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Regulatory Analysis Form

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(1) Agency
Pennsylvania Commission on Crime and Delinquency,
Office of Victims' Services

INDEPENDENT REGULATORY
REVIEW COMMISSION

(2) I.D. Number (Governor's Office Use)

35 - 29

IRRC Number:

2428

(3) Short Title

Crime Victims Compensation - Policies, Procedures, Schedule of Reimbursement Rates and Compensation Limits

(4) PA Code Cite

37 Pa. Code Chapter 411

(5) Agency Contacts & Telephone Numbers

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(6) Type of Rulemaking

Final Rulemaking

(7) Is a 120-Day Emergency Certification Attached?

 No
 Yes: By the Attorney General
 Yes: By the Governor

(8) Briefly explain the regulation in clear and non-technical language.

This rulemaking proposes to delete in their entirety the regulations that are currently codified at Title 37 Pa. Code Chapter 191, and to replace them with regulations specific to the Office. The new regulations would be published in a new chapter 411 of Title 37 of the *Pennsylvania Code*, adjacent to other regulations pertaining to PCCD or its other Offices. The final regulations reflect the substantial statutory changes that have occurred since 1989 when regulations affecting the program were most recently amended. The proposal would simplify or clarify many of the Office's claims processing, determination and appeal procedures. In addition, this rulemaking incorporates the Schedule of Compensation Limits and Reimbursement Rates for the Crime Victims Compensation Program published as a Statement of Policy in the *Pennsylvania Bulletin*, Vol. 32, No. 37, September 14, 2002. The rates for the Crime Victims Compensation Program have been in effect since September 14, 2002. Costs have been incurred on an ongoing basis since that date. PCCD expects deminimus increase based upon the promulgation of the Rules and Regulations.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

The regulations are proposed under the authority of the act of November 24, 1998 (P.L. 882, No. 111), as amended by the act of October 30, 2000 (P.L. 641, No. 86), as further amended by the act of June 28, 2002 (P.L. 496, No. 85), further amended by the act of November 19, 2004 (P.L. 838, No. 103) which is set forth at 18 P.S. §§11.101-11.5102, and is also known as the Crime Victims Act. The act empowers the Office of Victims' Services to "adopt, promulgate, amend and rescind suitable rules and regulations to carry out the provisions and purposes of Chapter 7 [of the act, relating to crime victims compensation] 18 P.S. §11.312(3). The act also empowers the Office of Victims' Services to establish compensation limits and reimbursement rates for the purpose of carrying out the provisions of Chapter 7 [of the act, relating to crime victims compensation] 18 P.S. §11.312(13).

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

Yes. See response to Question (9) above.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

This regulation is necessary because substantial statutory changes have occurred in a benefit program subsequent to the last time the applicable regulations were amended in 1989. The program has an increasing visibility in the Commonwealth's criminal justice system, having awarded a total of \$9.6 million in FY 2004-2005 consisting of initial awards for 4,004 claims and supplemental awards for 2,018 previous claims. In addition this regulation would adopt the Schedule of Compensation Limits and Reimbursement Rates as published in the PA Bulletin Vol. 32, No. 37, September 14, 2002, thus allowing conservation of limited financial resources. New regulations are needed to conform the regulatory framework to the needs and priorities of the current program.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

None.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

Quantitative costs associated with this rulemaking include The Schedule of Compensation Limits and Reimbursement Rates as published in the PA Bulletin Vol. 32, No. 37, September 14, 2002 delineating rates for new benefits or increased benefit levels in a variety of categories. The established rates applied to claims for compensation relating to crime injuries or services occurring on or after the effective date of Act 85, which was August 27, 2002. The actual number of claims paid under the applicable

categories in a typical year would be as follows: Funeral-related expenses, 496; home health-care expenses, 32; relocation expenses, 35; and replacement of stolen or damaged personal care items, 52. (Note: To project a more accurate estimate of the annual fiscal impact, the quantitative numbers and costs reflected were taken from actual data for the period of July 1, 2004 through June 30, 2005.

A majority of the claimants who were awarded benefits had at least a portion of their award go to medical expenses. (Almost 50 percent of the total benefits paid out went for health provider bills.) Therefore, the majority of claimants benefit from the provision in Act 85 that requires hospitals and other health care providers to accept the percentage set by the Office of Victims' Services. This benefits the affected claimants because more benefits within the statutory cap of \$35,000 may go to other components of loss, such as the claimants' additional medical expenses or loss of earnings.¹

Despite the fact that they are required to accept 70 percent of the bill as final payment, affected hospitals and other health care providers will also benefit due to the assurance of payment in many scenarios where currently they receive nothing. That is because the current regulations, at 37 Pa. Code § 191.9(1)(4), require the Office to pay as many outstanding expenses as possible to reduce the number of outstanding creditors. With an overall statutory limitation of \$35,000 per claim, this regulation requires the Office to pay as many smaller creditors first, and then the larger ones if there is any money left over. Imposing the 70 percent reimbursement rate per bill has meant that, in claims involving large hospital and medical expenses, a greater number of creditors have obtained some payment from the program.

In addition to the quantitative costs associated with this rulemaking, including The Schedule of Compensation Limits and Reimbursement Rates as published in the PA Bulletin Vol. 32, No. 37, September 14, 2002, the OVS also anticipates costs in claims involving the death of a direct victim or intervenor. OVS currently allows up to one week's net loss of earnings for one eligible claimant, not to exceed the average weekly wage determined by the Department of Labor and Industry, in connection with the death, if the eligible claimant was not otherwise reimbursed for the loss. An eligible claimant may apply for loss of earnings if they are the individual responsible for funeral arrangements and/or accompanying the body to an alternate location, or time lost from work due to trauma. OVS looked at all the death claims from CY 2005 that paid loss of earnings. Of the claims paid during that period, almost half of the claims were for the maximum allowable time of one week, while the remainder of the claims were for one to four days. Changing the benefit for more than one eligible claimant and expanding from one week to two weeks would allow additional claimants, including the surviving spouse, child or parent of the deceased victim, the person who assumes the obligation or who pays for the funeral or burial expenses or an individual dependent for principal support upon the deceased victim, who incurred a loss of earnings as a result of trauma, making funeral arrangements or accompanying the deceased to the place of interment, to be paid for up to two week's loss of earnings instead of one.

¹ Please see response to Question (14) for a discussion of the potential adverse impact on victims from the 70 percent reimbursement rate for hospitals and other health care providers.

14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

The 70 percent reimbursement rate for medical expenses set by the Office of Victims' Services under the authority of Act 85 may have adversely affected a variety of providers, because they did not receive as much reimbursement as previously, when they were paid in full to the extent of the maximum of \$35,000 under the Crime Victims Act. On the other hand, paying at 100 percent was the exception to the rule, and the setting of a percentage reimbursement rate has conformed to the practice of other third-party payors.

To illustrate the variety of affected providers, PCCD reviewed benefits awarded from July 1, 2004 through June 30, 2005. During that period, a total of 2,875 health provider payments were made to 1,357 unique providers. The 2,875 payments were allocated as follows: Hospitals, 975; Physicians, 856; Pharmacy, 615; Ambulance, 303; Dental, 113; and Home Health Care, 13. The total payments were allocated to providers as follows: Hospitals - \$2,633,184; Doctors - \$718,809; Ambulance - \$194,491; Dental - \$167,100; Pharmacy - \$104,829; Home Health Care - \$31,670.

There continues to be a potential for adverse impact on victims from the medical reimbursement rate, which may create a disincentive for some health care providers to deliver services to victims. The Victims' Services Advisory Committee continues to have some concerns about this impact, particularly with regard to specialties such as plastic surgery and dental reconstruction. However, VSAC did recommend the 70 percent rate to the Governor in its *Proposed Revisions to the Victims Compensation Statute*, submitted December 2000. The 70 percent rate was arrived at after lengthy discussion about the impacts of any percentage reduction.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

See response to Question (14).

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

PCCD's Victims' Services Advisory Committee (VSAC) and its Compensation Subcommittee have provided substantial input into the legislation that became Act 85 of 2002, the Schedule of Compensation Limits and Reimbursement Rates for the Crime Victims Compensation Program and in this proposed rulemaking. Members of VSAC are either certain government officials permanently designated by the Crime Victims Act or those appointed by the Governor.

Each member of VSAC's Compensation Subcommittee brings the voice of a broad-based representation of victim service and criminal justice professionals and acts as their liaisons to improve and strengthen the statute, regulations, and other policies and procedures relating to the programs affecting victims of crime.

Over the past several years, PCCD has targeted a significant number of organizations to provide training designed to enhance the services provided to victims filing for compensation. These trainings are also used as an opportunity to solicit concerns, recommendations and barriers that are met by individuals who assist crime victims. These organizations included the following: Rape Crisis Centers, Domestic Violence Centers, Comprehensive Victim Services, Victim/Witness Coordinators, Mothers Against Drunk Driving, Coalition of Pennsylvania Crime Victim Organizations, Pennsylvania District Attorneys' Association, police officers, and service providers.

Additional solicitation of input has occurred through the distribution of newsletters, surveys, workshops and on-site visits. In addition, in a partnership between victim service professionals and PCCD, some 491 trainings have occurred since January of 1999, involving 9,252 participants. These trainings have provided an opportunity for feedback and have generated much discussion regarding the necessity for the proposed changes in this rulemaking.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

As discussed in the response to Question (14), various health providers will incur costs resulting from the percentage reduction of payments set by the Office of Victims' Services. Utilizing data from claims paid for the period of July 1, 2004 through June 30, 2005, the estimated annual fiscal impact as a result of the percentage cost reduction will save the Crime Victim's Compensation Fund an estimated \$1,445,423. This is money that would have been paid to those providers.

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

None.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

The fiscal impact to PCCD from all of the reimbursement rates set by the Office of Victims' Services pursuant to Act 85 will consist of an estimated annual net savings of \$415,246. This calculation takes into account the savings to PCCD resulting from the Office's setting of a 70% reimbursement rate for expense to be paid to a hospital or other licensed health care provider on behalf of the victim (a \$1,445,423 saving and the costs to PCCD from new benefits or increased benefits, the rates of which are being set by the Office (a \$1,030,178 cost).

The percentage reduction for hospitals and other health care providers became effective for all services

rendered as of August 27, 2002, irrespective of the date of the crime, whereas the cost for other new or adjusted benefits, with some exceptions, began to accrue only for claims involving crimes occurring on or after August 27, 2002. Consequently, initially, the savings were realized more quickly than the costs.

It should also be noted that the savings for each fiscal period, starting with FY 2002-03, will actually be even higher when the effect of the federal reimbursement is taken into account. State victims compensation programs enjoy a 60 percent reimbursement that is eventually returned by the U.S. Department of Justice under the Victims of Crime Act (VOCA) funding stream for allowable benefits paid under the program. Each of the rates set by the Office pursuant to Act 85 is for benefits allowable under VOCA, so the cost savings figures would need to be adjusted downward to reflect the 60 percent reimbursement that will be paid to PCCD by DOJ beginning in FY 2004/2005. Consequently, the additional estimated cost of \$1,030,178 on an annual basis will be reduced by \$618,107 (60 percent of \$1,030,178). Therefore, the actual cost of the benefits, the rates of which were set by the Office of Victims' Services, are estimated to be \$412,071 annually.

The specific fiscal analysis regarding the health provider percentage reimbursement rate is as follows: The reduction applies to the following provider/expense types: Hospitals, Doctors, Dentists, Physical Therapy/Chiropractic, Medications (when billed by the pharmacy, which is a rare occurrence), Ambulance and Home Health Care. If the victim paid out of pocket any of the above medical expenses, he or she will continue to be reimbursed at 100%. (Approximately 8% of all medical expenses are paid for by the victim/claimant). Based on payments made during July 1, 2004 through June 30, 2005 the estimated annual fiscal savings for the 70 percent reimbursement will be \$1,445,423.

The savings from the medical cost percentage reduction has more than offset the costs of new or upgraded benefits set forth in the Schedule of Compensation Limits and Reimbursement Rates, which are estimated at \$1,030,178 annually. The specific fiscal analysis with respect to each category of new or expanded benefits incorporated into the published Schedule of Compensation Limits and Reimbursement Rates for the Crime Victims Compensation Program is as follows:

The travel expenses set forth in §411.103(b) were substantially unchanged from current amounts being paid. Consequently, there is no appreciable fiscal impact on this item.

For the costs of funeral-related expenses, which are set in §411.103(c), PCCD projects the annual fiscal impact for increasing the monetary limit to be \$681,384. This was projected after PCCD reviewed funeral related awards paid during July 1, 2004 through June 30, 2005 and calculated an estimated total using a data sample of 35.8%. At the previous maximum reimbursement rate of \$3,750, PCCD paid an average of 52 percent of each funeral bill. By raising the maximum reimbursement to \$5,000, PCCD is currently paying an estimated average of 75 percent of the typical funeral bill.

In claims involving the death of a direct victim or intervenor, OVS currently allows up to one week's net loss of earnings in connection with the death if the claimant was not otherwise reimbursed for the loss. To determine an estimated cost for increasing the net loss of earnings from one week to two, OVS looked at the death claims from CY 2005 that paid loss of earnings. Of the 49 claims paid during that period, 43% (21 claims), were for the maximum allowable time of one week, while 57% of the claims, or 28, were for one to four days. The total paid for the 21 claims, where the maximum net loss of earnings was paid, amounted to \$8,952. Estimating that the 21 claimants would all have been eligible for the maximum net

loss of earnings of two weeks, and based on the information OVS has compiled from 2005, the best estimate OVS can provide to increase this benefit would be an additional \$10,000 annually. However this number may increase depending on the number of individuals eligible for those types of awards. It is expected that the average projection would not exceed two eligible claimants, which may cause the OVS incur an additional \$10,000 annually for a total of \$20,000.

For the replacement of health-related items damaged or stolen, set at a maximum of \$1,000 in §411.103(d) PCCD analyzed 49 claims in which payments were made under the category of medical equipment/supplies between July 1, 2004 and June 30, 2005. The projected annual fiscal impact is \$12,138.

For the increase of the hourly rate for home tasks from \$6.00 to \$8.00, PCCD analyzed claims in which payments were made for this benefit for the period of July 1, 2004 through June 30, 2005. There were 4 claims where the \$8 hourly rate applied. The projected annual fiscal impact is \$5,394.

Emergency relocation is a new benefit as a result of Act 85. PCCD analyzed 35 claims in which payment were made under the category of relocation between July 1, 2004 and June 30, 2005. At a maximum of \$1,000, the projected annual fiscal impact is \$24,901.

These costs remain consistent with the costs incurred in subsequent years but they do not take into consideration increases in claims in future years.

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government	\$1,445,423 ²	\$1,589,965	\$1,589,965	\$1,589,965	\$1,589,965	\$1,589,965
Total Savings	\$1,445,423	\$1,589,965	\$1,589,965	\$1,589,965	\$1,589,965	\$1,589,965
COSTS:						
Regulated Community	\$1,445,423	\$1,589,965	\$1,589,965	\$1,589,965	\$1,589,965	\$1,589,965
Local Government						
State Government	\$1,030,178	\$1,133,196	\$1,133,196 ³	\$1,133,196	\$1,133,196	\$1,133,196

² Note that PCCD is citing figures based on claims paid for the period of July 1, 2004 through June 30, 2005 to determine the projected annual fiscal impact. (See response to Question 19).

³ This figures does not reflect receipt of the federal reimbursement of 60 percent of the allowable costs of \$1,030,178 paid in FY 2004/2005, or \$618,107, which will be paid by the U.S. Department of Justice in FY 2006/2007. Similarly, the total costs figures for this and each successive fiscal year do not include the applicable 60 percent reimbursement of the state government.

Total Costs	\$2,475,601	\$2,723,161	\$2,723,161	\$2,723,161	\$2,723,161	\$2,723,16
REVENUE						
LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue	\$0	\$0	\$0	\$0	\$0	\$0
Losses						

(20a) Explain how the cost estimates listed above were derived.
The above estimates are projections provided by PCCD based on actual claims paid by the Pennsylvania program.

(20b) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3 02/03	FY -2 03/04	FY -1 04/05	Current FY 05/06
Victims Compensation ⁴	\$9,243,150	\$10,029,919	\$9,806,700	\$11,963,456*
				*Estimated

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

As described in the response to Question (19), the added costs to PCCD of \$1,030,178 in added or increased benefits on a projected annual basis (minus the 60 percent federal VOCA reimbursement) will be substantially outweighed by the \$1,445,423 in savings from the percentage reduction in health provider reimbursements. Also, to the extent funds within the statutory maximum of \$35,000 total payout are not disbursed to health providers and instead go to other components of a victim's loss, such as additional medical expenses or loss of earnings, this will benefit the victim.

⁴ These budget figures relate to the Crime Victim's Compensation Fund, a special non-lapsing fund.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

None considered.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

None considered.

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

No.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

The changes enacted in Act 85 have brought Pennsylvania in line with the benefits that many other states provide to crime victims.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

This rulemaking will delete in their entirety the regulations that are currently codified at Title 37 Pa. Code Chapter 191 as well as incorporate the Schedule of Compensation Limits and Reimbursement Rates published as a Statement of Policy in the Pennsylvania Bulletin, Vol. 32, No. 37, September 14, 2002.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

None anticipated at this time.

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

No.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

None.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The regulations will become effective immediately with the final publication in the *Pennsylvania Bulletin*.

(31) Provide the schedule for continual review of the regulation.

Annually.

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

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INDEPENDENT REGULATORY
REVIEW COMMISSION

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Copy below is hereby approved as to form and legality. Attorney General

BY: _____
(DEPUTY ATTORNEY GENERAL)

DATE OF APPROVAL

Check if applicable
Copy not approved. Objections attached.

Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:
Pennsylvania Commission on Crime and Delinquency, Office of Victims' Services

(AGENCY)

DOCUMENT/FISCAL NOTE NO. 35-29

DATE OF ADOPTION: _____
BY: Michael J. Lee 3/27/06
Date

TITLE: Executive Director
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

Copy below is hereby approved as to form and legality. Executive or Independent Agencies.

BY: David J. Deurles
DAVID J. DEURLES

APR 25 2006

DATE OF APPROVAL

EXECUTIVE
(Deputy General Counsel)
(Chief Counsel, Independent Agency)
(Strike inapplicable title)

Check if applicable. No Attorney General approval or objection within 30 days after submission.

Final Regulation

Pennsylvania Commission on Crime and Delinquency
Office of Victims' Services

37 Pa. Code Chapter 411

Victims Compensation Assistance Program

RULES AND REGULATIONS

COMMISSION ON CRIME AND DELINQUENCY

(37 PA. CODE CHS. 191 AND 411)

Crime Victims Compensation

The PA Commission on Crime and Delinquency (PCCD) deletes Chapter 191 (relating to general provisions) and adopts Chapter 411 (relating to crime victims compensation.) to read as set forth in Annex A.

Purpose and Authority

This final rulemaking deletes Chapter 191 and replaces it with regulations specific to the Office of Victims' Services (OVS). The new regulation would be Chapter 411, adjacent to other regulations pertaining to PCCD or its other offices. The final rulemaking reflects the substantial statutory changes that have occurred since 1989 when regulations affecting the program were most recently amended. New regulations are needed to conform to the new requirements of the act. The final rulemaking will simplify or clarify many of the OVS's claims processing, determination and appeal procedures. In addition, this rulemaking incorporates the Schedule of Compensation Limits and Reimbursement Rates (schedule) for the Crime Victims Compensation Program (program) published as a statement of policy at 32 Pa.B. 4489 (September 14, 2002).

This final form rulemaking is adopted under the authority of the Crime Victims Act (act) (18 P.S. §§11.101-11.5102). Section 312 (3) of the act, (18 P.S. §§11.312 (3)) empowers the Office of Victims' Services (OVS) to "adopt, promulgate, amend and rescind suitable rules and regulations to carry out the provisions and purposes of Chapter 7." Section 312 (13) of the act also empowers the OVS to establish compensation limits and reimbursement rates for the purpose of carrying out the provisions of Chapter 7.

Comments and Response

Notice of proposed rulemaking was published at 34 Pa.B. 5032 (September 11, 2004) with a 30-day comment period. During the 30 day comment period, comments were received from the Crime Victim Center of Erie County, Inc; Victim Witness Services of South Philadelphia; Victim Services Division of the Cumberland County District Attorney's Office; Network of Victim Assistance (Bucks County); Lancaster County Victim/Witness Services ; Pennsylvania Coalition Against Domestic Violence; House Judiciary Committee; and the Independent Regulatory Review Commission (IRRC).

The Crime Victim Center of Erie County, Inc wrote in support of the proposed regulations in particular to the definition of 'immediate need' relative to relocation.

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The Pennsylvania Coalition Against Domestic Violence wrote in support of the proposed rulemaking highlighting the following areas:

Section 411.11(g) When a Protection From Abuse (PFA) is withdrawn or denied – “Although victims of domestic violence file approximately 50,000 Protection From Abuse cases annually, we recognize that many victims choose to withdraw their orders in order to secure safety. Studies show that victims are most at risk for retaliation or abuse when they separate from the perpetrator of abuse. PCCD’s decision to include specific guidelines for justification of this safety choice will help many survivors of domestic violence.”

Section 411.15 (h) Determining Primary Aggressor – “Unfortunately many victims of domestic violence are forced to use physical means to protect themselves when a perpetrator attacks them. These situations sometimes result in a confusing situation for law enforcement to assess. The aforementioned provision allowing for a determination of primary aggressor permits OVS to consider factors that are relevant to many victims of domestic violence. We applaud the inclusion of this section in the proposed regulations.”

Section 411.15 (g) Failure to Cooperate – “Many victims of domestic violence are forced to choose between their future safety and cooperation with law enforcement when a charge or complaint is filed. While this failure to cooperate may seem arbitrary to law enforcement, it is clear that these proposed regulations grant credibility to victims who make the choice to protect themselves rather than cooperate.”

Section 411.42 (f) Reimbursement for Relocation Expenses – “There is a cost to safety. The cost of safety includes relocation or acquiring temporary housing. The meaningful and substantial resource that the proposed regulations permit will save lives, encourage victims of domestic violence to seek help and move our culture closer to the goal of ending domestic violence. We are grateful that the relocation expenses include both temporary and permanent relocation. This allows flexibility for victims.”

The Coalition supports this priority and general tone in the proposed regulations that accepts the complex choices and options victims of domestic violence must face everyday.

Following is a summary of the comments and the PCCD’s response to those comments:

§ 411.2 (*relating to definitions*)

Comment: IRRRC recommended that the definition of dependent child be clarified by replacing ‘Eighteen years of age or younger’ with ‘Under 18 years of age’ to remain consistent with the Crime Victims Act.

Response: The PCCD concurs and revised the definition. In addition, to remain consistent with the act, under (ii) and (iii) Nineteen was deleted and replaced with Eighteen.

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Comment: The House Judiciary Committee and IRRC expressed concerns about the clarity of the proposed amendment regarding the definitions of loss of earnings, stolen benefit cash and cash equivalent.

Response: The PCCD concurs and revised the definition of loss of earnings to clarify that it includes loss of income or wages, deleted the definition for stolen benefit cash as it is defined in the Crime Victim Act under the definition of loss of earnings and deleted the definition for cash equivalent as it is clarified in Section 411.43 of the final rulemaking.

The term stolen benefit cash appears in the final rulemaking as a subcategory under loss of earnings in Section 411.11(k)(3)(i) and Section 411.43(a). PCCD opined it was important to delineate the different eligibility requirements as well as the required documentation when a victim of crime is unable to work as a result of the injury versus a victim of crime who has had money stolen or defrauded and whose primary source of income is derived from a fixed source such as social security, pension, etc.

Under 411.43(a), PCCD replaced the term direct victim with victim to be consistent with the statutory definition.

In addition, PCCD added, "In no instance would payment exceed the amount stolen" to provide clarity on the allowable reimbursement limit.

Comment: Lancaster County Victim/Witness Services and Victim Witness Services of South Philadelphia expressed concern that the definition of 'immediate need' be changed to a longer period than 30 days from the date of the crime or change in circumstance or indicator of danger. It was suggested that this time frame did not allow adequate time to coincide with the complications victims have in their lives that inhibit them from moving within 30 days. These complications may include the need to find a place to move, relocation of children who may be subject to custody orders or school changes, pending legal proceedings, or raising sufficient monies to make the initial move. Many victims can find a temporary hiding place with family or friends, but when they find a place to seek a permanent refugee, it may be too late to apply.

Response: The term immediate need is included under the definition of out-of-pocket loss in the Crime Victims Act. It states in part.: "(4) expenses resulting from the temporary or permanent relocation of a direct victim and individuals residing in the household of the direct victim due to the incident forming the basis of the victim's claim when there is an immediate need to protect the safety and health of the victim and individuals residing in the household, as verified by a medical provider, human services provider or law enforcement."

The intent focused on victims whose lives were in danger as a result of the crime with the desired result of meeting the immediate needs to protect the safety and health of the victim. Adding this benefit by statute was never intended to cover or address all aspects of the need for victims to relocate. OVS is cognizant of the unique circumstances that victims face and has the authority to consider delays past the 30 day time period. Specifically Section 411.42 (f) (3) states that OVS may consider a delay past the

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prescribed immediate need time period to be justified when the direct victim, intervenor, or claimant is mentally or physically incapacitated, there is a fear of retaliation, or other circumstances deemed appropriate by OVS.

§ 411.11 (*relating to filing procedures*)

Comment: IRRC commented that this section does not include time frames for filing claims for compensation with OVS or time frames for reporting the crime to proper authorities.

Response: The PCCD concurs and included a reference to the Crime Victims Act that outlines requirements for timely filing and reporting. (18 P.S. § 11.702(b) and 707(a)(3)).

Comment: IRRC recommended that Section 411.11(a) also reference Section 411.3(a)

Response: PCCD has revised this section to add the suggested reference.

Comment: The House Judiciary Committee expressed concern that the list contained in paragraph (f)(1) may deter a direct victim or intervenor with a legitimate claim from filing an application for compensation. The Committee suggests that this paragraph be amended to clearly indicate that this list is not exclusive and that OVS retains the authority to determine on a case-by-case basis, whether a direct victim or intervenor reported the occurrence of the crime to a “proper authority.”

Response: The PCCD reviewed the list and determined that it does not require further discretion in this area. However, after reviewing the list, the PCCD has included U.S. Postal Inspection Service which is the law enforcement arm of the postal service. As is with the FBI, they investigate and refer cases to the US Attorney’s Office for possible prosecution.

Comment: The House Judiciary Committee suggested that a definition of “the occurrence of the crime” be included in the regulations so that the time period for filing does not begin to run until the crime is *actually* discovered. The Committee believes that such a definition would be consistent with the intent of the act, i.e. the restoration of crime victims to their pre-crime status, and such a definition would treat all eligible claimants in a uniform manner.

Response: On November 19, 2004 Governor Rendell signed legislation H.B. 2396. This legislation became effective on January 19, 2005 and amended the filing time for a compensation claim. The amendment states in part.. “A claim must be filed not later than two years after the discovery of the occurrence of the crime upon which the claim is based.” OVS has incorporated this amendment into Section 411.11 (g) of the final rulemaking.

Comment: The House Judiciary Committee was concerned that the three requirements for not utilizing an insurance plan for medical or counseling may not suffice in all cases. The Committee recommends that OVS retain the authority to decide on a case-by-case

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basis whether a victim or intervenor had legitimate justification for not utilizing their insurance plan.

Response: PCCD concurs and has revised 411.11(k) (1) and 411.11(k) (5).

Comment: IRRC and the House Judiciary Committee suggest PCCD add requirements that would justify a victim not utilizing their homeowner's or renter's insurance.

Response: Claimants have a choice whether to access their insurance or not. They do not have to provide written justification to OVS as to why they did not access their insurance. Section 411.16(i) states: "In claims involving stolen benefit cash or crime scene clean-up, if a claimant chooses not to access any of his homeowner's or renter's insurance, OVS will apply as an offset any amount that the claimant would have been paid by the insurance company."

Exceptions to insurance usage for financial decisions are not supported by the OVS.

Comment: IRRC recommended that PCCD clarify what information is required for a claimant who witnesses the crime for the purpose of seeking reimbursement for counseling expenses.

Response: PCCD has clarified the requirements under 411.11(k) (5).

Under 411.11 (h) OVS has replaced OVS will "ask the claimant to submit confirmation of the issuance of a final PFA order" with OVS will "confirm the issuance of a final PFA order". In some instances, PCCD has the ability to access this information directly and would not need to require this information from the claimant.

§ 411.12 (*relating to review*)

Comment: The Pennsylvania Coalition Against Domestic Violence requested that Section 411.12(d) be amended to ensure that OVS will not request or review records or files of domestic violence counselor/advocates. The term domestic violence counsel/advocate is limited to the definition provided in 23 Pa. C.S. As such, no subpoena or subpoena duces tecum should be issued to any domestic violence counselor or advocate.

Response: PCCD did not amend this section. PCCD's intent is to uphold any statutory provisions that protect privileged and confidential information for victims of crime. Section 11.709 of the Crime Victims Act states in part.. "All reports, records or other information obtained or produced by the bureau during the processing or investigation of a claim shall be confidential and privileged, shall not be subject to subpoena or discovery, shall be used for no purpose other than the processing of a claim..". In addition, domestic violence programs have their own statutory privilege as outlined in Title 23 Section 6116.

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It is also important to note that OVS may not request or review counseling notes of mental health service providers. OVS will request an assessment from the mental health service provider as to the extent the service provided is needed as a direct result of the crime. Counseling may only be considered as a reimbursable expense when the service is provided by or under the supervision of a psychiatrist, psychologist, licensed professional counselor or licensed social worker. OVS could not provide reimbursement to domestic violence counselor/advocates, therefore would have no statutory authority to request counseling records from them.

Comment: The House Judiciary Committee is of the opinion that the intent of the statutory provision upon which 411.12(a) (relating to review) is based is to ensure that the OVS conducts an examination of each claim and any supporting documentation to prevent fraud. The proposed regulation and statute both state in relevant part that the OVS investigation shall include “an examination of police, court and official records and reports concerning the crime and an examination of medical and hospital reports relating to the injury upon which the claim is based.” The Committee is of the opinion that it is not the legislative intent of the statutory provision to require that an investigation into every claim require that each of the referenced items be examined, but rather that OVS examine such records and reports as necessary in order to ensure that a claim is legitimate. It is the opinion of the Committee, for example, that a claim based upon the abuse of a child that, according to official records of a county child protective services agency was reported to police should not be denied because the police department who received the complaint has not provided OVS with a copy of the police record or report further confirming the complaint. The Committee suggests that this section clarify this point.

Response: PCCD has added language to address this concern. It is PCCD’s intent, in the case of a child or a vulnerable adult, to accept a crime report to law enforcement or to a child or adult protective services agency from a mandated reporter.

§ 411.13 (relating to closing of claims)

Comment: The Network of Victim Assistance (Bucks Co.) indicated that the closing of claims is confusing. Specifically they asked if (e) overrides (c) and (d)? In addition, they indicated that the five year case closure for cases with no out-of-pocket expenses is unrealistic for child sexual assault and other PTSD cases, all of which may result in counseling needs several years beyond the crime or reporting of the crime.

Response: 411.13 (e) does not override the deadline established in (c) & (d) rather provides OVS with a mechanism to re-open claims when additional information is received that would contradict a prior decision.

The PCCD concurs that eligible claims where no verifiable out-of-pocket expense or loss has been received by OVS within 5 years from the date of the filing of the claim with no further right of appeal is not appropriate where the direct victim is a minor. Subsection 411.13 (e) has been added for clarification.

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§ 411.14 (*relating to determinations*)

Comment: The Network for Victim Assistance (Bucks Co), Members of the House Judiciary and IRRC commented on the clarity and reasonableness of Subsection (a) - This subsection states a claimant may provide "additional information or clarification on the claim post-marked no later than 30 days from the date of OVS's initial determination..." Does this mean the date on which the claimant receives notice of the initial determination?

Response: It has been a long standing practice (over 15 years) to use 30 days from the date of the determination. It is fairly rare for a claimant to not be able to file a request for reconsideration or a request for a hearing within 30 days. However, OVS did add justification to accept a delay past the prescribed time frame under 411.31 (b) and 411.32 (d).

Comment: Members of the House Judiciary and IRRC commented on Subsection (c) which outlines a list of individuals that may receive a copy of OVS's final determination. It was suggested that the district attorney having jurisdiction where the crime occurred be added to this list. Title 18 Section 1106(c)(4) requires district attorneys to make recommendations to the sentencing court for the amount of restitution. Notice from OVS regarding a claim determination will assist the district attorney in meeting this requirement.

Response: The PCCD has revised 411.14 (c) to indicate that the prosecutor of the county where the crime occurred may receive a copy of the final decision.

§ 411.15 (*relating to actions affecting awards*)

Comment: The Network of Victim Assistance (Bucks Co) and the IRRC recommended that this section be amended to more closely relate to the conduct of the direct victim or intervenor. Both commentors expressed concern with the standard that the direct victim or intervenor used 'poor judgment' resulting in the placement of a situation likely to result in injury. It was relayed that the term 'poor judgment' is subjective and open to broad interpretation.

Response: PCCD has deleted the term 'poor judgment' and revised 411.15 (a) and 411.15 (f) providing clarification in determining whether the conduct of a direct victim or intervenor contributed to the injury.

Comment: IRRC recommended that the proposed language of subsection 411.15 (c) be revised to clarify intent.

Response: PCCD has revised the language to clarify the intent.

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In addition, PCCD has revised the language of subsection 411.15(f) to clarify the circumstances of OVS's denial of a claim for failure to fully cooperate with law enforcement agencies. The claimant is required to cooperate with law enforcement agencies throughout the entire proceeding. OVS has discovered that in some instances, once a claimant receives a payment from OVS they refuse to assist the prosecution further in the case. In these instances, OVS has a policy to deny future awards as well as require repayment of a prior award. Accordingly the following language "will require repayment of a prior award" has been added in order to put all claimants on notice of this practice and to codify existing practice.

Comment: IRRC requested clarification in that Subsection (g) states OVS may consider a failure to cooperate with law enforcement and OVS justified when a number of situations occur. IRRC questioned if minors are able to cooperate with OVS?

Response: PCCD has included language under 411.15 (g) that OVS may consider failure to cooperate with law enforcement and OVS when the victim is a minor. This type of decision would be made on a case-by-case basis taking into consideration the circumstances of the crime and the age of the victim.

§ 411.16 (*relating to reductions, offsets and limitations*)

Comment: The House Judiciary Committee commented on Subsection (a) that any decision by OVS to reduce, offset or limit an award to a claimant should only be made after first considering the ability of the Board to exercise its right to subrogation and restitution. IRRC agreed.

Response: PCCD concurs and has revised this section.

Comment: IRRC recommends for clarity that the PCCD reference the sections that deal specifically with Medicare reimbursement allowances as a result of a motor vehicle incident under Subsection (e) of this Chapter.

Response: PCCD included the appropriate cite.

Comment: The Victim Services Division, Cumberland Co. District Attorney's Office recommended that in the cases of homicide, the survivors should not have to use the life insurance coverage before they can apply for Compensation.

Response: This would require an amendment to Section 11.707(e) of the Crime Victims Act.

Comment: Lancaster County Victim/Witness Services requested that 411.16(e) be clarified to consider the payment to have the notice of the time and place of the funeral listed in the paper.

Response: PCCD concurs and clarified this subsection.

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Comment: Lancaster County Victim/Witness Services requested consideration to lower the amount of \$10,000 to \$5,000 in the cases where the direct victim or intervenor has no financial means to order needed services or equipment. In these cases OVS will assist the claimant by evaluating the claim prior to purchase and make information available to the potential providers.

Response: PCCD concurs and has revised 411.16 (h) to reduce the amount from \$10,000 to \$5,000.

§ 411.31 (relating to reconsideration)

Comment: IRRC expressed several concerns with Subsection (a) which allows a claimant to contest OVSs determination “by submitting a written request for reconsideration post-marked no later than 30 days from the date of determination.”

First, how will the claimant know when the 30-day period began? Section 704(d) of the Ace (18 P.S. § 11.704(d) requires OVS to promptly notify the claimant of its final decision. IRRC also noted that the 30-day period for judicial review under 18 P.S. § 11.705 begins 30 days after the claimant receives a copy. The regulation should specify that the claimant has 30 days from receipt of OVS’ determination.

Second, the requirement of a post-mark would limit the method of filing. This subsection should be amended to be similar to Section 411.11(c) which allows several methods of filing, including electronic means.

Response: It has been a long standing practice (over 15 years) to use 30 days from the date of the determination. It is fairly rare for a claimant not to file a request for reconsideration or a request for a hearing within 30 days. However, OVS did add justification to accept a delay past the prescribed time frame.

For clarification, the 30-day period for judicial review under 18 P.S. § 11.705 refers to the final decision prior to appealing to Commonwealth Court. PCCD inadvertently included a reference to Commonwealth Court under Section 411.32(b) and has removed this reference.

Also, PCCD has removed the reference to postmark in Sections 411.14(a), 411.31(a) and 411.32(c) allowing for several methods of filing, including electronic means.

§ 411.32 (relating to hearings)

Comment: IRRC and the House Judiciary Committee suggested that 411.32(h) be amended to clarify whether the submission of a list of documentary exhibits will satisfy the requirement imposed, or if the actual documentary exhibits must be provided. This section also requires that the claimant must provide a list of witnesses and documentary

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exhibits to OVS counsel and the hearing examiner. The Committee suggests that this duplication of effort not be required.

Response: The PCCD has revised this section to clarify the requirements of the claimant and also who the claimant must respond to. The claimant will not need to provide required information to OVS counsel and the hearing examiner.

Comment: IRRC expressed concern that a hearing will not be rescheduled more than once. IRRC questioned the hearing examiners flexibility to review the reason the claimant did not attend and, based on that information, make a determination on whether another hearing should be scheduled.

Response: PCCD has revised this section to provide OVS with discretion to allow a hearing to be rescheduled if there is a showing of good cause.

Comment: The House Judiciary Committee and IRRC recommended that if it is the intent that a claimant may subpoena for the attendance of witnesses or for the production of documentary evidence, this subsection should clarify intent and procedures for requesting and obtaining these subpoenas.

Response: PCCD has revised this section to clarify the claimants ability to subpoena for attendance of witness or for the production of documentary evidence.

§ 411.33 (relating to final decision after hearing)

Comment: IRRC expressed concerned that this section does not contain any timeframe for the hearing officer to deliver the report or for OVS action on the report.

Response: Consistent with the Pennsylvania General Rules of Administrative Practice (1 Pa. Code 35.202) and other Commonwealth agency regulations, OVS does not see the need to add a timeframe within which the hearing officer must deliver the hearing report. While we recognize there are at least three other agencies' regulations requiring a timeframe, we are not inclined at this time to add this requirement.

§ 411.41 (relating to amount)

Under 411.41 (2) OVS inadvertently revised what the \$1,000 limit includes. This section was revised to remain consistent with the act and statements of policy.

§ 411.42 (relating to out-of-pocket loss)

Under 411.42 (b) (2) (i) OVS inadvertently excluded 'which are prescribed at the time of the forensic rape exam'. This section was revised to clarify that any medications prescribed in the future that are directly related to the sexual offense may be considered if the claimant files a compensation claim directly with the OVS for reimbursement.

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Comment: The Network of Victim Assistance (Bucks County) expressed a concern that the limit on crime scene clean-up is low for their geographical area.

Response: PCCD conducted a comparison of the amount of bills submitted for crime scene cleanup versus the amount the OVS has paid. This analysis was completed in the fall of 2004. OVS paid 13 claims since the inception of this benefit. Of the 13 claims, 8 were paid at 100%, 3 paid at 75% or higher, 1 paid between 25% and 49% and 1 between 0 and 24%.

Also, of the 13 claims, only 5 requested more than \$500. Based on the review, OVS, at this time, cannot justify increasing the cap for crime-scene cleanup.

Comment: Victim Services Division of the Cumberland County District Attorney's Office expressed a concern that the \$200 amount for the loss of eyeglasses in Section 411.42(d)(1) is too low. The crime victim should be able to replace their exact glasses that they had at the time of the crime and this might (in many cases) exceed the \$200.00.

Response: This limit applies to the replacement of personal health-related items damaged or stolen as a result of a crime. The \$200 applies only to the frames. Lenses are not a part of the \$200 limit.

Comment: The Network for Victim Assistance (Bucks Co) expressed a concern that the \$35,000 limit is not realistic when medical bills and loss of support or earnings are involved. Although the reimbursement reduction to 70% of medical costs certainly helps, several Bucks County victims have lost work time or support and had surgical procedures that have easily totaled more than \$35,000. This has become even more prevalent with the astonishing increases in health care costs in the past few years. IRRC noted that several commentators have indicated that current monetary limits, such as funeral expenses and the overall \$35,000 cap are not sufficient and that OVS should explain how the dollar amounts were derived, and why they are reasonable.

Response: There are several methods that may be utilized to determine a monetary limit. The National Association of Crime Victim Compensation Boards (NACVCB), is a national repository for data provided by the 50 member states, the District of Columbia, Puerto Rico, and the Virgin Islands. Through the NACVCB, statistics such as funding sources, eligibility requirements, procedures, benefits and compensable costs are available. Prior to considering a change, the NACVCB data is factored into the equation to see how Pennsylvania compares to other states. OVS has found this data method to be reasonable and an accurate outlet for comparison purposes. Also, OVS staff query data sets from our existing DAVE System database to see, for example, what the actual payouts for a particular benefit type are during a set time period. And depending on the situation, VCAP staff may also contact providers in predetermined geographic areas of the Commonwealth to determine what the "going rate" is for a particular service to see if our method and amount of compensation is high, low or proper for the service rendered. In addition, the solvency of the fund is always taken into consideration when adding or amending a monetary limit.

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Comment: The Network for Victim Assistance (Bucks Co) requested that this regulation include pre-approval of dental care, plastic surgery, vision or eye care, prosthetics and pharmacy costs because victims are denied non-emergency care when they cannot guarantee payment. In addition, IRRC inquired if there was a way for a victim to demonstrate need for non-emergency medical care before the procedure is done and can a provider be paid directly?

Response: Section 411.16(g) allows OVS to assist the claimant by evaluating the claim prior to purchase and make information available to the potential providers when a victim does not have the financial means to order needed services or equipment that exceeds \$5,000. In addition, OVS must pay providers directly for services rendered when the bill has not been paid by the claimant.

Comment: The Network for Victim Assistance (Bucks Co) expressed a concern that dentists, orthodontists, optometrists and doctors of physical medicine rely on outside vendors to make glasses, crowns, and prosthetic devices and the 70% reimbursement is not acceptable to them. Therefore in their experience, many victims go without this care.

Response: Section 11.708(b) of the Act states in part.. "Medical expenses, except as otherwise provided, shall be paid to a hospital or other licensed health care provider on behalf of the victim at a rate set by the Office of Victims' Services."

The Regulations define licensed health care provider to include any individual authorized by a licensing board or agency of the commonwealth or equivalent governmental entity to practice the science and skill of diagnosis and treatment of ailments of the human body. The term includes medical doctor, osteopathic physician, chiropractor, dentist, registered nurse, optometrist, pharmacist, physical therapist, podiatrist, psychologist, licensed professional counselor and licensed social worker.

If a provider of service was to be granted an exemption to the 70% reduction, it would require an amendment to the Crime Victims Act.

Comment: The House Judiciary Committee commented that travel expenses for funeral arrangements should be allowed as an out-of-pocket loss, but should also be required to be "reasonable and necessary." IRRC agreed with this comment.

Response: PCCD concurs and has revised 411.42 (g).

Comment: The Network of Victim Assistance (Bucks County) expressed concern that the definitions on what constitutes crime scene clean-up are too restrictive. In a recent case, a bloody mattress was "covered" for cleaning but not for replacement. It would have been less expensive to replace the mattress and, as the victim asked, who would want to keep the mattress where someone had been stabbed? In another case, a wounded victim left his house and escaped in his car, both of which needed cleaning. Only the house was covered, which was hard to explain to the victim.

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Response: Currently, the Crime Victims Act currently does not allow for reimbursement of out-of-pocket losses for property damage except as otherwise provided within the law. Replacing property that has been stained as a result of the crime injury would require an amendment to the Crime Victims Act.

It is also important to note, that the OVS receives 60% reimbursement from the federal government for each state dollar spent for eligible reimbursements to victims of crime. The federal guidelines state that states may not include property replacement or repair cost, except for replacement of locks and windows, and replacement of bedding and clothing held as evidence, in their annual certification of payments. If a statutory change occurred and OVS were to pay for replacement costs, the Fund would bear 100% of cost.

In addition, the Regulations could not include the clean-up of a car. The statute specifically states "costs of cleaning the crime scene of a private residence". This would also require an amendment to the Crime Victims Act.

Comment: The House Judiciary Committee and the IRRC suggested that the statutory definition of "cleaning" be included in the regulations and that language be included in the regulatory definition to clarify for claimants the types of "stains" for which compensation will be made to cover the cost of their "cleaning". The Committee believes that the intent of the General Assembly in enacting the statutory authorization to pay claims to cover the cost of crime scene cleaning was to ensure that payment may be made to cover the cost associated with the clean-up of blood and stains *caused by other bodily fluids* as a direct result of the crime or other dirt and debris caused by the processing of the crime scene. Stains deliberately caused by acts of vandalism and other intentional acts are property damage which is expressly excluded from the definition of "out of pocket loss" contained in the act.

Response: PCCD has added language to 411.42(h) specifically adding (iii) & (iv) to clarify these concerns.

§ 411.43 (*relating to loss of earnings*)

Comment: Victim Witness Services of South Philadelphia acknowledged that the funeral expenses section is wonderful and helps a number of families pay for a funeral. However, this agency suggests that more can be done for loss of earnings in the case of a homicide. At this time OVS only covers up to one week of loss of earnings per claim. This Program has worked with a number of parents who's children have been murdered and they are unable to return to work right away because of the trauma. It is understood that there needs to be limits, but one week is inadequate. If the claimants are able to show documentation from a doctor that they are unable to work this should allow for additional time, with perhaps a cap of up to 3 months. This would give parents, and other family members a chance to get back on their feet without their finances being totally depleted. Loss of earnings should also be made available to both parents. In many cases the parents of the slain child are not living in the same household and may be supporting

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two separate families. Loss of earnings should not be awarded to one parent just because they filed their claim quicker than the other. Both parents should be entitled to the same funds.

Response: OVS recognized the inequity in allowing only one individual to file for loss of earnings in homicide cases. The final rule allows for each eligible claimant to file for up to two week's net loss of earnings in connection with the death not to exceed the average weekly wage if the claimant was not otherwise reimbursed for the loss.

Under 411.43 (c)(1) OVS inadvertently added 'as certified by a physician or psychologist'. This reference is misplaced under this section. 411.11 (f) (3) sufficiently delineates the requirements to process a claim for loss of earnings.

Comment: The Network of Victim Assistance (Bucks County) expressed concern with the fact that the use of sick, vacation and personal time often occurs in the early aftermath of the crime when victims are unaware of the availability of compensation. They are then left with little or no paid time for an unrelated illness or vacation. If they had taken the initial time to deal with crime related matters as unpaid, they would have been eligible for compensation. Many victims feel this is unfair.

Response: In the calculation of loss of earnings, the final rule requires OVS to offset the award by 'other benefits received' which include employer paid leave.

This requirement is mandated under Section 11.707 (b)(2) of the Crime Victim Act. It states in part "An award made for loss of earnings or support shall, unless reduced pursuant to other provisions of this chapter, be in an amount equal to the actual loss sustained." If the victim utilizes another source to compensate his/her time off from work there would not be an actual loss that OVS could reimburse.

To clarify 411.43 (e)(3), OVS has replaced bereavement pay with employer paid leave, which is a more accurate term when describing sources of leave available from an employer.

Comment: Lancaster County Victim/Witness Services expressed concern with Section 411.43(a), specifically the rationale to include any language concerning the average weekly wage when there seems to be no correlation between stolen benefit cash and the average weekly wage. Since this provision is already limited by a one month entitlement, regardless of the amount of the loss, it should not further be limited by the average weekly wage.

Response: This section has been reviewed and deleted as a provision for further limiting the amount a crime victim may be eligible to receive when they are on a fixed income. A determination has been made that the reference to the average weekly wage, as determined annually by the Department of Labor and Industry through its Unemployment Compensation Law is clearly referencing income or wages earned by active employment

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for all persons covered by this act. This reference should not be applied to victims who are on a fixed income.

§ 411.44 (*relating to loss of support*)

Section 411.44(k) has been amended to correct a typographical error. The proposed rule making referenced a 3 year or 5 year payment plan for the disbursement of loss support payments. The final rulemaking states a 3 year to 5 year payment plan.

§ 411.53 (*relating to prohibitions*)

Under 411.53 (a) OVS inadvertently omitted the term claimant. The subsection should read: "Providers who write off bills to a direct victim or intervenor may not at any point following the write off seek reimbursement from OVS, direct victim, claimant or intervenor."

Final Proposed Rulemaking

Comment: IRRC has noted that there are several sections in the proposed rulemaking that provide discretion to allow OVS to consider other circumstances deemed appropriate or other factors that OVS deems relevant. What other circumstances or factors will OVS consider?

Response: The Crime Victims Act is clear in its intent to allow for discretion. Where the Act implies this discretion, OVS attempted to articulate the exceptions for why a claimant may not be able to meet a specific requirement.

For example: Section 411.11(f) requires the direct victim or intervenor report the crime to proper authorities within a prescribed time period. This section also provides that OVS may consider a delay past the prescribed time period to be justified when one of the following circumstances exist: 1) The direct victim, intervenor or the claimant is mentally or physically incapacitated; 2) The victim is a minor; 3) There is a fear of retaliation; 4) The occurrence of the crime is not readily apparent; or 5) Other circumstances deemed appropriate by OVS.

These exceptions represent 98% of the reasons why a direct victim or intervenor may not have reported within the prescribed time frame. However, OVS didn't want to write it in such a manner that would disallow an otherwise eligible victim to be provided compensation. Discretion is required for unusual circumstances which may include a direct victim who's child was hospitalized for an unrelated event and needed constant attention, a language barrier may exist with a tourist or possibly a crime victim is on a Visa and is detained and unable to meet the reporting requirement. Victimization and the circumstances surrounding the crime are unique to each crime victim and OVS requires this discretion to ensure that fairness and equity are part of the decision process in easing the financial hardship imposed upon them.

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Affected Parties

Victims of crimes, as defined in the act, benefit by having clear and up-to-date regulations regarding eligibility, compensation and procedures. Additionally, the proposed rulemaking is intended to provide further guidance and direction to healthcare providers and hospitals in regard to their eligibility and reimbursement under the act.

Under the authority of the act of June 28, 2002 (P.L. 496, No. 85) (Act 85), there is now a 70% reimbursement rate for medical expenses set by the Office which may adversely affect a variety of providers, because they will not receive as much reimbursement as previously received, when they were paid in full to the extent of the maximum of \$35,000 under the act. However, paying at 100% was the exception to the rule, and the setting of a percentage reimbursement rate has conformed to the practice of other third-party payors.

Fiscal Impact and Paperwork Estimates

The final rulemaking provides guidance in implementing a program that is already in effect, for which funding has been appropriated. Therefore, there is no new significant fiscal impact.

The fiscal impact to the Commission from all reimbursement rates set by the Office under Act 85 will consist of an estimated annual net savings of \$664,888. This calculation takes into account the savings to the Commission resulting from the Office's setting of a 70% reimbursement rate to providers (\$1,453,052) and the estimated costs to the Commission from new or increased benefits (\$788,164).

The final rulemaking does not affect existing reporting, record keeping or other paperwork requirements.

Effective Date

The final rulemaking will become effective upon publication in the *Pennsylvania Bulletin*.

Sunset Date

No sunset date has been assigned.

Contact Person

The official responsible for information on the final form rulemaking is Lynn Shiner, Manager of the Victims Compensation Assistance Program, Office of Victims' Services, PCCD, P.O. Box 1167, Harrisburg, PA 17108, (717) 783-0551 ext. 3210.

Regulatory Review

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On August 26, 2004, copies of the proposed rulemaking were delivered to IRRC and the Majority and Minority Chairpersons of the House and Senate Judiciary Committees. Notice of the proposed rulemaking was published at 34 Pa.B. 5032 (September 11, 2004), and provided for a 30-day public comment period. In compliance with section 5(c) of the Regulatory Review Act (71 P.S. § 745.5(c)), OVS provided IRRC and the Committees with copies of all comments received during the public comment period, as well as other documents if requested. In preparing the final-form rulemaking, OVS has considered all comments received from IRRC, the House Judiciary Committee and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), this final-form rulemaking was deemed approved by the House Judiciary Committee on _____ and Senate Judiciary Committee on _____. Under section 5.1(e) of the Regulatory Review Act, IRRC approved the final-form rulemaking on _____. The Attorney General approved the final form Rulemaking on _____.

Findings

The Commission finds that:

- (1) Public notice of the intention to adopt these regulations has been given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.
- (2) A public comment period was provided as required by law and all comments were considered and forwarded to IRRC and the Senate and House Committees.
- (3) The adoption of this final-form rulemaking in the manner provided by this order is necessary and appropriate for administration and enforcement of the authorizing statute.

Order

The Commission, acting under the authorizing statutes, orders that:

- (a) The Regulations of the Crime Victims Compensation Board at 37 Pa. Code Chapter 191 be deleted and the OVS Regulations at 37 Pa. Code Chapter 411 be added to read as set forth in Annex A.
- (b) The Commission shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for approval as required by law.
- (c) The Commission shall submit this order, Annex A and a Regulatory Analysis Form to IRRC, the House and the Senate Committees for their review and action as required by law.

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(d) The Commission shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(e) This order shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

Fiscal Note: 35-29

ANNEX A

TITLE 37. LAW

CHAPTER 411. CRIME VICTIMS COMPENSATION

GENERAL PROVISIONS

- Section 411.1. Scope.
411.2. Definitions.
411.3. Persons eligible for compensation.

CLAIMS

- Section 411.11. Filing procedures.
411.12. Review.
411.13. Closing of claims.
411.14. Determinations.
411.15. Actions affecting awards.
411.16. Reductions, offsets and limitations.
411.17. Emergency awards.
411.18. Awards.

APPEALS

- Section 411.31. Reconsideration.
411.32. Hearing.
411.33. Final decision after hearing.

SCHEDULE OF REIMBURSEMENT RATES AND COMPENSATION LIMITS

- Section 411.41. Amount.
411.42. Out-of-pocket loss.
411.43. Loss of earnings.
411.44. Loss of support.

MISCELLANEOUS

- Section 411.51. Subrogation.
411.52. Representation by attorney.
411.53. Prohibitions.

GENERAL PROVISIONS

§ 411.1. Scope.

Except as otherwise indicated, this chapter applies to claims for compensation relating to crimes occurring on or after August 27, 2002.

§ 411.2. Definitions.

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

Act—The Crime Victims Act (18 P.S. §§ 11.101-11.5102).

Average weekly wage—The amount designated for persons covered by the Unemployment Compensation Law (43 P. S. §§ 751—771) in this Commonwealth as determined periodically by the Pennsylvania Department of Labor and Industry.

[*Cash equivalent*—The net amount of a monthly Social Security entitlement, railroad retirement, pension plan, retirement plan, disability, veteran's retirement, court-ordered child support, or court-ordered spousal support payments.]

Dependent Child—The child of a direct victim or intervenor on whose behalf regular payments are received for the purpose of whole or partial support and who is one of the following:

- (i) [Eighteen years of age or younger] Under 18 years of age, including an unborn child for the purposes of this chapter only as defined by 18 Pa.C.S. §3203 (relating to definitions).
- (ii) [Nineteen] Eighteen years of age or older but under twenty-three years of age and currently attending secondary school or is a full-time student in a post-secondary educational institution.
- (iii) [Nineteen] Eighteen years of age or older but unable to provide for his own support due to a physical or mental disability.

Final decision—An OVS determination of a claim that may be appealed by the claimant as provided in 2 Pa.C.S. Ch. 7 Subch. A (relating to judicial review of Commonwealth agency action).

Guardian—A person appointed by a court for the care and management of a person or estate of a minor or incapacitated person, or designated by a parent of a minor to perform that role.

Health care provider—

- (i) An individual authorized by a licensing board or agency of the Commonwealth or equivalent governmental entity to practice the science and skill of diagnosis and treatment of ailments of the human body.

(ii) The term includes medical doctor, osteopathic physician, chiropractor, dentist, registered nurse, optometrist, pharmacist, physical therapist, podiatrist, psychologist, licensed professional counselor and licensed social worker.

Human services provider—Social workers, children and youth caseworkers, Area Agency on Aging, victim service providers (system and community based advocates), and other social service professionals, including mental health, substance abuse, and medical social work.

Immediate need—Thirty days from the date of the crime or 30 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.

[*Loss of Earnings* – Loss of wages or income or both.]

Loss of Earnings – In addition to its statutory definition, includes loss of wages or income or both.

Medical care—Diagnostic, treatment or rehabilitative services performed in a health care facility regulated by the Commonwealth or equivalent governmental entity or performed by a health care provider or person under the direct supervision of a health care provider.

OVS—The Office of Victims' Services in the Pennsylvania Commission on Crime and Delinquency.

PFA—Protection From Abuse Order issued under 23 Pa.C.S. Ch 61 (relating to protection from abuse)

Pigeon drop—The act of approaching a person and asking that person if he would like to share an amount of found money. In order to share the money, the person shows a good faith effort by willingly providing a specified amount of money with the expectation of receiving a part of the "found" money.

Primary source of income – Fifty percent or more of the direct victim's gross annual income.

Principal support— Fifty percent or more of a claimant's living expenses.

Private residence – Includes a house, apartment, condominium, mobile home, or other personal living space.

[*Stolen benefit cash* – Includes the loss of the cash equivalent of one month's worth of Social Security, railroad retirement, pension plan, retirement plan, disability, veteran's retirement, court-ordered child support or court-ordered spousal support payments if the payments are the primary source of the direct victim's income and the direct victim is deprived of the money as a direct result of a crime.]

(b) The definitions in section 103 of the act (18 P.S. §11.103) are incorporated by reference.

§411.3. Persons eligible for compensation.

- (a) *General rule.* Except as otherwise provided in the act, the following persons are eligible for compensation:
- (1) A direct victim.
 - (2) An intervenor.
 - (3) A surviving spouse, parent or child of a deceased direct victim or intervenor.
 - (4) Other persons dependent for principal support upon a deceased direct victim or intervenor.
 - (5) A person who assumes the obligation or who pays for the crime scene cleanup, funeral or burial expenses incurred as a direct result of the crime.
 - (6) Hospitals or other licensed health care providers.
 - (7) Persons eligible for counseling.
- (b) *Exception.* A person who is criminally responsible for the crime upon which a claim is based or an accomplice of the person is not eligible to receive compensation with respect to the claim. A member of the family of the individual who committed the crime is not eligible if the offender is living in the same household as the direct victim and will substantially benefit from the award. The Attorney General may at any time sue the offender or the direct victim, or both, to recover the award if the offender benefits from the award.

CLAIMS

§ 411.11. Filing procedures.

- (a) A claim may be filed by a person eligible as set forth under the act and §411.3(a) of this Chapter.
- (b) A claim must be filed within the prescribed time frame as set forth under § 702(b) of the act. (18 P.S. § 11.702(b))
- [(b)] (c) A claimant may request compensation by completing and submitting OVS's official claim forms to OVS.
- [(c)] (d) A claim may be filed by mail, in person or electronically. If filed by mail, a claim is deemed as filed on the date it is postmarked. If filed by electronic means or in person, it is deemed as filed on the date received by OVS.
- [(d)] (e) When OVS receives a claim, a claim number is assigned and data is entered into OVS's records.
- [(e)] (f) In determining whether the direct victim or intervenor complied with the requirement of the act to have reported the crime to proper authorities within the prescribed time period after the occurrence of the crime, the following apply:

1) Proper authorities may include a law enforcement officer, district attorney or other applicable prosecutorial authority, district justice, military police, campus police, U. S. Postal Inspection Service, appropriate hospital security, probation and parole officer, child protective services, adult protective services, or, in the case of a PFA order, the prothonotary or equivalent authority. If the crime occurs in a foreign country, a proper authority includes the United States consulate.

(2) OVS may consider a delay past the prescribed time period to be justified when one of the following circumstances exist:

(i) The direct victim, intervenor or the claimant is mentally or physically incapacitated.

(ii) The victim is a minor.

(iii) There is a fear of retaliation.

(iv) The occurrence of the crime is not readily apparent.

(v) Other circumstances deemed appropriate by OVS.

[(3)] (g) In making the determinations discussed in [this section] subsections (b) and (f) for claims where the occurrence of the crime is not readily apparent, OVS [will not] may deem the prescribed time periods to begin to run [until] on the date and time that the person with the obligation to report the crime or file the claim [learns] has knowledge that a crime occurred.

[(f)] (h) Claimants do not have to wait until a PFA becomes final to file a claim. In the process of verifying a claim, OVS will [ask the claimant to submit confirmation of the issuance of a final PFA order]. confirm the issuance disposition of a final PFA order.

[(g)] (i) If a temporary PFA order is issued and the claimant chooses not to pursue a final order, OVS will consider the PFA order withdrawn and deny the claim unless OVS determines the withdrawal to be justified. OVS may consider the withdrawal of a PFA justified when one of the following circumstances exist:

(1) The direct victim, intervenor or the claimant is mentally or physically incapacitated.

(2) There is a fear of retaliation.

(3) Other circumstances deemed appropriate by OVS.

[(h)] (i) Subsections [(f) and (g)] (h) and (i) only cover the filing of an initial PFA. If there is a violation of a PFA involving an otherwise eligible crime, the crime must be reported within the prescribed time frame as set forth under § 707(a)(3) of the act. (18 P.S. § 11.707(a)(3)) in a timely manner to the proper authorities, which may include filing of a private criminal complaint, to be considered for compensation payments.

[(1) *Stolen benefit cash.*

- (i) Statements for the month of the crime for payments such as Social Security, retirement, pension, disability, court-ordered child support or court-ordered spousal support.
- (ii) Federal tax returns as filed, including all schedules if applicable, for the years requested or a signed statement that the claimant is not required to file a tax return.
- (iii) Documentation of the homeowner's or renter's insurance coverage.]

[(2)] (1) *Medical treatment expenses.*

- (i) Itemized bills in the name of the claimant showing the name, address and telephone number of the provider, dates of service, type of service performed, and the amount charged for each service.
- (ii) Insurance benefit statements indicating payments or rejection.
- (iii) Canceled checks, verification from a medical provider, or receipts for any medical bills related to the injury that were paid by the direct victim, intervenor or claimant.
- (iv) Written justification if the direct victim or intervenor is covered by an insurance plan or medical assistance, but did not utilize the prescribed coverage, such as that the direct victim or intervenor could not obtain the required care, could not maintain ongoing care from a previous provider, [or] travel considerations or other circumstances deemed appropriate by OVS.

[(3)] (2) *Funeral expenses.*

- (i) Certified death certificate.
- (ii) Itemized funeral bills in the name of the claimant for which the claimant is responsible.
- (iii) Canceled checks, receipts, or verification from a provider for funeral bills relating to the death that were paid by claimant.
- (iv) Statements for benefits or payments received by the claimant as a result of the death of the direct victim or intervenor, such as life insurance or Social Security death benefits.

[(4)] (3) *Loss of earnings.*

- (i) Stolen benefit cash.

(A) Statements for the month of the crime for payments such as Social Security, retirement, pension, disability, court-ordered child support or court-ordered spousal support.

(B) Federal tax returns as filed, including all schedules if applicable, for the years requested or a signed statement that the claimant is not required to file a tax return.

(C) Documentation of the homeowner's or renter's insurance coverage.

(ii) Loss of Earnings

[(i)] (A) Pay stubs or other earnings records for periods immediately prior to the loss. If not obtainable, withholding statements and Federal tax returns as filed, including schedules, if applicable, for the years requested, or a written statement that no Federal tax returns were filed.

[(ii)] (B) Full name and complete address of claimant's employer.

[(iii)] (C) Full name and complete address of a physician or psychologist who will certify the existence, duration, and cause of the disability.

[(5)] (4) *Loss of support.*

(i) Certified death certificate.

(ii) Full name and complete address of employer of the deceased.

(iii) Federal tax returns as filed, including schedules, if applicable, for the years requested, or a written statement that no Federal tax returns were filed. If unavailable, pay stubs, withholding statements, or other earnings records for periods immediately prior to the injury.

(iv) Statements for benefits received as a result of the death of the direct victim or intervenor, such as life insurance, Social Security, veterans' benefits, or survivor benefits.

(v) Documents that demonstrate financial dependency, including birth certificates, support orders, or Federal tax returns as filed.

(vi) Guardianship papers, where applicable.

[(6)] (5) *Counseling expenses.*

(i) Itemized bills in the name of the claimant showing the name, address and telephone number of the provider, dates of service, and the amount charged.

(ii) Insurance benefit statements indicating payments or rejection.

(iii) Canceled checks, verification from a provider, or receipts for any counseling bills related to the injury that were paid by the direct victim, intervenor or claimant.

(iv) Written justification if the direct victim or intervenor is covered by an insurance plan or medical assistance, but did not utilize the prescribed coverage, such as that the

direct victim or intervenor could not obtain the required care, could not maintain ongoing care from a previous provider, or travel considerations or other circumstances deemed appropriate by OVS.

(v) The following information establishing the claimant's relationship to the direct victim, the claimant witnessing the crime, or the claimant's discovery of the homicide victim:

(A) *Witness.* [A police report obtained by OVS.] If the witness is not listed in the police report obtained by OVS, a written statement provided by someone who could substantiate that the witness was at the scene, preferably written by someone named in the police report.

(B) *Relative of direct victim.* A copy of a birth certificate, if applicable, or other identifiable information acknowledging the relationship to the direct victim.

(C) *Individual engaged to the direct victim.* An engagement announcement or a copy of the application for a marriage license. If either is unavailable, a written statement from the engaged individual plus a written statement from a family member acknowledging the intent of the union.

(D) *Shared household.* A copy of a document, such as a bill or a lease or mortgage agreement that indicates the same address for the direct victim and the victim or claimant filing for counseling expenses.

(E) *Individual who discovers homicide body.* A police report.

(F) *Individual responsible for the direct victim's welfare.* Foster parent documentation, guardianship papers, or other documentation showing that the claimant filing for counseling is an individual responsible for the direct victim's welfare.

(7) ~~(6)~~ *Crime-scene cleanup expenses.*

(i) Itemized bills and receipts in the name of the claimant related to the crime-scene cleanup for which the claimant is responsible.

(ii) Cancelled checks, receipts, or verification from a provider for bills related to the crime-scene cleanup.

(iii) Documentation of homeowner's or renter's insurance coverage.

~~[(8)]~~ ~~(7)~~ *Relocation expenses.*

(i) Itemized bills and receipts related to the relocation for which the claimant is responsible.

(ii) Cancelled checks, receipts, or verification from a provider for bills related to the relocation.

(iii) A verification letter from a human service agency, law enforcement, or medical provider explaining the immediate need for relocation.

[(9)] (8) *Miscellaneous expenses.*

- (i) Itemized bills and receipts in the name of the claimant for which the claimant is responsible related to the miscellaneous expense.
 - (ii) Cancelled checks, receipts, or verification from a provider for bills related to the injury.
- [(j)] (1) The claimant shall provide OVS with information pertaining to payments received or to be received by another source as a result of the injury, including restitution payments, workers compensation, insurance benefits or awards or settlements in a civil action.
- [(k)] (m) If a minor or incapacitated person has more than one guardian, OVS will determine the appropriate party for filing a claim on behalf of the minor or incapacitated person.
- [(l)] (n) If the direct victim or intervenor dies while a non-homicide claim relating to that direct victim or intervenor is being processed, OVS may substitute the executor or administrator of the direct victim or intervenor and complete the processing of the claim. A claim may not be filed by the estate of a direct victim or intervenor.
- [(m)] (o) The claimant may request a supplemental award by submitting additional out-of-pocket expenses or losses at any time after the initial claim, provided that the claimant has not received the maximum award payable by law. OVS will verify out-of-pocket expenses and losses submitted for a supplemental award to determine that they directly relate to the original [incident] crime.

§ 411.12. **Review.**

- (a) OVS will review the claim and supporting documents and investigate the validity of the claim. OVS shall conduct a comprehensive investigation of the claim including, as necessary, [The investigation shall include] an examination of police, court and official records and reports concerning the crime and an examination of medical and hospital reports relating to the injury upon which the claim is based.
- (b) If additional information is needed to determine the eligibility or validity of a claim, or to substantiate the degree of loss, OVS may ask the claimant for that information or request it directly from outside entities to the extent permitted by law.
- (c) OVS may issue subpoenas and subpoenas duces tecum, either on its own instance or upon written application of a party. Subpoenas and subpoenas duces tecum must comply with 231 Pa. Code (relating to rules of civil procedure). Their issuance must depend upon a showing of necessity. OVS, on its own motion or on the application of the claimant, will, whenever necessary, and upon the terms and conditions as OVS may determine, take or cause to be taken affidavits and depositions of witnesses residing within or outside this Commonwealth.
- (d) OVS may not request or review counseling notes of mental health service providers. OVS will request an assessment from the mental health service provider as to the extent the service provided is needed as a direct result of the crime.
- (e) OVS, at its expense, may direct an examination of the direct victim or intervenor by a health care provider designated by OVS. The direct victim or intervenor's failure to appear for the

examination may result in OVS's denial of the applicable portion of the claimant's request for reimbursement.

- (f) OVS will investigate and determine claims regardless of whether the alleged criminal has been apprehended, prosecuted or adjudicated for the criminal incident which is the basis for the claim.

§ 411.13. Closing of claims.

- (a) OVS will close a claim when a [final] determination has been made and written notification has been given to the claimant.
- (b) Where OVS has requested additional information under §411.12(b) (relating to review) and the information is not provided within 60 days of the request, OVS will close the claim file until requested information is received.
- (c) If sufficient information is not provided to OVS to determine eligibility within 2 years from the date of the filing of the claim, the claim will be closed with no further right of appeal. OVS will attempt to notify the claimant in writing 6 months prior to the closing of the claim.
- (d) Eligible claims where no verifiable out-of-pocket expense or loss has been received by OVS within 5 years from the date of the filing of the claim will be closed with no further right of appeal. OVS will attempt to notify the claimant in writing 6 months prior to the closing of the claim.

(e) Subsection (d) does not apply in cases where the direct victim was a minor at the time the crime was committed.

[e] (f) OVS may reopen a claim at any time for further investigation.

§ 411.14. Determinations.

- (a) If OVS is able to make [an initial] a determination that the claim does not meet the basic eligibility requirements or the action of the direct victim, intervenor or claimant affects the award, the claim will be denied in writing as a statutory denial or denial for cause. [A claimant may provide to OVS additional information or clarification on the claim post-marked no later than 30 days from the date of OVS's initial determination, at which time OVS may reconsider or reaffirm its initial determination.]
- (b) OVS will determine whether to grant an award, increase or decrease an award or deny the claim based on the supporting documents, the report of the investigation and staff recommendations.
- (c) OVS will promptly notify the claimant of its [final decision] determination in writing. OVS may also send a copy of the determination to all appropriate individuals, including the State Treasurer, court personnel, the prosecutor of the county where the crime occurred, victim advocate or the claimant's attorney of record.

§ 411.15. Actions affecting awards.

- (a) Except as provided in the Act, OVS may deny a claim or reduce the amount awarded if it finds that the conduct of the direct victim or intervenor contributed to the injury. The conduct of the direct victim or intervenor will be deemed to have contributed to the injury if the direct victim or intervenor did one of the following:
- (1) Initiated, provoked or prolonged a verbal or physical confrontation with the offender.
 - (2) Participated in an illegal act that was causally related to the injuries sustained.
 - (3) [Used poor judgment resulting in the placement of] Acted in a manner that placed the direct victim or intervenor into a situation likely to result in injury.
 - (4) Entered, knowingly and willingly a vehicle driven by someone under the influence.
 - (5) Sought retaliation against the offender.
 - (6) Entered into a physical altercation by mutual consent.
 - (7) Charged by law enforcement with criminal conduct as a result of the crime.
- (b) In determining whether the conduct of a direct victim or intervenor warrants a denial or reduction of the award, OVS may consider evidence indicating that the direct victim or intervenor was acting with legal justification as defined in 18 Pa.C.S. (relating to the Crimes Code) or other evidence of mitigation that the claimant asks OVS to consider.
- (c) [A direct victim or intervenor of a driving under the influence (DUI) crime incident will not be assessed for the lack of a current driver's license at the time of the incident, unless the license was suspended or revoked for a prior DUI.] OVS may assess a contribution amount or deny in [other] auto-related crimes when the victim is the driver of the vehicle and the victim does not have a valid license or the victim's driver's license has been revoked or was under suspension at the time of the crime.
- (d) OVS will assess a \$5,000 contribution for an award for medical expenses, or the current amount of medical benefits coverage required under Pennsylvania law, if a direct victim or intervenor, who was injured, was driving his own car without insurance.
- (e) Stolen cash claims that are received and are eligible for an award will have a minimum 10% contribution assessed if they [are classified as theft by deception under 18 Pa.C.S. §3922 (relating to theft by deception) and] fall under the definition of "pigeon drop."
- (f) OVS may deny a claim or reduce the amount awarded or require repayment of a prior award if it finds that a direct victim, intervenor or claimant has not cooperated fully with law

enforcement agencies or OVS. Failure to cooperate shall include one or more of the following:

- (1) Failure to cooperate fully with a law enforcement agency in the investigation of the crime on which the claim is based.
- (2) Failure to cooperate fully in the prosecution of the alleged offender of the crime on which the claim is based.
- (3) Failure to provide truthful, complete and accurate information for OVS to determine the eligibility or validity of a claim or amount of an award.
- (4) In crimes involving stolen or defrauded money, failure to implement personal crime prevention techniques recommended by the local police department, victim service program or crime prevention programs at OVS's request when crimes are similar in nature and repeated.

(g) OVS may consider a failure to cooperate with law enforcement and OVS to be justified when one of the following circumstances exist:

- (1) The direct victim, intervenor or the claimant is mentally or physically incapacitated.
- (2) There is a fear of retaliation.
- (3) The victim is a minor.
- [(3)] (4) Other circumstances deemed appropriate by OVS.

(h) If the crime involved is related to domestic violence, the conduct of the direct victim will not be considered unless the direct victim was the primary aggressor. In determining which party was the primary aggressor, OVS will consider the following:

- (1) Prior acts of domestic violence.
- (2) The relative severity of the injuries inflicted upon the persons involved in those prior acts of domestic violence.
- (3) The likelihood of future injury.
- (4) Whether, during the prior acts, one of the parties acted in self-defense.
- (5) Other factors that OVS deems relevant to the determination.

§ 411.16. Reductions, offsets and limitations.

- (a) Except as otherwise provided in the act, an award made under the act and this chapter shall be reduced by the amount of any payments received or to be received as follows by the claimant as a result of the injury:
- (1) From or on behalf of the individual who committed the crime.
 - (2) Under insurance or health and welfare programs, including those mandated by law.
 - (3) Under a contract of insurance wherein the claimant is the beneficiary.
 - (4) From public funds.
 - (5) As an emergency award under section 706 of the act (18 P.S. §11.706).
 - (6) Under pension programs, including those providing for disability or survivor's benefits.
 - (7) Under a settlement or award made by or on behalf of a party alleged to be responsible in whole or in part for the injury, without regard to the party's criminal culpability.
- (b) Any decision by OVS to reduce, offset or limit an award to a claimant should only be made after first considering the ability of OVS to exercise its right to subrogation and restitution.
- [(b)] (c) Charitable donations specifically designated for a funeral expense or which appear on a funeral bill as a direct payment and charitable donations specifically designated for an eligible expense or which appear on any bill as a direct payment will be used as an offset.
- [(c)] (d) In claims involving death or burial, OVS will reimburse travel expenses for the transport of a body or making funeral arrangements for no more than two persons, including a person designated by the family or person who pays for the funeral.
- [(d)] (e) In claims involving death or burial, reimbursement will not be made for alcoholic beverages, postage, thank you gifts and newspaper articles or paid advertisements ~~or notices~~ relating to the death or burial, other than the obituary and notice of the time and place of the funeral or burial services.
- [(e)] (f) When an injury is the result of a motor vehicle incident and the injury is covered by liability or first party benefits, including Under/Insured and Uninsured Motorist coverages, a provider may not request payment in excess of reimbursement allowances applicable in the Commonwealth under the Medicare Program (75 Pa.C.S. § 1797(a)) or their usual and customary charge, whichever is less.
- [(f)] (g) Medical, rehabilitation, or other devices, including wheel chairs, chair lifts, ramps, van conversion equipment, therapy spas, or special needs home remodeling that exceeds \$5,000

will need to have two bids unless good cause is shown. OVS will pay the lowest amount unless good cause is shown justifying the higher amount.

[(g)] (h) If the direct victim or intervenor has no financial means to order the needed services or equipment that exceed [\$10,000] \$5,000 listed in subsection [f](g), OVS will assist the claimant by evaluating the claim prior to purchase and make information available to the potential providers.

[(h)] (i) In claims involving stolen benefit cash or crime scene clean-up, if a claimant chooses not to access any of his homeowner's or renter's insurance, OVS will apply as an offset any amount that the claimant would have been paid by the insurance company.

§ 411.17. Emergency awards.

- (a) If it appears to OVS that the claimant has an urgent financial need, OVS may make an emergency award to the claimant [pending a final decision] as a determination on the claim.
- (b) An emergency award is solely for a claimant who incurs an undue hardship by paying medical expenses or funeral expenses out of his own pocket, or who incurred loss of earnings or support as a result of the crime incident.
- (c) The total amount of an emergency award will not exceed \$1,500 per claim.
- (d) OVS will expeditiously determine that the eligibility requirements have been met, review submitted documentation, and process the request.
- (e) OVS may reconsider an emergency award [at any time prior to the final decision] as a determination and may increase previous [orders] awards for emergency compensation up to \$1,500 per claim.

§ 411.18. Awards.

- (a) If the losses payable by OVS for out-of-pocket loss and loss of support or loss of earnings exceed the overall monetary limitation in the act, or the overall limitation as reduced by a contribution assessed by OVS under §[411.16 (a)] 411.15 [(relating to reductions, offsets and limitations)] relating to actions affecting awards, OVS will allocate the award as follows:
 - (1) Out-of-pocket losses will be paid in full, followed by as much of the loss of support or loss of earnings as resources allow.
 - (2) If the total out-of-pocket losses exceed the overall limitation in the act, OVS will attempt to pay unpaid providers in full, followed by reimbursements to claimants for expenses already paid. OVS will attempt to satisfy the expenses of as many unpaid providers as feasible, in order to minimize the number of creditors seeking payment from the claimant.

- (3) If more than one claimant files a claim for allowable expenses relating to the death of the victim or the intervenor, the award will be divided proportionately among the claimants when filed within the same time frame. In all other cases, awards are considered in the order that they are received.
- (b) A claimant may not accept a portion of OVS's determination and reject another portion of the same determination. If a claimant desires to contest a portion of OVS's determination, the claimant must contest the entire determination.
- (c) OVS will reduce an award of compensation by the amount of any other payments received or to be received by the claimant as a result of the injury, as set forth in the act and under §411.16 (relating to reductions, offsets and limitations).
- (d) After OVS has made an award relating to an injury, a person who receives any amounts paid by another source as a result of the injury shall notify OVS about the payments.
- (e) If a court has ordered an offender to pay restitution for the injury, but the order is not specific as to which components of the claimant's loss are to be reimbursed by the restitution payments, OVS will deem the restitution payments as being applied first to property losses that cannot be compensated under the act. Only after the property losses are fully paid will OVS use the restitution payments to offset for losses for which OVS has awarded or may award compensation.
- (f) OVS may make a supplemental award to a claimant who previously received an award from OVS and who subsequently incurs an additional loss that is attributable to the original injury when the maximum award under the law has not been exceeded.
- (g) If a claimant is liable for a bill incurred for out-of-pocket losses as a result of the crime injury but has not paid the balance, OVS will order payment to be made directly to the provider of the service.
- (h) OVS may reimburse all medical copays and deductibles.
- (i) If OVS makes an error in the amount of an award, OVS may seek repayment of the award.
- (j) OVS retains the discretion to determine the priority of awards.
- (k) In determining whether an injury is a direct result of a crime, OVS may consider a certification by a service provider.

APPEALS

§ 411.31. Reconsideration

- (a) A claimant may contest OVS's determination by submitting a written request for reconsideration [post-marked] no later than 30 days from the date of the determination. If a

request for reconsideration is not filed within the time required, the determination becomes a final decision of OVS.

(b) OVS may consider a delay past the prescribed time period to be justified when one of the following circumstances exist:

- (i) The direct victim, intervenor or the claimant is mentally or physically incapacitated.
- (ii) Other circumstances deemed appropriate by OVS.

[(b)] (c) If requesting reconsideration, the claimant shall provide any additional information or clarification that would assist OVS in conducting its reconsideration.

[(c)] (d) Based on further review and additional information or clarification that OVS receives, OVS will issue a reconsidered determination that either reaffirms or modifies [its initial] the determination.

[(d)] (e) OVS may issue the reconsidered determination as a final decision of the agency if it determines that the facts developed in the claims determination process establish that a particular determination is warranted as a matter of law.

§ 411.32. Hearing.

(a) If OVS is unable to determine if a claim is justified based upon supporting documents, it may direct a hearing before a hearing examiner designated by the OVS.

(b) Except for request for reconsideration falling under 411.31 (d) (relating to reconsideration), a claimant may appeal the reconsidered determination by OVS by requesting a hearing. [under 2 Pa.C.S. Ch. 7 Subch. A (relating to judicial review of Commonwealth agency action.)]

(c) A claimant may submit a written request for a hearing [post-marked] no later than 30 days after OVS issues its reconsidered determination. If a claimant fails to file the request for hearing within this time, the reconsideration determination becomes a final decision of OVS.

(d) OVS may consider a delay past the prescribed time period to be justified when one of the following circumstances exist:

- (i) The direct victim, intervenor or the claimant is mentally or physically incapacitated.
- (ii) Other circumstances deemed appropriate by OVS.

[(d)] (e) If requesting a hearing, the claimant shall provide a specific reason why the claimant asserts that OVS's determination is not correct.

[(e)] (f) A hearing officer who has no previous involvement in any aspect of the claim will be assigned by OVS.

[(f)] (g) The provisions of 1 Pa. Code, Part II (relating to general rules of administrative practice and procedures) govern a hearing to the extent they are not inconsistent with this chapter.

[(g)] (h) At least 30 days before the date of hearing, the claimant, the claimant's attorney, and the victim's advocate will be provided written notice of the time, place and purpose of the hearing.

[(h)] (i) The claimant shall provide written confirmation to OVS of the claimant's intent to attend the hearing, including [a list of witnesses and documentary exhibits to be presented,] documentary exhibits to be presented and a list of witnesses which must be received by OVS at least 10 days prior to the hearing date. [The claimant shall also provide a list of witnesses and documentary exhibits to OVS counsel and the hearing examiner.]

[(i)] (j) Failure to comply with the confirmation requirements in subsection [(f)] (h) may result in cancellation of the hearing.

[(j)] (k) A cancelled hearing may be rescheduled if the claimant shows good cause for failure to comply with subsection [(f)] (g). A hearing will not be rescheduled more than once, unless OVS deems it necessary.

[(k)] (l) The attorney representing OVS may submit a prehearing memorandum to the hearing officer, with a copy to the claimant, outlining the legal and factual positions of OVS with respect to the claim, and listing witnesses and documentary exhibits to be presented at the hearing. The attorney representing OVS may [also issue] subpoenas for attendance of witnesses or for production of documentary evidence.

[(m)] The claimant may subpoena for attendance of witnesses or for production of documentary evidence.

[(l)] (n) Upon a showing of relevancy and materiality, the hearing officer may issue subpoenas for both the OVS and the claimant for attendance of witnesses or for the production of documentary evidence.

[(m)] (o) In conducting the hearing, the hearing officer will liberally allow the admission of evidence that may not conform to the strict rules of evidence under common law or court rules. A stenographer or court reporter shall record the proceedings. Witnesses shall testify under oath.

[(n)] (p) The claimant shall have the burden of proving entitlement to compensation by a preponderance of the evidence.

[(o)] (q) Both OVS and the claimant may present testimony in support of their respective positions and cross-examine the opposing party's witnesses.

[(p)] (r) Hearings generally will be open to the public except that the hearing may be held in camera in any of the following instances:

- (1) Prosecution against the alleged perpetrator of the crime is pending.
- (2) The welfare and safety of the direct victim, intervenor, or his family or community may be adversely affected by a public hearing.
- (3) To protect the rights and interests of a minor.

[(q)] (s) A claimant may have support persons or victim advocates, or both, accompany him. The number of advocates and support persons may be limited by the hearing officer.

[(r)] (t) Upon adjourning the hearing, the hearing officer will offer the claimant and OVS's attorney an opportunity to file posthearing briefs, to be filed after the transcript is issued, on a schedule to be determined by the hearing officer.

[(s)] (u) Upon receipt of the transcript from the stenographer, notification will be sent by certified mail to the claimant that the transcript is available and can be purchased at the claimant's own expense.

[(t)] (v) OVS will reimburse claimants \$20 per day for attendance at a hearing directed by OVS in connection with the claim. Additional expenses will be reimbursed as follows:

- (1) Private vehicle usage at mileage rate currently paid by the Commonwealth to its own employees for travel.
- (2) Common carrier fares when preapproved by OVS.
- (3) Lodging the night before or the night after a hearing session, to a daily maximum of \$75, if the claimant must travel at least 50 miles from home for the hearing.

§ 411.33. Final decision after hearing.

- (a) The hearing officer will issue a report and recommendation which will be delivered to a designated Commission official acting on behalf of OVS who has no previous involvement in the claim.
- (b) The designated Commission official will review the report and recommendation, the hearing transcript and the documentary exhibits. The designated Commission official may not have access to information not in the hearing record.
- (c) The designated Commission official may not be advised in the hearing process by an attorney or any OVS staff member who has previous involvement with any aspect of the claim that is being heard. The designated Commission official may request the General Counsel of the

Commonwealth to appoint an attorney who has no prior involvement to provide advice on the matter.

- (d) Upon completing the review of the hearing officer's report and recommendation, the designated Commission official will do one of the following on behalf of OVS:
 - (1) Adopt the hearing officer's report and recommendation as written as a final decision.
 - (2) Modify the report and recommendation and issue the modified document as the final decision.
 - (3) Reject the report and recommendation in its entirety and prepare and issue a final decision for OVS.
- (e) The designated Commission official will distribute the final decision to the claimant, the claimant's attorney, the victim's advocate, and to OVS.
- (f) The claimant shall have the right of further appeal as set forth in the act or other applicable law.

SCHEDULE OF REIMBURSEMENT RATES AND COMPENSATION LIMITS

§ 411.41. Amount.

An award made under the act and this chapter shall be in an amount not exceeding out-of-pocket loss, together with loss of past, present or future earnings or support resulting from the injury. The total amount of an award may not exceed \$35,000 except for payment of the following:

- (1) Counseling, the maximum amount of which shall be in accordance with § 707 (b) (4.1) of the act. (18 P.S § 11.707(b) (4.1))
- (2) Forensic rape examination and medications directly related to the [exam or for the purpose of the exam] sexual offense, the amount of which shall not exceed \$1,000.
- (3) Reasonable and necessary costs of cleaning the crime scene of a private residence, the amount of which shall not exceed \$500.

§ 411.42. Out-of-pocket loss.

- (a) *General.* The following general provisions apply to reimbursement for out-of-pocket loss.
 - (1) OVS may make a monetary award for an out-of-pocket loss as it is defined in the act.
 - (2) OVS may pay the service provider directly or reimburse the claimant for amounts paid, as applicable.

(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% of the usual and customary charge for the service rendered.
- (2) Forensic rape examinations.
 - (i) OVS will reimburse a maximum of \$1,000 to a hospital or other licensed health care provider or both for a forensic rape examination and medications which are prescribed at the time of the forensic rape exam and are directly related to the sexual [assault or rape] offense.
 - (ii) The reimbursement will not include expenses for analyzing collected evidence for DNA or presence of Rohypnol or other similar drugs.
 - (iii) Claims shall be filed with OVS no later than 1 year after the date of the crime.

(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. 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:
 - (i) Cremation.
 - (ii) Interment.
 - (iii) Body preparation including embalming.
 - (iv) Grave opening and closing.
 - (v) Cemetery plot, tent and chairs.
 - (vi) Mausoleum.
 - (vii) Viewing services and facilities.
 - (viii) Automotive equipment, such as the hearse, limousine and flower car.
 - (ix) Death announcements, prayer cards, register book and thank you cards.
 - (x) Casket.
 - (xi) Minister, pastor, rabbi or other member of the clergy.
 - (xii) Other miscellaneous expenses, including organist, programs, death certificates, [and the] 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.

(d) *Replacement of personal health-related items damaged or stolen as a result of a crime.*

Except as otherwise set forth in this subsection, OVS will reimburse a claimant for costs for the replacement of each prosthetic device, wheelchair, cane, walker, hearing aid, eyeglasses or other corrective lenses, dental device or prescription medications. Reimbursement will not exceed \$1,000 and shall be subject to the following limitations:

- (1) Two hundred dollars for eyeglass frames.
- (2) One thousand dollars for replacement of all combined prescription medications stolen or damaged in a single crime incident.
- (3) One hundred dollars for replacement of canes.
- (4) Two hundred fifty dollars for replacement for walkers.

(e) *Counseling.* OVS will pay expenses of counseling performed by or under the supervision of a psychiatrist, psychologist, licensed professional counselor, or licensed social worker to claimants as follows:

- (1) A maximum of \$10,000 in total expenses of a direct victim who was under 18 years of age upon the occurrence of the crime.
- (2) A maximum of \$5,000 in total expenses of a direct victim who was 18 years of age or older upon the occurrence of the crime.
- (3) A maximum of \$5,000 in total expenses of any of the following individuals affected by the homicide of a direct victim:
 - (i) An individual responsible for the welfare of the direct victim, which includes legal guardians and foster parents.
 - (ii) An individual related in the second degree of consanguinity or affinity to the direct victim.
 - (iii) An individual residing in the same household with the direct victim.
 - (iv) An individual engaged to be married to the direct victim.
- (4) A maximum of \$2,500 in total expenses of any of the individuals described in subparagraph (3) affected by a crime against a direct victim that is not a homicide.
- (5) A maximum of \$1,500 in total expenses of an individual who:

(i) Is physically present at a crime scene and witnesses a violent crime.

(ii) Discovers the body in a homicide.

(6) For counseling expenses relating to a homicide, OVS may not reduce the amount of the award or deny the reimbursement due to the conduct of the direct victim.

(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 for the following:

(1) Relocation expenses to be reimbursed are as follows:

(i) Lodging to a daily maximum of \$75.

(ii) Rental of substitute living quarters.

(iii) Utility connection fees, which do not include cable.

(iv) Rental of a passenger vehicle for a total daily maximum of \$30.

(v) Private vehicle usage at mileage rate currently paid by the Commonwealth to its own employees for travel.

(vi) Common carrier fares.

(vii) Moving company charges or van rental.

(viii) Tolls and parking expenses.

(ix) Rental of post office box.

(x) Charges for storage of personal belongings.

(xi) Child care expenses.

(2) Reimbursement will be made only when a medical provider, human services provider, or law enforcement representative, which may include a district attorney or other prosecutorial agency, verifies the immediate need for relocation.

(3) OVS may consider a delay past the prescribed immediate need time period to be justified when the direct victim, intervenor, or claimant is mentally or physically incapacitated, there is a fear of retaliation, or other circumstances deemed appropriate by OVS.

- (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 the case of an injury that results in death, for travel in connection with making the funeral arrangements and transport of the body.
- (1) Meals totaling no more than \$28 per day, with no more than \$6 for breakfast, \$6 for lunch, and \$16 for dinner.
 - (2) Lodging to a daily maximum of \$75.
 - (3) Private vehicle usage at mileage rate currently paid by the Commonwealth to its own employees.
 - (4) Vehicle rental to a daily maximum of \$30.
 - (5) Payment of a driver other than common carriers needed as result of a crime at maximum hourly rate of \$8.
 - (6) Common carrier fares in full.
 - (7) Tolls and parking expenses.
 - (8) Meals and lodging reimbursement is limited to trips of 50 miles or more from the eligible person's home.
 - (9) Containers or other necessary requirements to transport the body.
 - (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 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.
- (1) Reimbursement will be limited to the cost of cleaning supplies purchased for the purpose of cleaning the scene, the cost of any necessary equipment purchased or rented and the cost of professional labor for the purpose of cleaning the crime-scene.
 - (2) Multiple private residences may each be considered for crime-scene cleanup if the sites are identified in the police report. The maximum award amount for each crime-scene cleanup is \$500.
 - (3) Cleaning means to remove or attempt to remove blood and stains caused by other bodily fluids as a direct result of the crime or other dirt or debris caused by the processing of the crime scene.
 - (4) Stains deliberately caused by acts of vandalism and other intentional acts are property damage which is expressly excluded from the definition of "out of pocket loss" contained in the act.

- (i) *Miscellaneous expenses.* OVS may reimburse a claimant for other services reasonably necessary, including the following:
- (1) The purchase or rental of nonmedical remedial care or products that are needed to assist in normal, daily life functions and are prescribed or recommended by a health care provider, such as a wheel chair ramp, lifts or other special accommodations, including equipment or robotic devices needed to assist in normal, daily life functions.
 - (2) The cost of obtaining services needed as a result of the crime such as laundering, cleaning, child care, administration of medication, food shopping and meal preparation.
 - (i) Members of the family of the direct victim or intervenor engaged to perform the services will be paid their net loss of earnings not to exceed the average weekly wage and if not otherwise reimbursed for the loss of earnings.
 - (ii) Individuals engaged to perform services who are not family members [who are engaged to perform services] will be paid a maximum hourly rate of \$8.
 - (3) At the discretion of OVS, telephone and television expenses incurred in connection with inpatient care of the direct victim or intervenor due to the injury.
 - (4) At the discretion of OVS, charges incurred for records, products, or services including those for rehabilitation, rehabilitative occupational training, other remedial treatment and care, tutors, and interpreters.

§ 411.43. Loss of earnings.

- (a) *Stolen benefit cash.* [An award for stolen cash will not exceed the average weekly wage as determined annually by the Department of Labor and Industry or the actual amount stolen, whichever is less.] The loss of cash equal to one month's net worth of Social Security, railroad retirement, pension plan, retirement plan, disability, veteran's retirement, court-ordered child support or court-ordered spousal support payments if the payments are the primary source of the victims income and the victim is deprived of the money as a direct result of a crime The actual amount stolen must be indicated in the police report. In no instance may payment exceed the amount stolen. Changes or amendments to the amount stolen must be made to the police within 2 weeks of the crime and subsequently documented by the police.
- (b) *Loss of earnings.* OVS may make an award within the monetary limitations of the act to compensate a direct victim, intervenor or claimant for loss of earnings attributable to the injury. A loss of earnings must be definitely ascertainable at the time of the injury and may not include a loss that is conditioned upon future events.

(c) *Claims involving death.* In claims involving the death of a direct victim or intervenor, OVS may pay up to [1] 2 week's net loss of earnings in connection with the death not to exceed the average weekly wage if the claimant was not otherwise reimbursed for the loss. The loss is limited to that suffered by a claimant who incurred a loss of earnings as a result of one of the following:

- (1) Trauma [as certified by a physician or psychologist].
- (2) Making funeral arrangements.
- (3) Accompanying the deceased to the place of interment.

(d) The following formula will be used to calculate loss-of-earnings:

$$\text{Loss of Earnings} = \text{Gross Earnings} - \text{Estimated Tax Obligations} - \text{Other Benefits Received}$$

(e) For purposes of the formula in subsection (d), the following apply:

(1) "Gross earnings" include taxable and nontaxable income that was terminated or reduced as a result of injury. Overtime may be included if the claimant demonstrates a history of regular overtime pay or provides verification that overtime is a condition of employment.

(2) Estimated tax obligations include Federal, State and local taxes.

(3) "Other benefits received" include disability payments, [bereavement pay,] employer paid leave, cash assistance, food stamps, workers' compensation, restitution or awards or settlements from a civil action or insurance payment.

(f) In calculating gross earnings, OVS may use either a time period immediately preceding the crime, the tax year in which the crime occurred, or the most recent tax year that ended prior to the year of the crime.

(g) As a condition for continuing receipt of loss of earnings benefits, OVS may require the claimant to file a claim for and pursue other benefits to which the claimant may be entitled and which could be an offset to the loss of earnings award.

(h) For a claimant who is self-employed and who continues to operate his business during the period of disability, OVS may compensate the claimant for the amount paid to other persons hired to perform the services usually performed by the claimant.

(i) For a claimant whose unemployment compensation benefits are suspended as a result of the injury, OVS may make an award to replace the suspended benefits.

(j) If the claimant was unemployed at the time of the injury and provides OVS with an affidavit from the employer on company letterhead stating the beginning date of employment, the hours per week to be worked, and the pay rate along with the employer's Federal identification number (FID#) certifying that the claimant was unable to begin because of the injury, OVS may measure loss of earnings based on anticipated earnings that would have been received in the new position.

(k) If the claimant was self-employed for less than a year prior to the injury and the tax records consequently provide a questionable measure of the claimant's earning potential, OVS may measure gross earnings by using the claimant's earnings as an employee for the period immediately prior to the start of the claimant's business.

(l) If a claimant is self-employed and is unable to fulfill a contract negotiated and signed prior to the crime due to the injury, OVS may consider the lost net income.

§ 411.44. Loss of support.

(a) OVS may make an award within the monetary limitations of the act to compensate an eligible person or persons who, as a consequence of the injury causing the death of a direct victim or intervenor, is deprived of the financial support that the direct victim or intervenor had been required by court order to provide or had actually been providing at the time of the injury that caused the death. When a court-ordered support obligation is in effect at the time of an injury causing the death, the following formula will be used to calculate loss of support:

$$\text{Loss of Support} = \text{Support} - \text{Other Benefits Received}$$

(b) For purposes of the formula in subsection (a), the following apply:

- (1) "Support" includes annual support based on obligation specified in the order plus any amount in arrears due to the claimant at time of death.
- (2) "Other benefits received" include restitution, insurance benefits, Social Security or pension benefits and awards from civil actions.

(c) When no court-ordered support obligation is in effect at the time of an injury causing the death of a direct victim or intervenor, the following formula will be used to calculate loss of support:

$$\text{Loss of Support} = \text{Support} - \text{Other Benefits Received}$$

(d) For purposes of the formula in subsection (c), the following apply:

- (1) "Support" includes the gross earnings less estimated tax obligations multiplied by 80%. Gross earnings include all taxable and nontaxable income that terminated at time of death such as wages, business income, retirement payments, Social Security payments and other benefits.
- (2) "Other benefits received" include restitution, insurance benefits, Social Security or pension benefits and awards from civil actions.
- (3) Loss of support must be definitely ascertainable at the time of the injury that caused the death and may not include a loss that is conditioned upon future events.

(e) In applying the formula in subsection(c), the following conditions apply:

- (1) A surviving spouse or dependent child will be allocated up to 80% of the net annual earnings of the victim or intervenor.
- (2) A surviving parent will be allocated the actual amount of support provided by the direct victim or intervenor, not to exceed 80% of the net annual earnings.
- (3) Any other person dependent upon the direct victim or intervenor for principal support will be allocated the actual amount of support provided by the direct victim or intervenor, not to exceed 80% of the net annual earnings.

(f) When calculating loss of support, OVS may consider as applicable, the life expectancy or labor force participation expectancy of the direct victim or intervenor, or the age of the dependent.

(g) In calculating gross earnings, OVS may use either a time period immediately preceding the crime, the tax year in which the crime occurred, or the most recent tax year that ended prior to the year of the crime.

(h) If the direct victim or intervenor was not employed at the time of the crime, OVS may use employment history up to the 3 years immediately preceding the crime to estimate potential support that would have been provided to an eligible person.

(i) If more than one person is eligible for a loss of support award, OVS will allocate each a share of the total annual amount based on OVS's determination of fairness and equity under the circumstances of the claim.

(j) If the total uncompensated loss of support for two or more eligible persons exceeds the monetary limitations set forth in the act, the limited resources will be distributed at the discretion of OVS proportionately among the eligible persons.

(k) OVS may provide a lump sum or accelerated payments for loss of support. The calculated maximum can be dispersed in one lump sum if extenuating circumstances necessitate, or under lesser conditions, paid out in a 3 year [or] to 5 year payment plan. Also, if the total projected award is of a lesser amount, and extended yearly payments are impractical, the award will be paid in total in a single sum. In claims in which OVS make protracted payments into the future, the claimant is subject to a continuing obligation to provide information that OVS requests. Failure to provide this information when requested may result in the suspension of future, payments or may require repayment of prior accelerated payments.

(l) The claimant or the recipient of a loss of support award has a continuing obligation to report to OVS any change in circumstances, such as if the recipient obtains a new source of support.

In these circumstances, OVS may terminate or reduce protracted payments made under the original award.

- (m) When an award for loss of support is paid to a person for the benefit of another person, OVS may require the payee to file a periodic accounting of OVS's payments or take other action as OVS may determine necessary and appropriate for the benefit of the beneficiary.
- (n) As a condition for continuing receipt of loss of support benefits, OVS may require the claimant to file a claim for and pursue other benefits to which the claimant may be entitled to offset the loss of support benefits.
- (o) At any time, OVS may reconsider and modify a future loss of support award previously issued or a protracted payment if another eligible person qualifies for a loss of support award.
- (p) Gifts of property or money bestowed upon the dependent on special occasions may not be considered in making a determination of dependency.

MISCELLANEOUS

§ 411.51. Subrogation.

- (a) Payment of an award made under the act shall subrogate the Commonwealth, to the extent of any payment, to any right of action against any person according to the claimant, the direct victim, or the intervenor to recover losses resulting from the crime with respect to which the award is made. In such a case, the Commonwealth shall be entitled to bring an action against the person causing or otherwise liable for the personal injuries or death for which the payment was made. Money recovered under this section shall be deposited in the Crime Victim's Compensation Fund established under the act.
- (b) If an amount greater than that paid under the act is recovered and collected in such an action, the Commonwealth will pay the balance to the claimant. The Attorney General shall enforce any subrogation. A claimant who failed to notify OVS of the receipt of funds from another claim or award arising out of the crime shall forfeit and pay to the Commonwealth an amount equal to all awards paid by OVS to the claimant or on the claimant's behalf.
- (c) The OVS Director has the discretion to settle subrogation claims for an amount less than the award. Under no circumstances will OVS settle subrogation claims for an amount that is less than 75% of the original award to the claimant. OVS reserves the right to assert further subrogation on additional recovery by the claimant. If the direct victim or intervenor incurs additional expenses related to the injury, the claimant must exhaust the actual insurance or civil recovery as well as the amount OVS reduced prior to receiving further payments from OVS.

§ 411.52. Representation by attorney.

- (a) The rules in 1 Pa. Code, Part II (relating to general rules of administrative practice and procedures) apply to the representation of a claimant by an attorney before OVS or in a hearing related to a claim submitted to OVS.
- (b) If an attorney has filed a notice of appearance on behalf of the claimant, the notice shall remain in effect until one of the following occurs:
 - (1) The claimant files with OVS a written revocation of the authority of the attorney.
 - (2) The attorney files with OVS a written statement of withdrawal from the case.
 - (3) The attorney makes a statement of withdrawal from the case on the record at a hearing.
 - (4) OVS receives notice of the license suspension or revocation or the death of the attorney.
- (c) During the period in which a notice of appearance filed under this section remains in effect, OVS may communicate with the attorney instead of the claimant. Service upon the attorney shall be deemed effective service upon the claimant.
- (d) An attorney who represents a claimant before OVS may receive a fee for that representation only under the provisions of the act. After OVS makes an award, the attorney may request that OVS pay attorney's fees and costs by filing with OVS an affidavit of services, listing the nature of each service rendered and the amount of time spent in rendering the service, plus an itemized list of costs incurred in the preparation, procuring, and filing of record papers regarding the claim.
- (e) In evaluating applications for attorney's fees, OVS will consider the following factors:
 - (1) The time and labor required.
 - (2) The novelty and difficulty of the questions.
 - (3) The skill needed to perform the legal service properly.
 - (4) Awards and similar claims.
- (f) A payment for attorney's fees shall be in addition to the award made to the direct victim, claimant or intervenor, but may not exceed 15% of that award. OVS may not reduce an award to a direct victim on account of payment of attorney's fees.
- (g) OVS may award no more than \$75 per hour to an attorney in the preparation and presentation of a claim that is awarded.
- (h) It is unlawful for an attorney to contract for or receive a sum larger than the amount allowed.

- (i) OVS may deny or reduce an award for attorney's fees if an attorney asserts a false claim as to the time spent on a matter concerning OVS or asserts a false claim as to the services rendered to a claimant. OVS may refer the matter to the Disciplinary Board of the Pennsylvania Supreme Court, the Attorney General, or other appropriate authorities.

§ 411.53. Prohibitions.

- (a) Providers who write off bills to a direct victim or intervenor may not at any point following the write off seek reimbursement from OVS, direct victim, claimant or intervenor.
- (b) A funeral director who assumes the obligation to pay for funeral expenses may not seek reimbursement from the direct victim or intervenor's family.
- (c) A person who assumes the obligation for crime scene clean up may not seek reimbursement from the direct victim or intervenor's family.

Commonwealth of Pennsylvania



PENNSYLVANIA COMMISSION ON CRIME AND DELINQUENCY

Walter M. Phillips, Jr., Esq.
Chairman

April 28, 2006

Michael J. Kane, Esq.
Executive Director

Honorable John R. McGinley
Chairman
Independent Regulatory Review Commission
14th Floor, Harristown 2
333 Market Street
Harrisburg, PA 17101

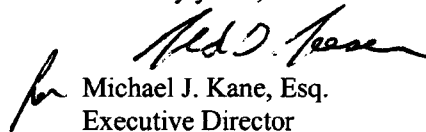
RE: Final Form Regulation
Pennsylvania Commission on Crime and Delinquency
Office of Victims' Services
Document No.: 35-29

Dear Chairman McGinley:

Enclosed is a copy of the Final Regulation package of the Office of Victims' Services of the Pennsylvania Commission on Crime and Delinquency.

Our Chief Counsel, Suzanne N. Hueston, and Manager of the Victims Compensation Assistance Program, Lynn Shiner, will be pleased to provide whatever information that you and your staff may require during the course of its review of the rulemaking.

Sincerely yours,


Michael J. Kane, Esq.
Executive Director

Enclosures

cc: Walter M. Phillips, Jr., Esquire
Chair, Pennsylvania Commission on
Crime and Delinquency

Ms. Beverly J. Horn
Director, Office of Victims' Services

Lynn Shiner
Manager
Victims Compensation Assistance Program

Suzanne N. Hueston, Esq.
Chief Counsel
Pennsylvania Commission on Crime and Delinquency

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**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 35-29
 SUBJECT: Office of Victims' Services: 37 Pa. Code, Chapter 411
 AGENCY: PENNSYLVANIA COMMISSION ON CRIME & DELINQUENCY

TYPE OF REGULATION

- Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
 - a. With Revisions
 - b. Without Revisions

RECEIVED
 APR 28 PM 12:10
 INDEPENDENT REGULATORY REVIEW COMMISSION
 PENNSYLVANIA

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
4/28/06	<i>Maryanne Kelliter</i>	HOUSE COMMITTEE ON JUDICIARY
4/28/06	<i>Mari Santona</i>	
4/29/06	<i>P. Nissley</i>	SENATE COMMITTEE ON JUDICIARY
	<i>M. Braune</i>	
4/28	<i>St. Helbert</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL
		LEGISLATIVE REFERENCE BUREAU