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**Minnich, Cynthia**

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**From:** Shiner, Lynn  
**Sent:** Tuesday, October 05, 2004 6:42 PM  
**To:** Minnich, Cynthia  
**Subject:** FW: Comments on Proposed Regulations

2004 OCT 12 AM 10:07

More comments for the Regs.

-----Original Message-----

**From:** Barbara Clark [mailto:bclark@novabucks.org]  
**Sent:** Tuesday, October 05, 2004 2:35 PM  
**To:** Shiner, Lynn  
**Subject:** Comments on Proposed Regulations

Dear Lynn:

I have attached comments on the proposed regulations from the staff and Public Affairs Committee at NOVA. We are also attempting to circulate the proposed regulations to victims who may wish to comment independently.

I will send a hard copy under separate cover today. If you have any questions, please do not hesitate to contact me.

Barbara Clark

2004 OCT 12 AM 9:27

October 4, 2004

PA Commission on Crime and Delinquency  
Office of Victims' Services  
P.O. Box 1167  
Harrisburg, PA 17108  
Attn: Lynn Shiner

Dear Lynn:

I am writing on behalf of the staff and Public Affairs Committee at NOVA to comment on the proposed Victims Compensation regulations published in the PA Bulletin on September 10, 2004. We were impressed with the proposed regulations and commend the Commission staff for their work on behalf of victims.

We understand that some issues identified below may be required by statute but we felt compelled to note all of the concerns we have heard from victims and others as we attempt to file claims so that they may be considered now with the draft regulations or later with any statutory changes, as appropriate.

- 1) 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.
- 2) Pre-approval of dental care, plastic surgery, vision or eye care, prosthetics and pharmacy costs would be most helpful, as many victims are denied this care because they cannot guarantee payment. We have found that providers for these "non-emergency" services will not generally take the risk. Additionally, because dentists, orthodontists, optometrists and doctors of physical medicine rely on outside vendors to make glasses, crowns, and prosthetic devices, the 70% reimbursement is not acceptable to them. It has been our experience that many victims go without this care.
- 3) 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.
- 4) The limit on crime scene clean-up is low for this area (minimum estimates for two recent cases have exceeded \$1000) and 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.

- 5) The closing of claims in 411.13 is confusing. Does (e) override (c) and (d)? 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. The inability to appeal seems unduly harsh.
- 6) The 30 day limit for filing an appeal may be insufficient for some individuals to make a decision about and secure help with such an appeal.
- 7) Section 411.15 (3) is open to broad interpretation. What constitutes poor judgment? It certainly leaves open the possibility of blaming the victim or intervener for decisions that he or she might have made in a moment of crisis.

We certainly appreciate the difficulty a statewide program faces in addressing the unique circumstances of each victim. The recent changes in the statute and the proposed regulations are an improvement from the past. Still, we felt compelled during this comment period to put forth the concerns we continue to find challenging as we work with victims in Bucks County.

If you have any questions, please do not hesitate to contact me or Leslie Slingsby at 215-348-5664.

Sincerely,

Barbara P. Clark  
Executive Director



Original: 2428

Original: 2428

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October 11, 2004

OCT 15 11:04 AM

**PENNSYLVANIA  
COALITION  
AGAINST  
DOMESTIC  
VIOLENCE**

Lynn Shiner  
Office of Victims' Services  
Pennsylvania Commission on Crime and Delinquency  
P.O. Box 1167  
Harrisburg, PA 17108-1167

RECEIVED  
PCOD VICTIMS  
COMPENSATION PROGRAM  
04 OCT 12 AM 9:40

Re: Proposed Crime Victims Compensation Regulations

Dear Ms. Shiner;

6400 Flank Drive  
Suite 1300  
Harrisburg  
Pennsylvania  
17112

The Pennsylvania Coalition Against Domestic Violence thanks you for the opportunity to respond and comment on the proposed Crime Victim Compensation regulations.

First, we want to express our support for the specific provisions that address the needs of victims of domestic violence. What follows are our comments in support of these provisions. At the end of this correspondence we have one request for change in the proposed regulations.

***Section 411.11 (g) When a Protection From Abuse 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. The Pennsylvania Commission on Crime and Delinquency'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.

717-545-6400  
PA: 800-932-4632  
Nat'l: 800-537-2238  
TTY: 800-553-2508  
Fax: 717-671-8149

**Legal Department**  
717-671-4767  
PA: 888-23-LEGAL  
Nat'l: 800-903-0111  
extension 2  
Fax: 717-671-5542

www.pcadv.org

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

***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.

Please consider the following addition to the proposed regulations.


***Section 411.12 (c) & (d) Privileged Communications***

The Protection From Abuse Act 23 Pa.C.S. 6116 protects the confidential communications between a victim and a domestic violence counselor or advocate in the course of their relationship. As such, no subpoena or subpoena *duces tecum* should be issued to any domestic violence counselor or advocate. We request the language underlined below be specifically included in the proposed regulations so as to preclude unnecessary waste of resources, time and energy in the legitimate action to resist unauthorized disclosure of confidential communications. Furthermore, should the OVS engage in a pattern and practice of requesting such disclosures, it will likely discourage victims from seeking advocacy with domestic violence programs. Please consider our request so that this unintended consequence does not occur. What follows is our suggested language.

411.12 (d) OVS will not request or review records or files of domestic violence counselor/advocates. The term domestic violence counselor/advocate is limited to the definition provided in 23 Pa.C.S. 6102. 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.

Thank you in advance for your kind attention to our comments. If you have any questions or require any additional clarification, please feel free to contact me at (717) 545-6400.

Sincerely,

  
Susan Kelly-Dreiss  
Executive Director

Original: 2428

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**Minnich, Cynthia**

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**From:** Shiner, Lynn  
**Sent:** Friday, September 24, 2004 7:12 PM  
**To:** Minnich, Cynthia  
**Subject:** FW: New VCAP Regulations

2004 SEP 24 PM 5:00

Comment for regs. Please respond and forward to appropriate parties.

Thanks...Lynn

-----Original Message-----

**From:** Tod Allen, Crime Victim Center of Erie County, Inc. [mailto:[tod@cvcerie.org](mailto:tod@cvcerie.org)]  
**Sent:** Friday, September 24, 2004 11:52 AM  
**To:** [lshiner@state.pa.us](mailto:lshiner@state.pa.us)  
**Subject:** New VCAP Regulations

Dear Ms. Shiner:

Upon review of the new VCAP regulations as recently published in the Pennsylvania Bulletin, I wanted to comment. Our Agency staff have reviewed the regulations and have indicated that they are in favor of the changes, in particular the definition of "Immediate Need" relative to relocation.

Thank you for your consideration of the above.

Sincerely,

Tod C. Allen  
Crime Victim Center of Erie County

9/27/2004



2004 SEP 30 AM 10:30

**PENNSYLVANIA COMMISSION ON CRIME AND DELINQUENCY**

September 28, 2004

Walter M. Phillips, Jr., Esq.  
Chairman

Carl J. Anderson, Esq.  
Executive Director

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

Re: Crime Victims Compensation  
Proposed Rulemaking 35-29

Dear Chairman McGinley:

Pursuant to the Regulatory Review Act at 71 P.S. § 745.5 (c), I am submitting the copies of comments received by this agency from the public concerning the above-captioned proposed rulemaking.

This agency received comments from representatives of three organizations:

1. Mr. Tod C. Allen of the Crime Victim Center of Erie County, Inc.;
2. Ms. Krista Dahl of the Victim/Witness Services of South Philadelphia; and
3. Ms. Donna VandeMortel, Executive Director of the Victim Services Division of the Cumberland County District Attorney's Office.

Please advise if you have any questions.

Sincerely yours,

Lynn Shiner  
Manager

Victims Compensation Assistance Program

Enclosures

cc: Walter M. Phillips, Jr., Esquire  
Chair, Pennsylvania Commission on Crime and Delinquency  
Carl J. Anderson, Esquire  
Executive Director, Pennsylvania Commission on Crime and Delinquency  
Carol Lavery  
Director, Office of Victims' Services  
Suzanne N. Hueston, Esquire  
Chief Counsel, Pennsylvania Commission on Crime and Delinquency

Original: 2428

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**Minnich, Cynthia**

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**From:** Shiner, Lynn  
**Sent:** Monday, September 27, 2004 3:00 PM  
**To:** Minnich, Cynthia  
**Cc:** Lavery, Carol  
**Subject:** FW: Comp Reg's

2004-09-27 03:00

2004-09-27 03:00

Another comment

-----Original Message-----

**From:** Vandemortel, Donna [mailto:dvandemortel@ccpa.net]  
**Sent:** Monday, September 27, 2004 1:38 PM  
**To:** lshiner@state.pa.us.  
**Subject:** Comp Reg's

Dear Ms. Shiner,

The proposed regulations seem to be an improvement. I think many of the current problems were addressed and will benefit crime victims. I would like to see three changes in the future. In the cases of homicide, the survivors should not have to use the life insurance coverage before they can apply for Compensation. The person killed made payments (sometimes for years) to an insurance company for that coverage. I would like to see the coverage for replacement of glasses increased from the current \$200.00. The cost of lenses for prescriptions other than single coverage can approach 180.00 and that doesn't include the frames (which could not be bought for \$20.00 or 30.00). 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. I also feel that Compensation should be allowed for all types of economic losses. If a crime victim can prove that a particular loss is directly related to a crime, then the victim should be able to seek compensation for that loss. Having said that, I realize that would be a major change for the Compensation program but one that would greatly benefit crime victims. Of course, I think we need to do a better job of having defendants reimburse the Compensation fund. If you have any questions, do not hesitate to call or e-mail me. Thank you.

Donna VandeMortel  
Executive Director  
Victim Services Division  
Cumberland County District Attorney's Office



Original: 2428

Memo

RECEIVED  
OCT 13 2004  
NEW YORK

To: Lynn Shiner  
From: Pamela Grosh  
Date: October 13, 2004  
Re: Comments on the proposed Regulations

Overall, I have tried to tailor my comments to a literal or worst case interpretation of the regulations as they appear on the printed page without regard for current practice. These are my concerns:

§411.2 Definitions

Immediate Need - I recommend that this be changed to 180 days from the date of the crime or change in circumstance or indicator of danger. The 30 days limit is so restrictive as to negate the benefit provided to victims. As evidence I offer the number of claims submitted since this provision was adopted which have been denied because the relocation took place more than 30 days following the crime. Many victims have complications in their lives which do not allow them to move within 30 days. These include the need to find a place to move, relocation of children who may be subject to custody orders or school changes, and pending legal proceedings. Many victims can find a temporary hiding place with family or friends, but when they find a place to seek a permanent refugee, it is too late to apply.

I deeply appreciate the provision that allows for a victim to relocate based on a change in circumstance or indication of danger. This provision is very useful since it addresses one of the most common scenarios in which victims need to relocate.

§411.11 Filing procedures

(i)(2)(ii) and (i)(6)(ii)

While I recognize that the language states the victim shall submit these documents, **if requested by OVS**, I am concerned about the continuing practice of requiring victims to procure these documents even when payments by insurance providers are clearly noted on the face of the provider's bill. Obtaining these documents is frequently a hardship for victims making it difficult to complete a claim. Some insurance or other benefit plans do not send separate benefit statements to their covered parties. In several cases, victims have been required to pay to obtain this documentation.

§422.15(c) Action affecting awards

While I am uncertain exactly what other auto related crimes this section refers to, I am concerned that, as it reads, it is not clear that the victim would need to be driving at the time of the crime. Surely no contribution would be assessed for an unlicensed victim who is the victim of an assault by vehicle or accidents involving death or personal injury if the victim was a pedestrian or

homicide by vehicle if the victim was a passenger, but this language is very unclear. I would suggest that the language is the same for all crimes as the DUI provision. As it is written, it creates a special class of victims. I believe this is inappropriate.

#### §411.16 Reductions, offsets and limitations

I am concerned about the language in this section. The amounts should be offset by these other payments to the extent that they are covering the same expenses that have been paid by an award. I am concerned that this language leaves open the possibility that any funds received from any of these sources could be determined to be an offset despite the fact that they may have been received for a completely different reason (restitution for property losses) and/or considered in the calculation of the award (SS payments).

411.16(d) We now have to pay to have the notice of the time and place of the funeral listed in the paper. I suppose this is a trend. I would like to allow payment of the obituary and this notice since it is frequently the way family and friends learn of the arrangements for the funeral.

411.16 (g) I believe this amount is too high. Risking the incursion of a payment of \$10,000.00 because a claim is denied is simply too much for a victim. I think the far more appropriate figure is \$5,000.00. Since the only difference here is whether the work of evaluating the claim is done before or after the bill is incurred, I fail to see why the amount needs to be so high.

#### §411.32 Hearing

(i and j) I think it should be “the confirmation requirements in subsection (h) may result in cancellation” since I don’t see any confirmation requirements in subsection f. I would like to insure that OVS has a duty to inform the claimant of this responsibility along with the notice of the time, place and purpose of the hearing.

(k) Since the claimant “shall provide” the witness and documentary exhibit information to OVS, I think that OVS “shall provide” this information to the claimant. I would recommend that both parties shall provide the witness and exhibit information and both parties may submit a prehearing memorandum. Why is it different, especially when the claimant has the burden of proof?

I believe, in the light of history, that there should be a time frame inserted into this section for the scheduling of a hearing. I note that there are very narrow time frames for the claimant to act to preserve an appeal but OVS has no time frames to schedule the hearing. Delay in scheduling the hearing naturally weighs the balance of power in favor of OVS because of the difficulty of continuing to maintain representation, emotional energy required to pursue the matter and the waning availability of witnesses and exhibits. I believe OVS should be required to schedule the hearing within 90 days after receiving the request from the claimant. Failure to do so should result in the claim being paid. As this is currently written, a claimant has many responsibilities and timelines with an automatic denial of the claim if they fail to meet them. OVS has no penalties or deadlines.

### §411.3 Final decision after hearing

Again I think this section needs some timetables. This is an extremely convoluted process that will never be the first priority of the designated Commission official so without some deadlines this process can drag out for years. I believe there should be a specific time frame, after submission of any posthearing briefs, for the hearing officers decision to go to the designated Commission official and a specific time frame for the final decision to be rendered. I would recommend 90 days for each. Even this time frame could easily result in the victim waiting 8 months following a hearing for a decision.

### §411.42 {c} Out-of-pocket loss

I believe the cap of \$5,000.00 for funeral expenses is too low. Except in the case of a cremation or the funeral of a child, it is very rare for CVC to pay the entire funeral bill for a victim in Lancaster County. Victims with medical losses are made generally whole by CVC. Families of homicide victims are not. In addition, any insurance funds, which might be used to pay the difference, are offset so the family has no means other than out-of-pocket funds to pay these expenses. The provision of caps for the various covered expenses within the maximum is much appreciated and does provide for more flexibility to use the available funds. However, I firmly believe that the overall maximum is still too low. This idea is widely supported in the field by other victim advocates.

### §411.13 Loss of earnings

{a} I do not know what the rationale is here to include any language concerning the average weekly wage but 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, I do not believe it should further be limited by the average weekly wage. We can explain to a victim that CVC covers a one month entitlement. I have no idea how to explain the average weekly wage or its correlation to this loss.

(c) (2) I would like a specific acknowledgement that this does not mean that the claimant must be listed as responsible party on the funeral bill. The decision about the names on the funeral bill is often directed by the funeral home based on the financial resources and stability of the available responsible parties. It does not necessary reflect the participants in making the funeral arrangements. However, I have had claims for lost wages denied because the name of the person making the funeral arrangements did not appear on the funeral bill as a responsible party so I would like this to be clearly stated here.

(e) (3) This may mean that sick and vacation pay are no longer an offset since they are not listed here. I support this change since it is a definite hardship for victims to be required to use their vacation, sick or paid personal leave as the result of another's wrongful action.

§411.52 {c} Representation by attorney

I am uncomfortable with the provision that OVS may communicate solely with the attorney rather than the claimant. I do not believe that the claimant will necessarily understand that they need to file a written revocation to remove the attorney or that an attorney will follow through with a statement of withdrawal if the matter is protracted as in the case of the unscheduled hearings. This could result in the claimant not receiving critical information in a timely fashion. I believe the standard here should be the same as it is for a victim advocate who assists the claimant. Both the advocate and the claimant receive all information concerning the claim. I would recommend that the claimant have the right to file a written notice requesting that only the attorney receive all communications. In the absence of such a written request, I think it is very important for both the claimant and the attorney to receive all communications.

I appreciate the opportunity to offer comments to this process. They are based both on my direct experience in assisting victims to file for Crime Victims Compensation and my experience as a member of the Compensation subcommittee of the Victims Services Advisory Committee. I believe wholeheartedly in the value of Crime Victims Compensation to victims. My goal in these comments is to provide victims with the most meaningful and valuable access to Compensation possible.

**Minnich, Cynthia**

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**From:** Shiner, Lynn  
**Sent:** Friday, September 24, 2004 7:13 PM  
**To:** Minnich, Cynthia  
**Subject:** FW: Crime Victim Compensation

SEP 24 2004 7:13 PM

RECEIVED STATE

Comments on Regulations.

-----Original Message-----

**From:** Dahlkristac@aol.com [mailto:Dahlkristac@aol.com]  
**Sent:** Friday, September 24, 2004 3:34 PM  
**To:** lshiner@state.pa.us  
**Subject:** Crime Victim Compensation

Ms. Shiner,

I believe that for relocation that *immediate need* should be longer than the 30 day period. Many of our victims start to begin to raise money right away, but do to limited resources it often takes more than the required 30 days. Also there is the possibility that a victim may not be aware of this time limit until it is too late.

I think that the funeral expenses section of Crime Victims Compensation is wonderful and helps a number of families pay for a funeral. I do think though that more can be done for loss of earnings in the case of a homicide. At this time CVC only covers up to one week of loss of earnings, which is the week of the funeral. I have 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. I understand 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 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 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.

Thank you for your time.

Krista Dahl  
Victim Witness Services of South Philadelphia