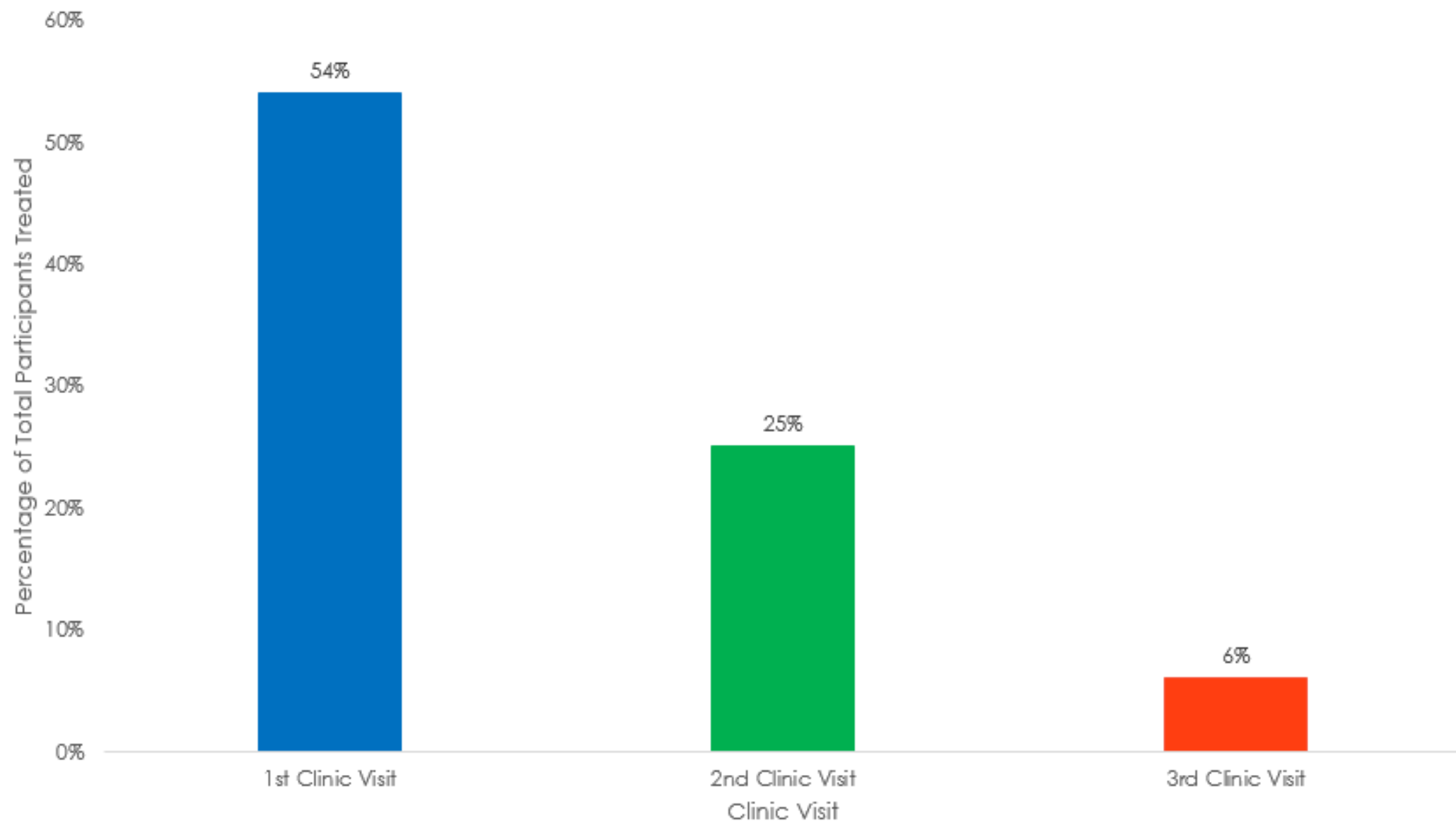


STATISTICS

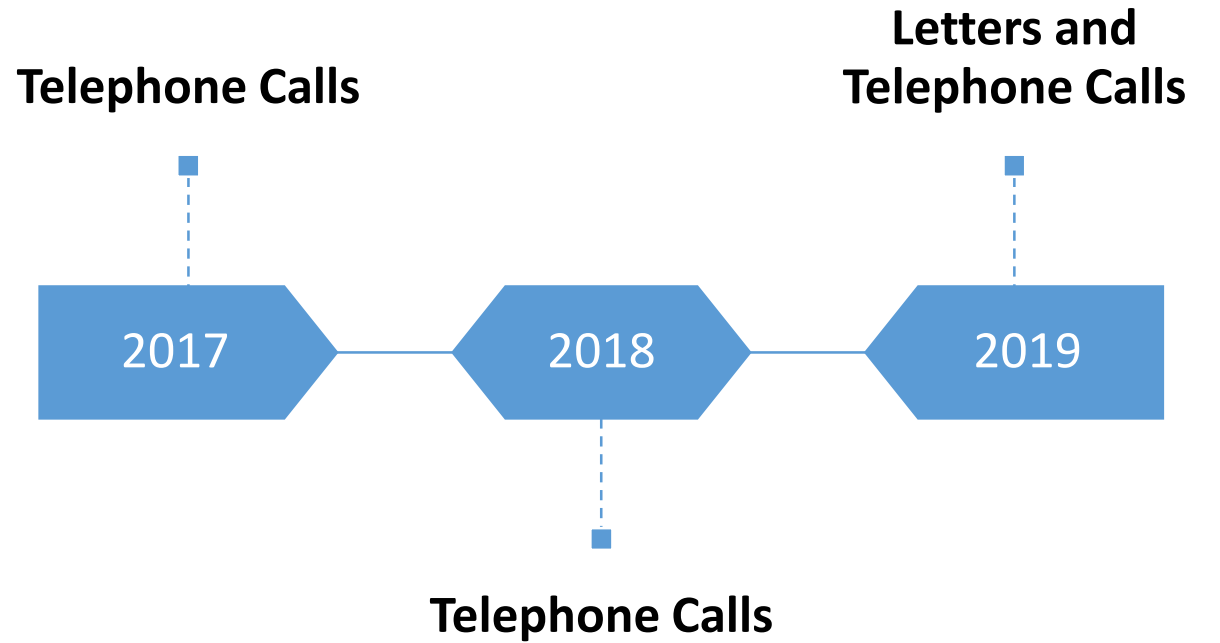
Total Number of Participants Per Calendar Year



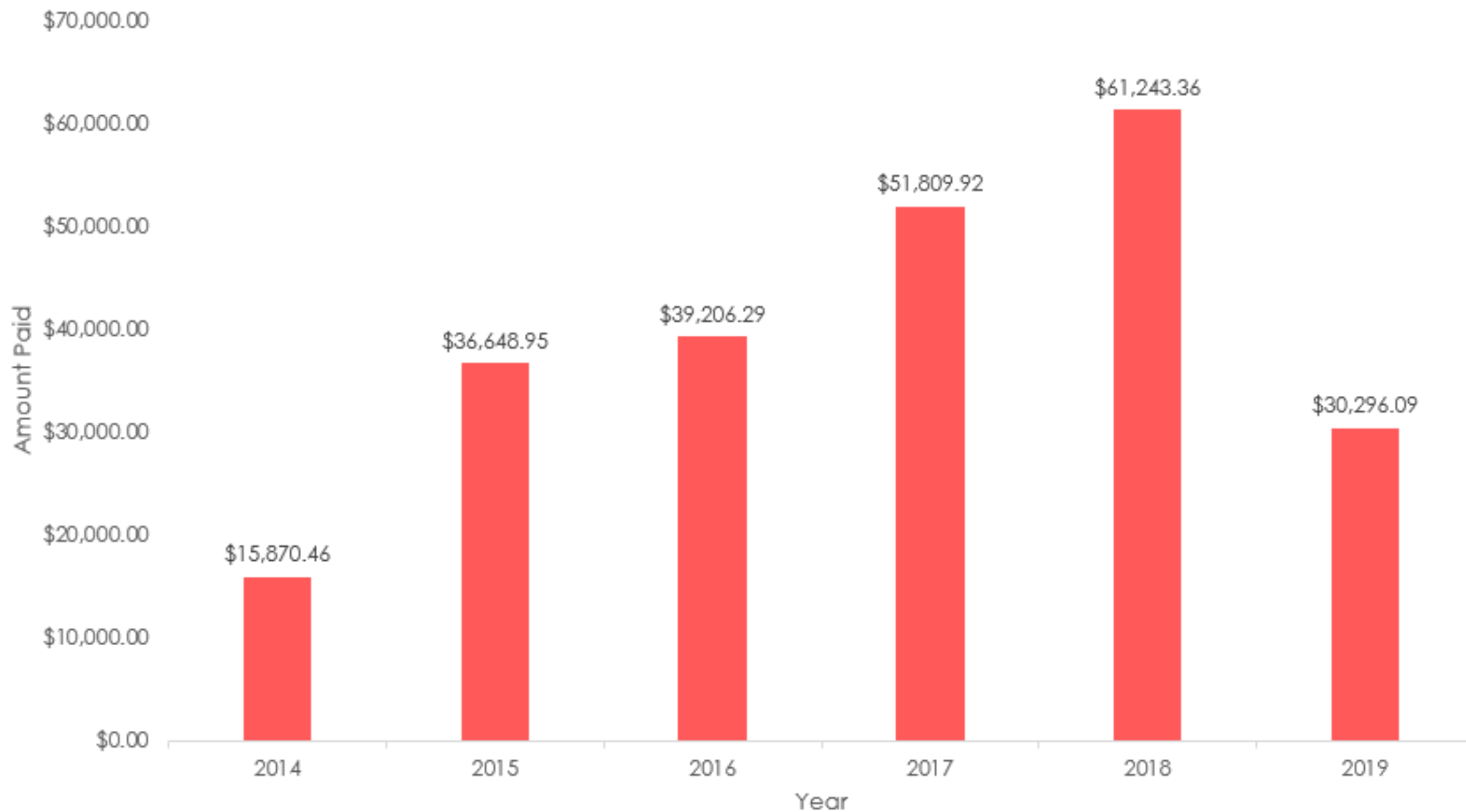
Participation in Clinic Visits



Method of Outreach



Amount Paid Per Calendar Year



High Risk for Acquiring



What is Next?





- Access: Transportation
- Follow-Up: Phone? Text?
- Dispensing All Meds at the ED vs. Dispensing at the Follow-Up Visit

Q & A

You have

Questions

We have

Answers



INDIANA SEXUAL ASSAULT PROGRAM

Nolan L. Jenkins, Program Director

IC 16-21-8-1

Forensic medical exams and additional forensic services; rules; enumeration of sex crimes

- Sec. 1. (a) A hospital licensed under [IC 16-21-2](#) that provides general medical and surgical hospital services shall provide forensic medical exams and additional forensic services to all alleged sex crime victims who apply for forensic medical exams **and additional forensic services in relation to injuries or trauma resulting from the alleged sex crime.** To the extent practicable, the hospital shall use a sexual assault examination kit to conduct forensic exams and provide forensic services. The provision of services may not be dependent on a victim's reporting to, or cooperating with, law enforcement.

IC 16-21-8-1 (cont.)

(b) For the purposes of this chapter, the following crimes are considered sex crimes:

- (1) Rape ([IC 35-42-4-1](#)).
- (2) Criminal deviate conduct ([IC 35-42-4-2](#)) (repealed).
- (3) Child molesting ([IC 35-42-4-3](#)).
- (4) Vicarious sexual gratification ([IC 35-42-4-5](#)).
- (5) Sexual battery ([IC 35-42-4-8](#)).
- (6) Sexual misconduct with a minor ([IC 35-42-4-9](#)).
- (7) Child solicitation ([IC 35-42-4-6](#)).
- (8) Child seduction ([IC 35-42-4-7](#)).
- (9) Incest ([IC 35-46-1-3](#)).

Multiple Funding Streams

- Direct Allocation State Funding Bill
- State use fee paid into one fund – The SA fund receives a percentage.
- Funds collected from DOC
- Court Ordered Restitution

SEXUAL ASSAULT APPLICATION

- Submitted by the Facility within 180 days of the exam
- Application must be signed by the victim or guardian
(if the victim is under the age of 18)
- Victims 18 years of age or older do not have to report to Law Enforcement
- Victims under the age of 18 must report to Law Enforcement
(This requirement can include DCS)



**APPLICATION FOR BENEFITS FROM
SEX CRIME VICTIM SERVICES FUND**
State Form 241 (R10 / 2-14)

Send original copy to: **Indiana Criminal Justice Institute**
101 West Washington Street, Suite 1170, East Tower
Indianapolis, Indiana 46204
Telephone Number: (317) 232-0157
E-mail: SexualAssaultReimbursement@cjl.in.gov

* Race included for research purpose only.

- INSTRUCTIONS:** 1. Remove the information sheet and give to the patient and ask them to read it prior to completing the application for benefits.
2. Attach a copy of the patient's complete Emergency Department record from the date of examination.
3. Attach an itemized bill to this application.

Questions or concerns please contact the Indiana Criminal Justice Institute at 317-232-0157 or e-mail at SexualAssaultReimbursement@cjl.in.gov.

CONSENT (To be completed by patient or guardian)

Have patient / guardian initial each item to indicate consent and understanding

- _____ 1. I have read and understand the attached letter explaining the sex crime victim services fund.
- _____ 2. I authorize this facility, its physicians, agents and employees to examine me in relation to an alleged sexual assault, and to conduct tests for that purpose.
- _____ 3. I authorize this hospital to release a completed copy of this application/report with any evidence of sexual assault, including, but not limited to, my clothing, laboratory specimens and medical records of this date to (law enforcement agency): _____
- _____ 4. I authorize the release of this application and medical records of this date to the sex crime victim services fund for the purpose of evaluation and payment.
- _____ 5. If this case involves a child molestation, I authorize the appropriate Child Protection Services caseworker or law enforcement to release information regarding this investigation to the Indiana Criminal Justice Institute.

Signature of patient or guardian _____ If patient is a minor, relationship to signee _____ Date (month, day, year) _____

IDENTIFYING INFORMATION (To be completed by hospital personnel)

Is the patient a minor? Yes No

Name of patient _____ Name of parent or guardian (if patient is a minor) _____

Social Security number (Last 4 digits) _____ Race of patient* _____ Parent or guardian Social Security number (Last 4 digits) _____

Gender Male Female _____ Marital status _____ Date of birth (month, day, year) _____ Date of alleged assault/abuse (month, day, year) _____

Address (number and street) _____ E-mail address of parent or guardian _____

City, state, and ZIP code _____ Telephone number () _____

SERVICE PROVIDER INFORMATION (To be completed by hospital personnel)

Name of service provider _____ Patient account number _____ Telephone number () _____

Was the patient admitted for inpatient care? Yes No _____ Is this the initial forensic exam? Yes No _____ If no, when and where was the initial exam? (month, day, year) _____

Was the patient transferred from another facility? Yes No _____ If yes, name of transferring facility _____

Printed name of physician performing the exam _____ E-mail address of nurse _____

Printed name of nurse performing or assisting in the exam _____ Telephone number of nurse () _____

INFORMATION ABOUT THE ALLEGED ASSAULT (To be completed by hospital personnel)

Is the patient reporting to law enforcement? Yes No _____ Time alleged assault occurred AM PM _____ If reported, the date reported to law enforcement (month, day, year) _____

Exact location of assault (if known, number and street, city, state, and county) _____

Name of law enforcement agency notified _____ Name of officer / case worker notified _____

Is the alleged assault being reported anonymously? Yes No _____ Was forensic evidence transferred to law enforcement? Yes No _____ Serial number of kit (if used) _____

Date arrived at hospital (month, day, year) _____ Date evidence collected (month, day, year) _____ Date of transfer (month, day, year) _____

Name of suspect (if applicable) _____ Relationship to patient/victim (if applicable) _____ Race of suspect (if known)* _____

Does patient/victim know the suspect(s)? Yes No _____ Type of sexual trauma Vaginal Child molestation (under 16) Oral Anal Other (specify) _____

Type of evidence collected _____

Signature of physician _____ Signature of nurse _____

EVIDENCE TRANSFER

I acknowledge the transfer of the specimens clothing collected during the emergency treatment of the patient named on this application.

Name of transporting officer _____ I. D. number _____ Name of receiving officer _____ I. D. number _____

Signature of transporting officer _____ Date (month, day, year) _____ Signature of receiving officer _____ Date (month, day, year) _____

Name of agency _____ Time AM PM _____ Name of agency _____ Time AM PM _____

DISTRIBUTION: Instruction Page - Patient; White - ICJI; Canary - Law Enforcement Agency; Pink - Hospital

A Forensic Exam

- A forensic medical examination is a top-to-toe examination looking for injuries and taking samples that may be used as evidence in a police investigation and any subsequent prosecution.
- **The sexual assault fund can only pay for those services related to a forensic exam.**

Reimbursable Expenses

(Covers only specific services, included but not limited to:)

- **Forensic Medical Exam & Additional Forensic Services**
- **Hospital medications, limited laboratory & x-ray services**
- **Up to \$3,000 in out-patient mental health counseling**
- **Initial Pregnancy & STD testing**
- **One follow-up pregnancy test and other STD testing up to 30 days following the first emergency room treatment**
- **One Syphilis test up to 90 days following the initial exam**
- **Prophylactic medication related to pregnancy or sexually transmitted diseases**
- **Drug testing covered only with documented clinical indications that assault may have been drug induced**

HIV Prophylactic Treatment

- A 30 day supply of the post-exposure prophylaxis (or PEP) will be covered by the sexual assault fund.

Counseling Benefit

- \$3,000.00 or two(2) year from the date of the assault. Which ever comes first.

Additional Information

- The application must be submitted by the provider who performed the Forensic Medical Exam, with the itemized bill, and medical records which must include the SANE nurses notes and a narrative of events, within 180 days of the date of the exam.
- Submission of a claim without the information listed above or not submitted within 180 days of the exam may cause the claim to be denied.
- The Sexual Assault Compensation Fund is the primary payer.
 - Those services specifically related to the forensic exam should not be billed to the patients insurance provider

Common Denial Reasons

- Filing limitation of 180 days from date of the exam
- Assault occurred in a correction facility
- Exam was conducted past the 120 hour guideline set by the National Protocol for Sexual Assault Medical Forensic Examinations *2nd Edition*.

FY 18

- Number of applications received:
2,466
- Forensic Sexual Assault Exam payments totaled: **\$6,925,431.28**



Unified Group Services, Inc.

- Unified negotiates with providers on behalf of the agency to lower the amount to be paid to the providers.
- The agency has seen a saving of between 21% and 24%
- Unified get 25% of total savings

Senate Bill 424

Tracking of Sexual Assault Kits

STATE OF INDIANA SEXUAL ASSAULT EVIDENCE COLLECTION KIT - VICTIM

STATE OF INDIANA SEXUAL ASSAULT EVIDENCE COLLECTION KIT - VICTIM

INVESTIGATING OFFICER:

- Instruct the victim not to clean up in ANY WAY — DO NOT change clothes, DO NOT bathe or shower, DO NOT douche. If possible, have the victim take additional clothing to hospital.
- Take victim to hospital. In presence of doctor or nurse:
 - Photograph general appearance of victim — torn clothing, blood, dirt or stains on body or clothing.
 - Note marks on face, arms, and legs that show resistance — photograph any bite marks that may be present.
- Give integrity sealed kit to examining personnel.
- If possible, obtain evidence from suspect — use separate ISP Suspect Kit.

Law Enforcement Agency: _____ Received Completed Kit From: _____
 Agency Case Number: _____ Date: _____
 Officer: _____ Time: _____

FOR COLLECTING FACILITY PERSONNEL
(PLEASE PRINT)

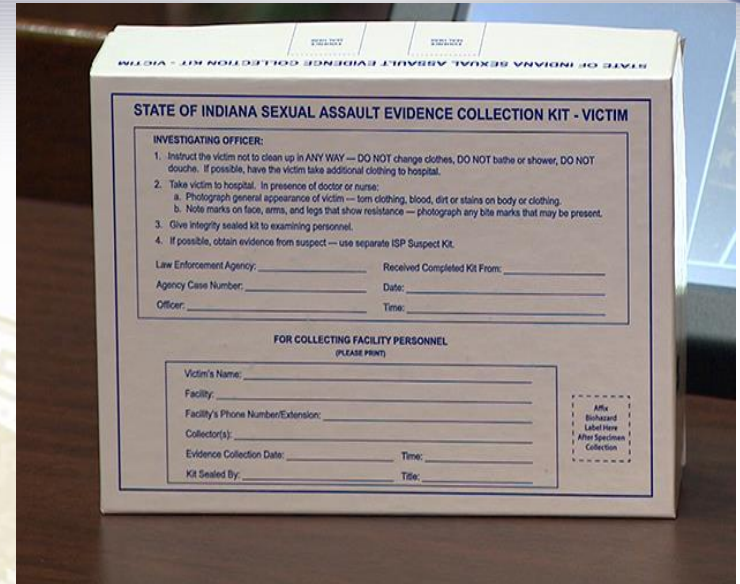
Victim's Name: _____
 Facility: _____
 Facility's Phone Number/Extension: _____
 Collector(s): _____
 Evidence Collection Date: _____ Time: _____
 Kit Sealed By: _____ Title: _____

Biohazard
Label Here
After Specimen
Collection

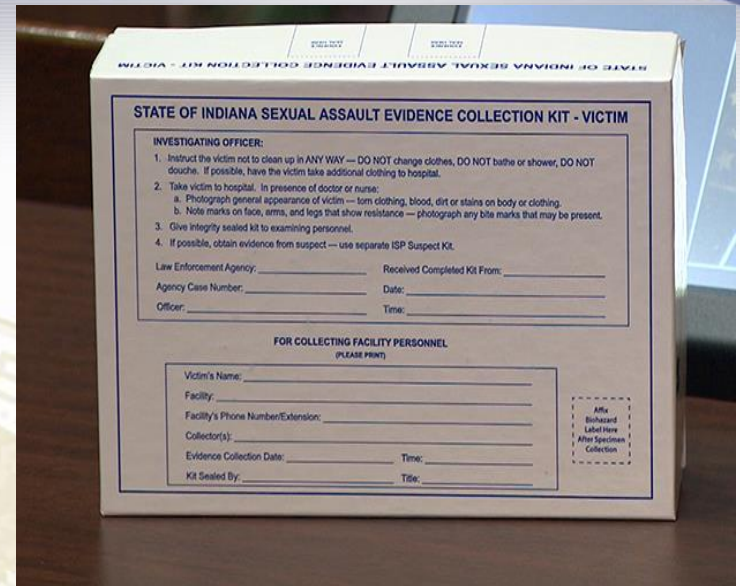
- Service providers will enter kit serial number in our Victim Compensation System

- Law Enforcement will enter receipt of the kit

- The testing facility will enter date received and the date the kit was processed



- Our victims will be given a 4 digit pin number which will allow them to log into a separate module within our Compensation system to view exactly where their kit is located.



INDIANA SEXUAL ASSAULT PROGRAM



Questions?