

**Report of the Virginia Sexual Assault and Forensic Exam (SAFE)  
Program Work Group**

*To the Governor, the Chairpersons of the House Committee on Appropriations and  
the Senate Committee on Finance and Appropriations, and the Joint Commission  
on Health Care*

Pursuant to § 15.2-1627.4, Chapter 1072 of the Virginia 2020 Acts of Assembly

October 28, 2020

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## **Executive Summary**

House Bill 806 (Chapter 1072, 2020 Acts of Assembly)<sup>1</sup> directed the Secretary of Health and Human Resources to convene a workgroup to evaluate the feasibility and cost of expanding the type of services that are covered by the Criminal Injuries Compensation Fund created pursuant to § 19.2-368.18 of the Code of Virginia, particularly the unreimbursed costs resulting from sexual abuse; evaluate the feasibility of transferring from the Virginia Workers' Compensation Commission to the Department of Medical Assistance Services for the Sexual Assault Forensic Examination program (the SAFE program); to develop recommendations for an efficient, seamless electronic medical claim processing system for hospitals and health care providers if transfer of the SAFE program from the Virginia Workers' Compensation Commission to DMAS is not feasible; and to provide recommendations related to increasing reimbursement rates for sexual assault forensic examinations to cover the cost of examinations, including the costs associated with preparing for and participating in criminal trials.

The SAFE Program workgroup assessed opportunities to increase efficiency and effectiveness of the SAFE Program and the Criminal Injuries Compensation Fund (CICF) with the ultimate goal of maintaining a survivor-centered approach to service delivery. Review of existing procedures revealed that the SAFE Program and CICF are administratively sound programs and the greatest opportunities for systems change lie in the “front end” hospital billing process through training and education on braiding funding alongside enhanced reimbursement rates. Work Group recommendations reflect these assessments. The workgroup met with key stakeholders between August and September of 2020 and developed the following recommendations:

- Maintain administration of the Sexual Assault Forensic Examination (SAFE) Program at the Virginia Workers' Compensation Commission.
- Expand upon standardized billing training to hospitals/health systems, MCOs and community providers.
- Examine opportunities to create statewide electronic claims systems once new CPT Codes for forensic exams are established.
- Reduce barriers to accessing payment from the Criminal Injuries Compensation Fund.
- Expand services covered by the Criminal Injuries Compensation Fund
- Increase reimbursement rates for the SAFE Program.
- Examine opportunities for a specialized Medicaid rate for forensic-level fee and/or increase the medically necessary rate.
- Facilitate access to reimbursement through CICF by reviewing Code section 19.2-368.10, and any related Code sections, for any changes that may be beneficial.
- Increase funding to the Criminal Injuries Compensation Fund.

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<sup>1</sup> Full text of the legislation can be found here, <https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+CHAP1072>

Over the past few years, Virginia has experienced significant advancements in its understanding of the landscape of forensic nursing, supported by the 2019 Forensic Nurse Study by the Joint Commission on Healthcare, and looks forward to meaningful change in how services will be delivered in the coming years. Expected systems transformation includes requiring hospitals implement referral protocols which will increase access to a forensic nurse examiner across the Commonwealth. This is occurring in conjunction with establishing a forensic nurse examiner coordinator at the Department of Criminal Justice Services that will serve to further coordinate statewide efforts in providing high quality, victim centered services. The changes to the SAFE Program and Criminal Injuries Compensation Fund considered by HB806<sup>2</sup> (Appendix A) support continued progress toward a vision for the Commonwealth's delivery of person centered services for victims of sexual assault – that an individual will receive high quality, trauma-informed care and assistance to navigate the systems involved in receiving payment for costs related to injuries suffered as a result of sexual assault.

## **Background**

### **Forensic Nursing in the Commonwealth**

In 2019, the Joint Commission on Healthcare completed the Forensic Nursing Study<sup>3</sup> pursuant to HJR 614. The study focused on funding sources for existing forensic nursing programs in Virginia; the cost and potential funding sources of creating new programs; cost of evidence collecting and court testifying; potential funding sources for testimony costs; current forensic nursing workforce and ways to increase availability of forensic nursing certifications to nurses; insurance reimbursement for forensic nursing services; and best practices in other state forensic nursing programs, including telehealth. The study reviewed the goals of the forensic nurse exam, which are to link trauma informed healthcare with criminal justice, provide patient centered trauma informed care and insure patient safety during the exam and prior to discharge. Data on sexual assaults in Virginia and nationally and the caseload for sexual assault nurse examiners was examined. The study reported on the sources of funding that are available to victims of sexual assault for payment of medical exam and service expenses. Receiving payment from existing funding sources is based on criteria, including reporting the assault to police, cooperating with the investigation, and submitting a Physical Evidence Recovery Kit (PERK). These requirements and the respective funds are outlined in 1) Compensation for Unreimbursed Medical Costs for Victims of Crime Virginia Code, Ch 21.1 (19.2-368.1 et.seq.); and 2) Forensic Medical Expenses for Criminal Cases Virginia Code 19.2-165.1 (B), which provides for payment from the Criminal Injuries Compensation Fund (CICF or Virginia Victims Fund, VVF). The study noted that navigating the system to receive payment from the multiple funding sources is very complex as the eligibility criteria across funding sources differs. The review of data and programs led to several findings and recommendations in the report as detailed below<sup>4</sup>:

- Forensic nurse training should be standardized and forensic nurses should be a recognized subcategory of registered nurses

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<sup>2</sup> Full text of the legislation can be found here, <https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+CHAP1072>

<sup>3</sup> The report can be found here, <http://jchc.virginia.gov/Forensic%20Nursing.pdf>

<sup>4</sup> The report can be found here, <http://jchc.virginia.gov/Forensic%20Nursing.pdf>

- Hospitals license requirements should include requirements for forensic examination referral protocol
- Sexual Assault Response Teams (SART) should include other providers such as community health centers
- Sexual assault patients receiving a forensic exam should be able to access all funds available for medical expenses
- The Bureau of Insurance should establish regulations to protect the privacy of patients who are dependents and can consent to their own care
- The reimbursement rate for forensic exams should be increased and the reimbursement process should be improved (Table 1)

Several of the recommendations were subsequently acted upon by the 2020 General Assembly. House Bill 808 requires every hospital in the Commonwealth to provide treatment or transfer services, as defined in the bill, to survivors of sexual assault pursuant to a plan approved by the Department of Health; establishes specific requirements for providers of services to pediatric survivors of sexual assault; and establishes the Task Force on Services for Survivors of Sexual Assault to facilitate the development of services for survivors of sexual assault. Senate Bill 373 establishes the Virginia sexual assault forensic examiner coordination program within the Department of Criminal Justice Services. The bill outlines several duties for the coordinator, including creation and coordination of an annual statewide sexual assault forensic nurse examiner training program and coordination the development and enhancement of sexual assault forensic examiner programs across the Commonwealth, for example. House Bill 1176 requires every hospital to report quarterly to the Department of Health information regarding the number of certified sexual assault nurse examiners employed by the hospital and the location, including street address, and contact information for the location at which each certified sexual assault nurse examiner provides services. House Bill 806 adds to those persons invited to participate in the annual meeting of the group led by the attorney for the Commonwealth to coordinate the multidisciplinary response to criminal sexual assault in each political subdivision and directs the Secretary of Health and Human Resources to establish a work group to evaluate the feasibility of moving responsibility for the SAFE program from the Virginia Workers' Compensation Commission to the Department of Medical Assistance Services and to provide recommendations on expanding services covered by the Criminal Injuries Compensation Fund and increasing reimbursement rates in the SAFE Program.

Table 1. Payment Rates for Survivor Medical Expenses\*

Exam Type	Estimated Cost	SAFE Program Payment	Forensic Nursing Study Recommendation #6	Workers Compensation Commission approved reimbursement rate increase
Acute exam	\$2,823	\$1,200	\$2,823	\$2,900

<b>Non-acute (no PERK**)</b>		\$800	\$1,560	\$1,800
<b>Follow up</b>	\$1,045.98	\$300	\$1,046	\$1,500
<b>HIV follow up</b>	\$913.34		\$913	
<b>Court requirements</b>	\$1640.98		\$1,641	

\*Data taken from JCHC Forensic Nursing Study 2019;\*\*PERK: physical evidence recovery kit

### **Sexual Assault Forensic Examination Payment Program**

In 2008, amendments to the Code of Virginia provided that, “All medical fees expended in the gathering of evidence through physical evidence recovery kit examinations conducted on victims complaining of sexual assault...” should be paid from the Criminal Injuries Compensation Fund (CICF or Virginia Victims Fund, VVF). The SAFE Payment Program was established within CICF to process claims submitted for payment of these exams. The Virginia Workers’ Compensation is charged with administering CICF. SAFE offers evidence collection at no cost to victims of rape or sexual assault. In addition to covering the cost of physical evidence recovery kit (PERK), the SAFE Program covers the following expenses: emergency room physician fees; hospital and forensic examiner fees; testing for sexually transmitted infections and/or pregnancy; medications to prevent sexually transmitted infections and/or pregnancy; HIV nPep (nonoccupational postexposure prophylaxis); ambulance transport to a medical facility; follow-up medical forensic examination; and other expenses necessary may be considered. SAFE Program claims have increased yearly over the past three years. From FY17 to FY18 claims increased by 35%; and claims increased by 24% from FY18 to FY19. Due to COVID-19, in FY20 providers saw a decrease in patients presenting for PERKS and a resultant 10% decrease in SAFE program claims. In FY18 total expenses paid were \$1,941,579; \$3,172,220 in FY19; and \$2,183,349.59 in FY20. Note that during 2018 Virginia Victims Fund experienced a prolonged vacancy in the SAFE Program that resulted in a reduced number of claims processed and expenses paid. SAFE Program costs exceed general fund appropriation. In order to maximize the payment victims of sexual assault receive from the available sources of funding, including VVF and SAFE Program, the SAFE Program has integrated the flow of processes between VVF and SAFE and vice versa. Claim information can be shared between VVF and the SAFE Program. The SAFE Program has access to VVF resources and ancillary staff, including the Ombudsman and the Medical Services Liaison. Given that both the SAFE Program and VVF are administered by the Workers’ Compensation Commission, policy change can be quickly implemented for mutual benefit to optimize both programs.

### **SAFE Program Work Group**

From August through September of 2020, the Office of the Secretary of Health and Human Resources convened a Work Group which included representation from the Virginia Department of Medical Assistance Services (DMAS), the Virginia Department of Planning and Budget (DPB), the Department of Criminal Justice Services (DCJS), the Medical Society of Virginia

(MSV), the Virginia Hospital and Healthcare Association (VHHA), the International Association of Forensic Nurses, the Virginia Sexual and Domestic Violence Action Alliance, as well as health system representatives including Bon Secours and Inova. A full list of stakeholders is available in Appendix B.

The workgroup met to review available data on forensic nursing in Virginia, the Criminal Injuries Compensation Fund, and the SAFE Program, including individuals served, costs and spending over time. The workgroup approached accomplishing the legislative mandate by dividing into three subgroups focused on 1) SAFE Program Transfer; 2) Criminal Injuries Compensation Fund Service Expansion; and 3) Reimbursement Rates. Each subgroup developed recommendations specific to their area of focus that were further refined by the entire workgroup.

### **Work Group Recommendations**

Below are recommendations the workgroup raised to address the issue of transferring the SAFE Program from the Virginia Workers' Compensation Commission, provide clarity around the utility of an electronic claims processing system, advise additional services to be covered by the Criminal Injuries Compensation Fund; and help clarify the benefit of increased reimbursement rates.

***Recommendation 1: Maintain administration of the Sexual Assault Forensic Examination (SAFE) Program at the Virginia Workers' Compensation Commission.*** The workgroup recognized that existing administrative processes at the SAFE Program have been streamlined in recent years such that, currently, most claims are processed in real time. The administrative team at SAFE has worked to establish solid relationships with medical providers, forensic nurses, medical billing providers, and pharmacies. Additionally, the team focuses on a victim centered approach to service delivery. On review of the administrative processes, the workgroup, identified a few areas for improvement in the SAFE Program. Assessment of the existing processes and risk/benefit of program transfer led to the determination that the major area of need in the system is at the "front end," where hospital billing for forensic exams occurs. Discussions uncovered an issue broader than the SAFE program- namely that forensic exams are supported by multiple streams of funding that require a specialized knowledge of billing Codes, limitations of the available funding, and dedicated program personnel to bill and file claims. One assumed benefit of transfer was that DMAS would be able to use its existing system of processing medical claims to streamline the "front end" process of seeking payment from multiple sources of funding for an individual survivor. Another assumed benefit of transfer was that DMAS could leverage its relationships with managed care organizations and community providers to increase awareness of and training for the SAFE Program among those partners. Extensive discussion clarified that transfer of the SAFE Program to DMAS would not directly address the issue that there are multiple sources of funding to pay for a claim or eliminate the need to submit claims to those multiple funding sources to maximize payment and reduce costs to the survivor. In order to facilitate claims processing and payment, DMAS would likely need to create a new program to handle the payment claims for both Medicaid and non-Medicaid clients. Establishing a new program at DMAS would likely have significant fiscal impact. Furthermore, the workgroup acknowledged that transferring the program could jeopardize the

survivor centered care that is a hallmark of the SAFE Program currently; the Criminal Injuries Compensation Fund is survivor centered and aims to ease the financial burden that survivors experience whereas DMAS, while person centered, does not have specific expertise or focus on survivors of violent crimes or sexual assault. Given that transferring the SAFE program would not sufficiently address the complex “front end” issue, the workgroup does not recommend program transfer and pivoted to focus on recommendations that would address the identified gap. Concrete opportunities to improve clinician training for the SAFE Program are further outlined in Recommendation #2.

**Recommendation 2: Expand upon standardized billing training to hospitals/health systems, MCOs and community providers.** The workgroup recognized that the major need was not administrative improvements to the SAFE Program but increased support for billing at the hospital/health system “front end” of the process, particularly training on billing. Billing training should target hospitals/health systems, MCOs and expand on relationships established by the SAFE Program with providers to facilitate each entity streamlining their forensic nursing billing process and establishing best practices. Virginia’s hospitals span the continuum with some having long-standing, robust, fully staffed forensic nursing programs and others without such programs. Therefore, training on billing for forensic nursing exams must take this continuum into account. The workgroup recommends the development of training targeting hospitals that have a forensic nursing program and one for hospitals without a forensic nursing program. The standard operating procedures for existing forensic nursing programs may serve as a helpful reference in the design of the training curriculum. While the SAFE Program administrators regularly conduct training, opportunities exist for them to enhance their outreach to providers that are low utilizers of the program in order to provide targeted training. Additionally, to better reach Medicaid providers, workgroup participants recommended DMAS consider including training on the SAFE program and billing for forensic nursing exams as part of the MCO contracts. The workgroup also advised that the Statewide Forensic Nursing Coordinator, being established at the Department of Criminal Justice Services, have billing experience in order to support hospitals/health systems’ training efforts. A Statewide Forensic Nursing Coordinator with billing experience would serve as a critical resource to provide technical assistance to hospital/health system programs in establishing billing procedures within the healthcare setting.

**Recommendation 3: Examine opportunities to create electronic claims systems once new CPT Codes for forensic exams are established.** Work Group participants noted the current process for billing and claiming for forensic exams is largely manual, paper based, and handled by the forensic nurses administering the program. They acknowledged that current CPT Codes are not specific enough to allow differentiation that would benefit from an electronic system at this time.

**Recommendation 4: Implement process improvement to reduce barriers to accessing Criminal Injuries Compensation Fund.** Currently, the process for seeking reimbursement for costs incurred with a forensic exam is complex for victims as well as forensic nurses acting as



medical billers due to the multiple streams of funding available. The CICF (or Virginia Victims Fund) and SAFE Program are both funding sources that can pay for costs related to forensic exams, and each have different requirements and limitations. CICF/VVF was created in 1977 by the Virginia Compensating Victims of Crime Act § 19.2-368.1.; to help victims of violent crime with out of pocket expenses. The CICF is funded through court fines, restitution from convicted offenders, unclaimed restitution, federal grants, and private donations. CICF covers a wide array of forensic exam related costs, including paying for medical and dental treatment, mental health services, lost wages, funeral and burial expenses, moving expenses, prescription, mileage to medical appointments, loss of support for dependents, and other crime related expenses. The workgroup's careful review of the real life application of these funds to victims' cases revealed several gaps. Often victims are unable to access CICF for payment of X-rays and ultrasounds; emergency room visits; ambulance costs; or multiple follow up visits. Claiming payment for HIV medications is challenging as each program is responsible for setting up agreements with a pharmacy. Work Group participants recommend process improvements to decrease barriers to reimbursement for victims with ER bills and for HIV prophylaxis.

***Recommendation 5: Expand services covered by the Criminal Injuries Compensation Fund.***

As noted in Recommendation #4 above, while the CICF/VVF pays for an array of costs related to the forensic exam, there are some costs that are not covered, which presents a barrier for victims. Work Group participants noted that sexual assaults that occur outside of Virginia are not eligible for any reimbursement. Another vulnerable group includes victims of human sex trafficking, whose medical needs can be extensive to include immunizations, long term birth control, ultrasounds, x-ray, etc, and who may be undocumented, making Medicaid ineligible as a source of payment. Work Group participants recognized several best practices for coverage that the CICF should adopt: 1) cover services provided by SANE even if a patient declines to have evidence collected; 2) cover exam costs regardless of where the crime occurred in Virginia; and 3) cover the cost of testing for DFSA (drug facilitated sexual assault protocol) even if not reported to the police.

***Recommendation 6: Increase reimbursement rates for the SAFE Program.*** This recommendation draws upon work by the 1) Joint Commission on Healthcare whose Forensic Nurse Study recommended increasing reimbursement rates; and 2) the Workers' Compensation Commission, which approved SAFE administrators to pursue rate increases with the Department of Planning and Budget in August 2019. As captured in the Forensic Nurse Study<sup>5</sup>, current SAFE program reimbursement rates do not reflect actual costs of sexual assault exams, follow up exams or associated court costs. Increasing the reimbursement rates may incentivize forensic nursing program development in underserved areas of the state by hospital/health systems and community health centers. Given sufficient resources through increased reimbursement rates, hospitals/health systems may increase administrative support for forensic nursing programs, shifting billing responsibility from forensic nurses to billing offices and thereby addressing the billing issues highlighted in Recommendation #2. The workgroup recommends increasing the rates to \$2,900 for acute exams; \$1,800 for non-acute (without PERK), and \$1,500 for follow up

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<sup>5</sup> <http://jchc.virginia.gov/Forensic%20Nursing.pdf>

as previously recommended by the Workers' Compensation Commission<sup>6</sup>. Some workgroup participants noted that hospitals receiving supplemental payments may experience limited benefits from a reimbursement rate increase given that reimbursements cannot exceed Medicare rates. Overall, the goal of increasing reimbursement rates is to more closely match the cost of care and to increase access to care and treatment.

***Recommendation #7: Examine the opportunities to design a specialized Medicaid rate for forensic-level fee and/or increase the rate for medically necessary services.*** One opportunity noted by the Work Group is that Medicaid currently reimburses for medically necessary services related to forensic exams at lower rates than the SAFE Program. Creating a specialized forensic-level fee or increasing the rate for medically necessary services would help achieve parity for the reimbursement rates. This is particularly important since, for Medicaid eligible clients, Medicaid providers must bill Medicaid first and must accept Medicaid payment as payment in full. This recommendation would decrease the unreimbursed costs for Medicaid eligible clients.

***Recommendation #8: Facilitate access to reimbursement through CICF by reviewing Code section 19.2-368.10, and any related Code sections, for any changes that may be beneficial.*** The workgroup recognized that victims are required to meet several requirements in order to obtain reimbursement through CICF, including reporting the crime to law enforcement within five days (unless good cause is shown). To increase access to the CICF, the workgroup discussed amending the Code to remove the requirement that sexual assault crimes must be reported to law enforcement within 120 hours to be eligible for CICF reimbursement under 19.2-368.10. Some workgroup participants suggested reviewing the list of crimes that are eligible for reimbursement. Concern was raised regarding potential unintended consequences of amending this Code section without assessing impact to related Code sections. Given this, any Code change that is pursued should include review of related Code sections to avoid unintended consequences.

***Recommendation #9: Increase funding to the Criminal Injuries Compensation Fund.*** Related to Recommendations #5 and #8, expanding services covered by the CICF and reviewing the Code for changes to increase access to the CICF will lead to increased claims and require additional funding for the CICF.

## **Conclusion**

Forensic nurses and forensic nursing programs along with the Criminal Injuries Compensation Fund and the SAFE Program are critical resources for survivors of sexual assault. The recommendations offered by the HB806 Virginia SAFE Program Work Group to expand services covered by the CICF and decrease barriers to accessing payment, increase reimbursement rates in the SAFE Program, and standardize training for the SAFE program will strengthen CICF and the SAFE Program. The workgroup recommendations seek to advance support for forensic nursing toward the goal of ensuring that victims of sexual assault receive high quality, trauma-informed care and to make the systems involved in receiving payment for costs related to injuries suffered as a result of sexual assault easier to navigate.

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<sup>6</sup> The Office of the Executive Secretary and the Supreme Court of Virginia are not involved in rate setting for the SAFE Program

## Appendices

Appendix A: HB806, Ch. 1072 (2020)

2. *That the Secretary of Health and Human Resources shall establish a work group composed of the Secretary of Public Safety and Homeland Security or his designee; the Attorney General or his designee; the Directors of the Department of Medical Assistance Services, the Department of Criminal Justice Services, and the Department of Planning and Budget or their designees; the Executive Secretary of the Supreme Court or his designee; the Executive Director of the Virginia Workers' Compensation Commission or his designee; and such other stakeholders as the Secretary of Health and Human Resources shall deem appropriate to evaluate (i) the feasibility and cost of expanding the type of services for which the Criminal Injuries Compensation Fund created pursuant to § [19.2-368.18](#) of the Code of Virginia will make awards to include claims or portions of claims based on the claimant's actual expenses incurred for unreimbursed medical costs resulting from sexual abuse, including the cost of physical evidence recovery kit examinations conducted on victims of sexual assault, unreimbursed medical expenses or indebtedness reasonably incurred for medical expenses, expenses attributable to pregnancy resulting from such sexual abuse, and any other reasonable and necessary expenses and indebtedness associated with or attributable to the sexual abuse upon which such claim is based and (ii) the feasibility of transferring responsibility from the Virginia Workers' Compensation Commission to the Department of Medical Assistance Services for the Sexual Assault Forensic Examination program (the SAFE program) and all related claims for medical expenses related to sexual assault, strangulation, domestic and intimate partner violence, human trafficking, and adult and child abuse. If the work group finds that it is not feasible to move responsibility for the SAFE program and related claims from the Virginia Workers' Compensation Commission to the Department of Medical Assistance Services, the work group shall develop recommendations for creation of an efficient, seamless electronic medical claim processing system for hospitals and health care providers that coordinates payments from all available sources, suppresses explanations of benefits, and removes the patient from the medical billing and reimbursement process. The work group shall also provide recommendations related to (a) increasing the reimbursement rates for sexual assault forensic examinations to cover the actual cost of such examinations and (b) including reimbursement of costs associated with preparing for and participating in a criminal trial related to the sexual assault when a sexual assault forensic nurse is subpoenaed to participate in such trial as a cost that is reimbursable through the SAFE program. The work group's report shall include specific legislative, regulatory, and budgetary changes necessary to implement the work group's recommendations. The work group shall report its findings and recommendations to the Governor and the Chairmen of the House Committee on Appropriations, the Senate Committee on Finance and Appropriations, and the Joint Commission on Health Care by September 1, 2020.*

## Appendix B: Work Group Members

ACTS Sexual Assault Services

Bon Secours Richmond Forensic Nursing Services

Department of Criminal Justice Services Medical Assistance Services

Department of Medical Assistance Services

Department of Planning and Budget

Fairfax County Domestic and Sexual Violence Services

Forensic Assessment and Consultation Teams (FACT) Department at Inova Health

International Association of Forensic Nurses

Joint Commission on Health Care (Non-Voting, Advisory Role)

Medical Society of Virginia

Office of the Attorney General

Office of the Executive Secretary of the Supreme Court of Virginia (Non-Voting, Advisory role)

Virginia Hospital and Healthcare Association

Virginia Sexual and Domestic Violence Action Alliance

Virginia Victims Fund

Virginia Workers' Compensation Commission