

# PROPOSED RULEMAKING

## OFFICE OF VICTIMS' SERVICES

[ 37 PA. CODE CH. 411 ]

### Crime Victims Compensation

The Office of Victims' Services (OVS) of the Pennsylvania Commission on Crime and Delinquency (PCCD) proposes to amend §§ 411.1, 411.2, 411.17 and 411.42 to read as set forth in Annex A.

#### *Statutory Authority*

The proposed rulemaking is authorized under section 312(3) of the Crime Victims Act (act) (18 P. S. § 11.312(3)).

#### *Purpose of Chapter*

Chapter 411 sets forth regulations governing the processing of crime victim compensation claims, providing for reimbursement to crime victims of crime related expenses when no other resources are available.

#### *Purpose of Proposed Amendments*

The purpose of these proposed amendments to Chapter 411 is to increase reimbursement to crime victims in accordance with rising costs, expand eligibility for reimbursement and simplify claims processing procedures, while reducing the percentage that OVS may reimburse hospitals and other licensed health care providers to conform to the practice of other third party payors.

#### *Summary of Amendments*

Section 411.1 (relating to scope) has been amended to establish the effective date for the amendments.

Section 411.2 (relating to definitions) has been amended to increase the number of days a victim has to relocate under the definition of "immediate need" from 30 days to 120 days.

Section 411.17 (relating to emergency awards) has been amended to increase the maximum compensation allowed for an emergency award from \$1,500 to \$5,000 per claim.

Section 411.42 (relating to out-of-pocket loss) has been amended as follows:

Section 411.42(b) has been amended to reduce the percentage of the usual and customary charge for services rendered that OVS may reimburse to providers from 70% to 65% and to set the effective date for this percentage change. This reduction conforms to the practice of other third-party payors. This section has also been amended to allow reimbursement to a victim who has been billed in error for a forensic rape exam. The reimbursement for a forensic rape exam billed in error will be subject to the \$1,000 monetary limit.

Section 411.42(c) has been amended to increase the total award for funeral expenses from \$5,000 to \$6,500 and eliminate caps on individual expenses. The elimination of individual caps will allow the claimant flexibility in submitting expenses and increase the reimbursement to claimant on individual expenses within the \$6,500 maximum award. This section is also amended to add the cost of an urn as an eligible funeral expense.

Section 411.42(f) has been amended to increase the total reimbursement amount from \$1,000 per crime inci-

dent per household to \$1,000 for each direct victim within the household, when immediate relocation is necessary as a result of the crime. Since there may be more than one direct victim of a crime, this amendment allows each direct victim to receive compensation up to \$1,000 per household.

Section 411.42(g) has been amended to include travel reimbursement associated with attendance or participation in court proceedings and other circumstances if good cause is shown and for attendance of funeral services. The addition of "good cause" allows OVS discretion if a travel expense is not specifically listed in the regulation, but the travel was necessary as a result of the crime.

Section 411.42(h) has been amended to include food, paint or other materials used to deface property as eligible for crime scene cleanup reimbursement.

#### *Persons and Entities Affected*

Victims of crimes, as defined in the act, will benefit from the increase in reimbursement for funeral expenses in keeping with current costs for services and allowing flexibility for reimbursement within the \$6,500 maximum award. The number of days, as defined in immediate need, expands the relocation time frame, allowing victims sufficient time to relocate to become or remain safe.

Medical providers will be adversely affected because they will receive less reimbursement with the 65% rate. However, the 65% reimbursement rate conforms to the practice of other third-party payors.

#### *Fiscal Impact*

It is estimated that the recommended changes will aid 1,149 victims by increasing benefits that are available through victim's compensation. The fiscal impact to PCCD will consist of an estimated annual net savings of \$143,739. This calculation takes into account the estimated costs to PCCD from increased benefits of \$151,261 and savings to PCCD resulting from reducing the awards to medical providers from a 70% reimbursement rate to 65% on behalf of the victim (\$295,000).

Summary of Costs, Savings and Federal Reimbursements

Year One (2008/09)—No fiscal impact.

Year Two (2009/10)—It is estimated that implementation of this schedule will take place by December 1, 2009, therefore statistics are included for that part of the State Fiscal Year 2009/10. As the average time from the date of a crime incident until the date a claim is filed is 92 days, or 3 months, the costs have been projected for 4 months (March 1, 2010 to June 30, 2010). The savings from the reduction in the reimbursement rate for medical providers affects benefits for claims relating to services rendered on or immediately after the effective date of the regulation, therefore the savings have been projected for the entire 7 months (December 1, 2009 to June 30, 2010). Costs are estimated at \$126,051; savings are projected at \$172,083; or an overall savings of \$46,033.

Year Three (2010/11)—First full year of implementation. For this period, costs are projected at \$378,152 with savings estimated at \$295,000, or an overall cost of \$83,152.

VOCA Reimbursement—State victims compensation programs enjoy a 60% reimbursement that is eventually returned by the United States Department of Justice

(DOJ) under the Victims of Crime Act (VOCA) funding stream for allowable benefits paid under the program. As all of the rates set by the Office under the act are for benefits allowable under VOCA, the cost figures would need to be adjusted downward to reflect the 60% reimbursement that will be paid to PCCD by DOJ. Costs paid in 2009/10 will be reimbursed by VOCA in 2011/12; costs paid in 2010/11 will be reimbursed in 2012/13, and the like.

For year 2 (2009/10), the VOCA reimbursement will be \$75,630 resulting in an overall savings of \$121,663 (\$126,051 @ 60% = \$75,630 reimbursement) which will be paid by the DOJ in 2011/12. Therefore, the real cost of the increased benefits will actually be a savings of \$121,663 (\$46,033 + DOJ VOCA reimbursement of \$75,630 = \$121,663).

For year three (2010/11), the VOCA reimbursement will be \$226,891 resulting in an overall cost savings of \$143,739 (\$378,152 @ 60% = \$226,891 reimbursement) which will be paid by VOCA in 2012/13. Therefore, the real cost of the increased benefits will actually be a savings of \$143,739 (\$83,152 + DOJ VOCA reimbursement of \$226,891 = \$143,739).

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), OVS submitted a copy of these proposed amendments to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Judiciary Committees (Committees) on May 13, 2009. In addition to submitting the proposed amendments, OVS has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed amendments within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the Regulatory Review Criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Commission the General Assembly and the Governor of comments, recommendations or objections raised.

*Effective Date*

The amendments will become effective upon publication of the final-form rulemaking in the *Pennsylvania Bulletin*.

*Sunset Date*

No sunset date has been assigned. These regulations will be reviewed annually.

*Public Comments*

Interested persons are invited to submit written comments regarding the proposed amendments to the regulations to Lynn Shiner, Deputy Director, Office of Victims' Services, P. O. Box 1167, Harrisburg, PA 17108-1167, within 30 days of the publication of this notice in the *Pennsylvania Bulletin*.

*Contact Person*

The contact person for additional information regarding the proposed amendments of the regulations is Lynn Shiner at the previous address.

B.J. HORN,  
*Director*

**Fiscal Note:** 35-31. (1) General Fund; (2) Implementing Year 2008-09 is \$0; (3) 1st Succeeding Year 2009-10 is

\$0; 2nd Succeeding Year 2010-11 is \$83,000; 3rd Succeeding Year 2011-12 is \$87,000; 4th Succeeding Year 2012-13 is \$87,000; 5th Succeeding Year 2013-14 is \$87,000; (4) 2007-08 Program—\$12,283,000; 2006-07 Program—\$13,138,000; 2005-06 Program—\$12,188,000; (7) Crime Victims Reimbursements; (8) recommends adoption. Federal reimbursements are expected to cover a portion of these costs.

**Annex A**

**TITLE 37. LAW**

**PART VI. COMMISSION ON CRIME AND DELINQUENCY**

**CHAPTER 411. CRIME VICTIMS COMPENSATION**

**§ 411.1 Scope**

Except as otherwise provided, this chapter applies to claims for compensation relating to **[ crimes ] crime injuries** occurring on or after **[ August 27, 2002 ]** *(Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking.)*

**§ 411.2 Definitions.**

(a) The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

\* \* \* \* \*

*Immediate need*—**[ Thirty ] One hundred and twenty** days from the date of the crime or **[ 30 ] 120** days from the date the victim is threatened by any change of circumstance or indicator of danger and a move or relocation is necessary to become or remain safe.

\* \* \* \* \*

**CLAIMS**

**§ 411.17. Emergency awards.**

\* \* \* \* \*

(c) The total amount of an emergency award will not exceed **[ \$1,500 ] \$5,000 per claim.**

\* \* \* \* \*

(e) OVS may reconsider an emergency award as a determination and may increase previous awards for emergency compensation up to **[ \$1,500 ] \$5,000 per claim.**

**SCHEDULE OF REIMBURSEMENT RATES AND COMPENSATION LIMITS**

**§ 411.42. Out-of-pocket loss.**

\* \* \* \* \*

(b) *Medical expenses.* The following provisions for payment of medical expenses apply:

(1) OVS will pay a hospital or other licensed health care provider at the rate of **[ 70% ] 65%** of the usual and customary charge for the service rendered.

(2) **This rate will apply to any bill for services incurred on or after \_\_\_\_\_ (Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking.)**

(3) Forensic rape examinations.

\* \* \* \* \*

(iv) **OVS will reimburse a direct victim who is erroneously billed and subsequently pays the cost**

of the forensic rape examination or medications directly related to the sexual offense. The reimbursement will be subject to the \$1,000 monetary limitation.

(c) *Funeral expenses.* Except as otherwise set forth in this subsection, OVS will reimburse for expenses relating to a funeral of a direct victim or intervenor. The total reimbursement amount for funeral expenses will not exceed [ \$5,000 ] \$6,500. [ Additionally, within that \$5,000 monetary limitation, reimbursement will be subject to the following limitations:

(1) Four thousand eight hundred dollars for funeral services, including the following ] Funeral expenses to be reimbursed are as follows:

\* \* \* \* \*

- (x) Casket or urn.
  - (xi) Minister, pastor, rabbi or other members of the clergy.
  - (xii) Monument.
  - (xiii) Floral arrangements.
  - (xiv) Funeral or memorial meal.
  - (xv) Clothing purchased for the deceased for the funeral or interment.
  - (xvi) Other miscellaneous expenses, including organist, programs, death certificates, obituary notice and notice of the time and place of the funeral or burial services.
- [ (2) Nine hundred dollars for a monument.
- (3) Three hundred dollars for floral arrangements.
- (4) Three hundred dollars for funeral or memorial meal.
- (5) One hundred and seventy-five dollars for clothing purchased for the deceased for the funeral or interment. ]

\* \* \* \* \*

(f) *Relocation expenses.* OVS will reimburse for expenses incurred by the temporary or permanent relocation of a direct victim and individuals residing in the direct victim's household when immediate relocation is necessary to protect their health and safety. This reimbursement will not exceed \$1,000 per household for each [ crime incident ] direct victim for the following:

\* \* \* \* \*

(g) *Travel expenses.* OVS will reimburse expenses associated with travel necessary and reasonable as determined by OVS to obtain medical care or counseling [ and, in ], attend or participate in criminal justice or protection from abuse proceedings, and other circumstances when good cause is shown by the claimant. [ in ] In the case of an injury that results in death, for travel in connection with making the funeral arrangements [ and ], transport of the body and attendance of funeral services as follows:

\* \* \* \* \*

(10) In the case of an injury that results in death, for travel in connection with the transport of the body [ and ], making funeral arrangements and attending the funeral services not to exceed 5 days.

(h) *Crime scene clean up.* The cost of cleaning the crime scene of a private residence up to a maximum of \$500.

\* \* \* \* \*

(3) Cleaning means to remove or attempt to remove blood and stains caused by [ other ] bodily fluids, food, paint or other materials used to deface property as a direct result of the crime or other dirt or debris caused by the processing of the crime scene.

\* \* \* \* \*

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