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**INDEPENDENT REGULATORY REVIEW COMMISSION**  
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

November 12, 2004

Carl J. Anderson, Esq., Executive Director  
Pennsylvania Commission on Crime and Delinquency  
Office of Victims' Services  
3101 North Front Street  
P.O. Box 1167  
Harrisburg, PA 17108

Re: Regulation #35-29 (IRRC #2428)  
Pennsylvania Commission on Crime and Delinquency, Office of Victims' Services  
Crime Victims Compensation

Dear Mr. Anderson:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulatory review criteria that have not been met.

The comments will be available on our website at [www.irrc.state.pa.us](http://www.irrc.state.pa.us). If you would like to discuss them, please contact my office at 783-5417.

Sincerely,

Robert E. Nyce  
Executive Director  
wbg  
Enclosure

cc: Honorable Stewart J. Greenleaf, Chairman, Senate Judiciary Committee  
Honorable Jay Costa, Jr., Minority Chairman, Senate Judiciary Committee  
Honorable Dennis M. O'Brien, Majority Chairman, House Judiciary Committee  
Honorable Kevin Blaum, Democratic Chairman, House Judiciary Committee

# Comments of the Independent Regulatory Review Commission

on

## Pennsylvania Commission on Crime and Delinquency, Office of Victims' Services Regulation # 35-29 (IRRC #2428)

### Crime Victims Compensation

November 12, 2004

We submit for your consideration the following comments that include references to the criteria in the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The Office of Victims' Services (OVS) must respond to these comments when it submits the final-form regulation. The public comment period for this regulation closed on October 12, 2004. If the final-form regulation is not delivered within two years of the close of the public comment period, the regulation will be deemed withdrawn.

#### **1. Section 411.2. Definitions. - Legislative intent; Consistency with statute; Need; Clarity.**

##### *Cleaning*

The House Judiciary Committee (House Committee) commented that this term should be defined to clarify the intent 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. . . .” We agree.

##### *Dependent child*

This definition contains the phrase “eighteen years of age or younger.” Section 11.702(b)(2)(ii) of the Crime Victims Act (Act) (18 P.S. § 11.702(b)(2)(ii)) includes the language “under 18 years of age” to describe an individual who is not an adult. For clarity, OVS should use the phrase “under 18 years of age” to define a “dependent child.”

##### *Loss of earnings and Stolen benefit cash*

The House Committee commented on both of these regulatory definitions. We agree that these definitions are confusing. We have two concerns.

First, the regulatory term “stolen benefit cash” is confusing because it is virtually identical to the statutory definition of “loss of earnings.” Subsection (b) states “[t]he definitions in section 103 of the act (18 P.S. § 11.103) are incorporated by reference.” Hence, why is the regulatory term “stolen benefit cash” needed?

Second, if the term “stolen benefit cash” is needed, why does it vary from the statutory definition of “loss of earnings”? The definition of “stolen benefit cash” uses the term “direct victim” in place of the term “victim.” The statute defines both the term “victim” and “direct victim” differently. The statute uses the term “victim” in its definition of “loss of earnings.”

OVS should either explain the need for the term “stolen benefit cash” or delete it from the definitions and the regulation. In its place, the term “loss of earnings” should be amended to be consistent with the statute.

**2. Section 411.11. Filing procedures. - Consistency with statute; Clarity.**

*Time limits*

This section does not include a time limit for filing claims for compensation with OVS. The regulation should include the time limits in Section 702(b) of the Act (18 P.S. § 11.702(b)).

*Subsection (a)*

This subsection states, “A claim may be filed by a person eligible under the act.” Subsection (a) should also reference Section 411.3(a) of this Chapter.

*Subsection (e) and Subsection (g)*

Subsections (e)(2)(v) and (g)(3) allow OVS to consider “other circumstances deemed appropriate by OVS.” What “other circumstances” will OVS consider?

*Subsection (h)*

This subsection describes violations of a protection from abuse order involving an eligible crime. To fulfill the requirements of this subsection, the eligible crime must be reported in a “timely manner.” What is considered a “timely manner”?

*Subsection (i)*

The House Committee suggests adding language to Paragraph (i)(7) to determine whether damage as a result of the crime is covered by homeowners insurance, similar to provisions in Subsections (i)(2)(iv) and (i)(6)(iv). We agree.

Additionally, this subsection states, “when requested by OVS, the claimant shall submit copies of documents that are needed to process the particular type of claim, which include the following . . . .” Under the list of provisions, Paragraph (6)(v)(A) *Witness.*, would require the claimant to submit “a police report obtained by OVS.” If OVS obtained the police report, why is the claimant required to submit a copy?

**3. Section 411.14. Determinations. - Reasonableness; Clarity.**

*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?

*Subsection (c)*

This subsection includes a list of individuals that may receive a copy of OVS’ final determination. The House Committee suggests that the district attorney having jurisdiction where the crime occurred should be added to this list. Title 18 Section 1106(c)(4) (18 Pa.C.S. § 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. We agree.

**4. Section 411.15. Actions affecting awards. - Consistency with statute; Clarity.**

*Subsection (a)*

This subsection sets standards for consideration of whether the conduct of the direct victim or intervenor contributed to the injury. The standard in Paragraph (3) is the direct victim or intervenor “used poor judgment resulting in the placement of the direct victim or intervenor into a situation likely to result in injury.” The standard of “poor judgment” is subjective. This standard should be deleted or amended to more closely relate to the conduct of the direct victim or intervenor.

*Subsection (c)*

The intent of this subsection is not clear. How will the victim of a driving under the influence crime be treated differently? How does driving without a license differ from the conduct standards in Subsection (a)?

*Subsection (g)*

Subsection (g) states OVS may consider a failure to cooperate with law enforcement and OVS justified when a number of situations occur. However, this subsection does not include minors. Are minors able to cooperate with OVS?

*Subsection (g) and Subsection (h)*

Subsections (g)(3) and (h)(5) allow OVS to consider other circumstances deemed appropriate by OVS or other factors that OVS deems relevant. What other circumstances or factors will OVS consider?

**5. Section 411.16. Reductions, offsets and limitations. - Clarity.**

*Subsection (a)*

This subsection states, “an award made under the act and this chapter shall be reduced by the amount of any payments received or to be received . . . .” Paragraph (1) includes any payment from or on behalf of the individual who committed the crime. The House Committee commented 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.” We agree.

*Subsection (e)*

This subsection includes a citation to the federal Medicare Program. This program is found at 42 U.S.C. § 1395 *et. seq.* For clarity, the Commission should cite the sections that deal specifically with Medicare reimbursement allowances as a result of a motor vehicle incident.

**6. Section 411.31. Reconsideration. - Reasonableness.**

*Subsection (a)*

This subsection allows a claimant to contest OVS's determination "by submitting a written request for reconsideration post-marked no later than 30 days from the date of determination." There are two concerns.

First, how will the claimant know when the 30-day period began? Section 704(d) of the Act (18 P.S. § 11.704(d)) requires OVS to promptly notify the claimant of its final decision. We also note 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.

**7. Section 411.32. Hearing. - Clarity.**

*Subsection (h)*

This subsection requires the claimant to "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 . . . ." The House Committee requests this section be amended to clarify whether the submission of a list of documentary exhibits will satisfy this requirement, or if the actual documentary exhibits must be provided. We agree with the House Committee, and request the OVS clarify this subsection in the final-form regulation.

*Subsection (j)*

This subsection states "a hearing will not be rescheduled more than once." Shouldn't the hearing examiner have the 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?

*Subsection (l)*

This subsection allows a hearing officer to "issue subpoenas for attendance of witnesses or for the production of documentary evidence." The House Committee suggested procedures for requesting subpoenas be included in Section 411.32(k). We agree.

**8. Section 411.33. Final decision after hearing. - Reasonableness; Clarity.**

This section does not contain any timeframe for the hearing officer to deliver the report or for OVS action on the report. Should timeframes be added to ensure claims are processed in a timely manner?

**9. Section 411.42. Out-of-pocket loss. - Reasonableness; Clarity.**

*Dollar amount of allowed expenses*

Commentators have said that the \$200 amount for the loss of eyeglasses in Section 411.42(d)(1) is too low. Additionally, commentators stated the \$5,000 limit for funeral expenses in Section 411.42(c) is not enough. OVS should explain how the dollar amounts were derived, and why they are reasonable.

*Pre-approval*

A commentator 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. Is there a way for a victim to demonstrate need for non-emergency medical care before the procedure is done? Can a provider be paid directly?

*Subsection (g)*

This subsection states, "OVS will reimburse expenses associated with travel 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." The House Committee commented that travel expenses for funeral arrangements should be allowed as out-of-pocket loss, but should also be required to be "reasonable and necessary." We agree.

### Facsimile Cover Sheet

**Kristine M. Shomper**  
**Administrative Officer**



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**INDEPENDENT REGULATORY REVIEW COMMISSION**  
**333 MARKET STREET, 14<sup>TH</sup> FLOOR, HARRISBURG, PA 17101**

**To:** Cynthia Minnich  
**Agency:** PCCD, Office of Victims' Services  
**Phone:** 5-0888, ext. 3134  
**Fax:** 7-4306  
**Date:** November 12, 2004  
**Pages:** 7

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INDEPENDENT REGULATORY REVIEW COMMISSION

**Comments:** We are submitting the Independent Regulatory Review Commission's comments on the Pennsylvania Commission on Crime and Delinquency, Office of Victim's Services's Regulation #35-29 (IRRC #2428). Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through Interdepartmental mail. You should expect delivery in a few days. Thank you.

**Accepted by:** Shaw Tatro **Date:** 11/12/04

Fax5

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