

THE ASSISTANT SECRETARY OF DEFENSE

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WASHINGTON, DC 20301-1200



HEALTH AFFAIRS

MEMORANDUM FOR DIRECTOR, DEFENSE HEALTH AGENCY

SUBJECT: Policy Clarification on the Provision of Forensic Healthcare Examinations in the Direct Care

- References:
- (a) Department of Defense (DoD) Directive 6495.01, "Sexual Assault Prevention and Response (SAPR) Program," January 23, 2012, Incorporating Change 5, November 10, 2021
 - (b) DoD Instruction (DoDI) 6310.09, "Health Care Management for Patients Associated with a Sexual Assault," May 7, 2019
 - (c) DoDI 6495.02, Volume 1, "Adult Sexual Assault Prevention and Response: Program Procedures," March 28, 2013, Incorporating Change 8, July 26, 2024
 - (d) DoDI 3020.41 "Operational Contract Support Outside the United States," November 27, 2024
 - (e) DoDI 6400.06 "DoD Coordinated Community Response to Domestic Abuse Involving DoD Military and Certain Affiliated Personnel," December 15, 2021, Incorporating Change 3, July 11, 2024
 - (f) Assistant Secretary of Defense for Health Affairs Memorandum "Assistant Secretary of Defense for Health Affairs Oversight of the Healthcare Management of Sexual Assault in the Department of Defense", November 30, 2020

The publication of the Defense Health Agency Procedural Instruction (DHA-PI) 6310.01, "The Healthcare Management of Patients Associated with Interpersonal Violence and the Department of Defense Forensic Healthcare Program," on August 10, 2023, extends care to non-beneficiaries, who are not otherwise eligible for care within the Military Health System (MHS), without authority and is out of compliance with existing DoD policy. As such, I direct the Director, DHA to ensure widest dissemination of this memorandum and to take the following actions immediately.

1. Clarification on Eligibility for Forensic Healthcare Services Provided in Direct Care Settings: Military Medical Treatment Facilities (MTFs) and Deployed and Austere Locations
 - a. In accordance with reference (a), only Active-duty Service members, and their dependents are eligible to receive forensic healthcare examinations, including sexual assault forensic examinations (SAFEs).
 - b. Retirees who are eligible for care within the MHS may receive medical care, such as testing for sexually transmitted diseases and pregnancy, emergency contraception, prophylaxis, and other care necessary to address any illnesses or injuries incurred from interpersonal violence.

Retirees are not eligible for reporting options or advocacy services, as outlined in references (c) and (e). As such, evidence collected from retirees can only be processed consistent with Unrestricted Reporting kits. To maximize options available to retirees, MTF providers should facilitate a warm hand-off, once clinically stable, to a civilian facility where retirees may have additional options that preserve their privacy (kits can be stored confidentially) and access to civilian advocacy services. If a retiree prefers to have evidence collected at the MTF, forensic healthcare examiners must, in consultation with their respective legal office, turn over the kits to the appropriate law enforcement agency, consistent with the handling of Unrestricted Reporting kits.

c. In accordance with references (b) and (c), the following non-beneficiaries are eligible for limited emergency services in specific circumstances. Limited emergency services are defined as triage and assessment of patients presenting for care associated with interpersonal violence and providing care when life, limb, or eyesight is jeopardized. This may include time-sensitive treatment, such as pregnancy prevention and prophylaxis, when timely access to the appropriate civilian facility is limited. Forensic healthcare examination or follow-up care is not included in the definition on limited emergency services; therefore, non-beneficiaries are not eligible for a forensic examination or follow-up care.

1) DoD civilian employees and their family dependents who are stationed and performing duties outside the continental United States (OCONUS).

2) United States citizen contractors and their United States citizen employees, when authorized to accompany the Armed Forces in contingency operations OCONUS.

d. Foreign Nationals and DoD civilians who are not otherwise authorized to receive care through the MHS are not eligible for forensic examination of follow-up care.

e. MTFs must establish, through their written plans, as required in reference (b), processes that ensure non-beneficiaries are stabilized and transferred to the appropriate civilian facility should the patient request a forensic healthcare examination or need non-emergency care (illness or injuries that do not jeopardize life, limb, or eyesight), at their own personal expense. Regardless of eligibility, all patients presenting for care associated with interpersonal violence must continue to be triaged as an emergency.

2. Adult Non-intimate Partner Sexual Assault Forensic Healthcare Examination Requirements

In accordance with reference (c), victims of adult non-intimate partner sexual assault who wish to make a formal report, must make the report via the DD Form 2910, *Victim Reporting Preference Statement* with the Sexual Assault Response Coordinator (SARC) or Sexual Assault Prevention and Response (SAPR) Victim Advocate (VA). While not all sexual assault victims will opt to make a formal report, victims seeking evidence collection through a forensic healthcare examination or sexual assault forensic examination from MTF or operational providers, must make a formal report. Although timeliness of evidence collection is important, it is not a priority over informed decision-making for the victim. Victims must be given the time

and space to make a decision that is best for them, with the support of their SARC, SAPR VA, as applicable. As such, the following applies:

a. Healthcare providers must continue to ensure immediate notification of the SARC or SAPR VA, in accordance with the MTF's written plan and with references (b) and (c). SARCs and SAPR VAs are best positioned to assist victims in making informed decisions and ensure that victims are aware of their reporting options, eligibility for services such as special victim's counsel, and other available resources.

b. Regardless of reporting decision, all eligible adult victims of non-intimate partner sexual assault, as defined in section 1(a) of this issuance, may receive the medical components of a forensic healthcare exam.

1) This includes, but is not limited to, sexually transmitted infection testing, pregnancy testing, prophylaxis, pregnancy prevention, and any other care necessary to address acute and potential ongoing medical concerns.

2) Victims must be informed that they are eligible for healthcare associated with their sexual assault regardless of their reporting decision, and differences between that care and evidence collection must be explained by the appropriate healthcare provider.

c. Victims of adult non-intimate partner sexual assault who choose not to make a formal report or have expressed needing more time to consider their choices, are not eligible to receive evidence collection through the forensic healthcare examination at the MTF or by operational providers in deployed or austere locations. As such, forensic healthcare examiners:

1) Are not authorized to discuss reporting options with victims, and must refer the victim to the SARC, SAPR VA, or Chaplain to discuss the options.

2) Are not authorized to request to see the signed DD Form 2910 or validate the formal report. However, if formal reporting is unclear (e.g., the victim reports being unclear about whether they have made a formal report), the forensic healthcare examiner must consult with the SARC to verify whether a formal report has been made and to receive a Restricted Reporting Case Number, as applicable.

3) Are not authorized to begin collecting evidence when a victim has declined to make a formal report or expresses ambivalence about their reporting option and must provide the victim necessary time and space to consider their options. However, healthcare must not be delayed unless the victim requests more time to consider whether they would like such care.

d. In the event there is a delay in the SARC or SAPR VA's ability to meet with the victim to obtain their formal report, the forensic healthcare examiner may have the victim sign the DD Form 2911 *Sexual Assault Medical Forensic Examination Report* to begin limited evidence collection (see 2.d.4 for definition) to make the victim more comfortable, only when the following criteria are met:

1) Delay in the arrival of the SARC or SAPR VA is greater than two hours and the victim has discussed reporting options virtually with the SARC or SAPR VA.

2) The victim has expressed a desire to make a formal report and has a clear idea of the type of report they would like to make. If a victim is ambivalent about reporting options, the forensic healthcare examiner is not authorized to proceed with this option.

3) The victim would like limited evidence collection so they can eat, drink, or use the restroom, to be more comfortable. The forensic healthcare examiner will only engage in limited evidence collection (cheeks and urine samples only) once the DD Form 2911 has been signed, until the formal report via the DD Form 2910 is signed.

4) If a victim changes their reporting option after speaking with the SARC, the forensic healthcare examiner must note that change in decision on the DD Form 2911.

3. Adult Intimate Partner Forensic Examinations for Intimate Partner Violence and Sexual Abuse in Direct Care Settings

a. Healthcare providers must notify Family Advocacy Program (FAP) personnel, including but not limited to the Domestic Abuse Victim Advocate (DAVA), consistent with the MTF's written plan, in accordance with references (d) and (e).

b. Consistent with section 2(b)-(d), victims of intimate partner violence must make a formal report, via the DD Form 2967, "Domestic Abuse Reporting Options Statement," to be eligible for a forensic healthcare examination.

c. Forensic healthcare examiners are not authorized to discuss reporting options with victims and must refer the victim to FAP personnel, DAVA, or Chaplain to discuss the options.

d. Forensic healthcare examiners are not authorized to request to see the DD Form 2967. However, if formal reporting is unclear (e.g., the victim reports being unclear about whether they have made a formal report), the forensic healthcare examiner must consult with FAP personnel or DAVA, to verify whether a formal report has been made.

e. In the event there is a delay in FAP personnel or DAVA's ability to meet with the victim to obtain their formal report, the forensic healthcare examiner may have the victim sign the DD Form 2911 form to begin limited evidence collection (see 3.e.4 for definition) to make the victim more comfortable, only when the following criteria are met:

1) Delay in the arrival of the FAP personnel or DAVA is greater than two hours and the victim has discussed reporting options virtually with the FAP personnel or DAVA.

2) The victim has expressed a desire to make a formal report and has a clear idea of the type of report they would like to make. If a victim is ambivalent about reporting options, the forensic healthcare examiner is not authorized to proceed with this option.

3) The victim would like limited evidence collection so they can eat, drink, or use the restroom, to be more comfortable. The forensic healthcare examiner will only engage in limited evidence collection (cheeks and urine samples only) once the DD Form 2911 has been signed, until the formal report via the DD Form 2967 is signed.

4) If a victim changes their reporting option, the forensic healthcare examiner must note that change in decision on the DD Form 2911.

4. DHA Required Actions to Address to Ensure Compliance with DoD policy.

a. Identify how many forensic healthcare examinations have been provided to non-beneficiaries and where the associated kits are being stored for any examinations completed between October 1, 2019, and the date of signature on this memorandum. DHA is not authorized to destroy any kits identified to belong to non-beneficiaries.

b. Ensure MTFs with outstanding bills associated with forensic healthcare examinations provided to non-beneficiaries, are resolved, without requiring the victim to pay for any portion not covered by their insurance.

c. Create processes to ensure compliance with these requirements, including compliance measures, results of those measures, and mitigation plans, in the annual report as required by reference (e).

d. Develop, in coordination with Health Affairs (HA) and the Family Advocacy Program, procedures for the packaging, storage, and chain of custody for collection kits, noting the distinction between packing of Restricted Reporting and Unrestricted Reporting forensic kits associated with intimate partner violence.

e. Review DHA-PI 6310.01 for DoD policy compliance and immediately correct any and all areas not currently in compliance, in coordination with HA and the Office of General Counsel.

f. Provide a briefing to me no later than sixty days from the date of signature of this memorandum, on the following.

1) Specific listing of items in DHA-PI 6310.01 that are not in compliance with DoD policy or where DHA authority is unclear.

2) Processes that resulted in publication of DHA-PI 6310.01 with the inclusion of elements not in compliance with DoD policy.

3) DHA plans to ensure no future DHA publications are signed without validation of DoD policy compliance.

4) Report of information collected under the DHA actions in Paragraph 4, providing specific data about the number of kits and the names of the MTFs that provided the kits.

The requirements outlined in this issuance will be incorporated into a rewrite of reference (b). My point of contact for this guidance is Ms. Kimberly Lahm, who can be reached at kimberly.r.lahm.civ@health.mil.

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