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DEPARTMENT OF JUSTICE
CRIME VICTIM AND SURVIVOR SERVICES DIVISION
CRIME VICTIMS' COMPENSATION PROGRAM

VOLUME III

Policy & Procedure Manual

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POLICY NUMBER: III.A.1.a.
Revised 02/08/2018

Approved by: RS1 _____
Date: 02/08/2018

SUBJECT: APPLICATION/SIGNATURES ACKNOWLEDGING RELEASE OF INFORMATION, CONFIDENTIALITY AND SUBROGATION

PURPOSE: To establish consistency in required signatures from applicant in the form of a signed release authorizing the surrender of documents to the Program for the purpose of collecting information for processing application for benefits and pursuing subrogation.

AUTHORITY: ORS 147.005, 147.015, 147.205 and 147.345 Legal Opinions dated 10/14/96 and 8/18/00

DEFINITIONS: *Subrogation:* The right of the state to have first claim on crime-related recovery, up to the amount paid out by CVCP on behalf of the victim..

Incompetent Person: A person not qualified to conduct his/her own affairs either due to temporary or permanent impairment.

POLICY: An application for benefits requires a signature(s), either electronic “e” signatures or handwritten, to allow the Program to collect necessary documents to process the application. A signature authorizes the release of information about the crime and related treatment from multiple sources including: police agencies, medical and dental providers, mental health providers, employers, insurance carriers, and other public agencies. The signature of the victim/applicant acknowledges that the Program will pursue collection of any subrogated funds.

The CVCP application for benefits shall be signed by the victim of the crime, unless the victim is deceased or a minor or an incompetent person. If the victim of a crime is a minor, the application for benefits should be signed by the minor’s parent or guardian. Note: there may be cases where the minor is under the jurisdiction of the Juvenile Court and/or in the temporary custody of DHS, in this circumstance the application may be signed by the foster parent or the DHS caseworker.

There may also be cases where a minor child has been emancipated by the court and is without a guardian. With evidence of emancipation, only the minor’s signature is required.

In the case of a deceased victim, the application must be signed by the individual who actually incurs the crime-related losses or assumes the financial responsibility. In no circumstance shall a provider such as a funeral home or cemetery be accepted as an applicant for compensation.

By signing the application, the victim/applicant acknowledges understanding that information in the CVCP case file becomes public

record (ORS 147.205 (2)). Exception to the public record/information release under ORS 147.115 (1) includes those cases where:

1. Disclosure of the information would adversely affect either the apprehension or the trial of the suspect;
2. The alleged offense is rape, sodomy or sexual abuse and the interest of the victim or of the victim's dependents require that the information be kept confidential or that the public be excluded from a hearing;
3. The victim or alleged suspect is a minor;
4. The interests of justice would be frustrated rather than furthered if the information were disclosed or if the hearing were open to the public;

Applicant/victim signature/electronic signature on the application signifies acceptance of any award made by CVCP pursuant to ORS 147.005 to 147.365. Monies paid by the Program to or on behalf of the victim for crime-related services must be paid back to the Program if the victim recovers monies as a result of the crime. These recovered monies include: compensatory fines, restitution, civil recoveries, and insurance settlements. In addition, CVCP may apply to the court to be listed as the payee for restitution ordered by the court and paid by the defendant in the criminal case. Any settlement based on the compensable crime, civil or otherwise, must be approved by the Department of Justice if the Program has made an award to the victim or to dependents of the victim. (ORS 147.345)

POLICY NUMBER: III.A.1.b.
Revised 02/09/2018

Approved by: RS1
Date: 02/12/2018

SUBJECT: ELIGIBLE APPLICANTS – MULTIPLE APPLICANTS

PURPOSE: To establish who is eligible to file a claim application for CVCP benefits and to define a secondary/indirect victim’s eligibility criteria.

To establish operating procedure in the event that the CVCP receives multiple applications from qualified applicants in regard to the same victim (living or deceased)

AUTHORITY: ORS 147.005(1),(13), (14); 147.015, 147.025, 147.035, 147.105 (6), (7) (a) 147.345

DEFINITIONS: *Victim:* A person who is killed or injured in Oregon as a direct result of a compensable crime perpetrated or attempted against that person, or a person who is killed or injured in Oregon while attempting to assist a person against whom a compensable crime is being perpetrated or attempted, if that attempt of assistance would be expected of a reasonable person under the circumstances, or a person who is killed or injured in another state as a result of a criminal event that first began in Oregon.

Non eligible victim: A person who would otherwise be eligible for benefits as a victim of a compensable crime:

- A person who is incarcerated at the time of application would be ineligible for compensation and would have to refile their application within six months after their release from incarceration
- A person with a court ordered financial obligation resulting from a criminal conviction is ineligible until that financial obligation has been paid. The Department must be notified of the satisfaction of the financial obligation within one year of the Department’s written notification to the applicant. Exceptions to this policy will be made for good cause or when “the interest of justice” requires otherwise.

Applicant: Any victim of a compensable crime who applies to the Department of Justice for compensation under ORS 147.005 to 147.367; any person who was a dependent of a deceased victim at the time of death of that victim; any person who is a survivor of a deceased victim; or any person eligible for compensation under ORS 147.025, which states that a person is eligible for compensation for reasonable medical expenses if they have paid or incurred these expenses on behalf of a victim of a compensable crime and for reasonable funeral expenses of a deceased

victim of a compensable crime if such expenses were paid or incurred by the person; and, the person files a claim in the manner provided in ORS 147.105 and the conditions specified in ORS 147.015 have been met.

Dependent: Any such relative of a deceased victim who had been completely or partially reliant upon the victim's income at the time of the victim's death or would have been so reliant but for the victim's incapacity due to the injury from which the death later resulted. Proof of financial dependency must be demonstrated through legitimate documentation such as a recent tax return. Ordered but unpaid child support on the part of the deceased victim would not constitute eligibility for loss of support as a dependent.

Survivor: Any spouse, parent, grandparent, guardian, sibling, child or other immediate family member of a deceased victim. A person who resided with the deceased victim at the time of the crime.

Indirect Victim: Any person who had not been injured as a result of a crime directed against their person, but nevertheless had suffered mentally and emotionally as a consequence of the direct criminal victimization of a family member, friend or acquaintance. Individuals included within the following list may all be considered indirect victims that would qualify for mental health counseling benefits.

- A child under age 18 who witnesses domestic violence;
- A survivor of a homicide victim;
- A family member of a child sex abuse victim;
- A friend or acquaintance of a deceased victim who is the first person to discover the corpse of the deceased victim;
- A relative of a victim of international terrorism.
- A relative of a victim of abuse of a corpse.

In cases where the victim is killed as a result of the compensable crime, a qualifying dependent (s) may also be eligible for loss of support benefits.

POLICY:

Eligible Applicants:

Any victim of a compensable crime 14 years of age or older can file a claim on their own behalf with the CVCP. If the victim is under the age of 14, the CVCP would need a parent or legal guardian to apply as the applicant. If a child victim is a ward of the state, or has been in the temporary custody of DHS, the CVCP can accept a DHS caseworker or the foster parent as a qualified applicant.

In the event that they were not included in the initial application, a relative of a deceased victim who was entirely or partially dependent on the deceased victim's (reported) income at the time of the perpetration of the compensable crime causing the death of the victim, can file their own application. Any person who is a survivor or was a household member of a deceased victim can file their own application. Any person who had paid or incurred reasonable medical or funeral expenses for the victim, can file

an application for compensation for the purpose of obtaining reimbursement or getting any incurred liability paid by the CVCP. Certain persons or institutions would not be eligible to apply as an applicant for compensation (see below).

As of 1/1/04, any friend or acquaintance of a deceased victim who was the first person to discover the corpse of that victim can file a claim application for counseling benefits.

As of 1/1/04, any relative of a victim of international terrorism can now file a claim for counseling benefits.

Non-Eligible Applicants:

Close family friends (that did not incur any compensable expenses on behalf of the victim), social workers, prosecutors, funeral homes, medical providers, victim advocates or other governmental professionals do not qualify as approved applicants under ORS 147.005 or 147.025.

Multiple Applications Received:

Often times the CVCP will receive multiple applications for the same victim (same criminal incident). The most common occurrence of this is in death cases where more than one person may have paid for funeral expenses of the deceased victim. Multiple applications might also be received by the CVCP in child cases involving child victims of divorced or separated parents. In such situations, each parent may file their own application pertaining to the same criminal incident.

It is important to understand that when multiple applications are received for the same claim, the awarded benefits amounts do not increase and therefore must be shared amongst the multiple applicants.

POLICY NUMBER: III.A.1.c.
Revised: 02/09/2018

Approved by: ___RS1___
Date: ___02/12/2018___

SUBJECT: MEDICAL ASSESSMENT ONLY

PURPOSE: To establish a policy for payment of medical assessments in cases of unsubstantiated child physical or sexual abuse.

AUTHORITY: ORS 147.390 and 147.397

DEFINITIONS: *Child Abuse Medical Assessment:* An assessment by or under the direction of a licensed physician or other licensed health care professional trained in the evaluation, diagnosis and treatment of child abuse. Child abuse medical assessment includes the taking of a thorough medical history, a complete physical examination and an interview for the purpose of determining whether or not the child has been abused, making a medical diagnosis and identifying the appropriate treatment or referral for follow-up for the child. ORS 418.782(2)

POLICY: If a child does not make a disclosure but was referred for a medical assessment based on an allegation of physical or sexual abuse the application will be denied but the medical assessment will be paid by CVC. These applications/claims will be referred to as “Medical Assessment Only.”

POLICY NUMBER: III.A.1.d.
Revised 02/09/2018

Approved by: RS1
Date: 02/12/2018

SUBJECT: WAIVER OF FINANCIAL OBLIGATION

PURPOSE: To establish exceptions to the statutory requirement that an application shall not be processed for a victim who owes a financial obligation imposed by the court as a result of a previous criminal conviction.

AUTHORITY: ORS 147.105 (6), OAR 137-076-0010 (10)

DEFINITIONS: *Financial Obligation:* An amount ordered or imposed by a court, as a result of a previous criminal (misdemeanor/felony) conviction. This does not include any amount owed to CVCP, unless a court order has been imposed.

Suspension: Application held without processing.

Void: Application is deemed invalid without determination.

Applicant: A victim or person applying on behalf of a victim.

POLICY: An applicant shall be notified via a letter that their claim application has been suspended due to an outstanding court ordered financial obligation. If the victim does not produce the required documentation (ORS 147.105 (6)) within one year, the application is void. This requirement may be waived by the Department under the exceptions listed below.

EXCEPTIONS: Interest of Justice and Good Cause

Interest of Justice

Pursuant to ORS 147.105(6) the Department may waive an applicant's failure to satisfy financial obligations in the interest of justice. As a matter of policy the Department finds it is in the interest of justice to waive certain financial obligations.

- **Domestic violence:** Financial obligations owed by victims of domestic violence will be waived UNLESS the obligations arise from restitution owed another victim as a result of a violent crime perpetrated by the applicant. If the financial obligation is restitution associated with a violent crime, then the Department will follow the policy outlined above.

The Department will waive these obligations in the interest of justice because denying a survivor of domestic violence's

application for CVC may prevent the survivor from seeking services and safety. Additionally, as abusers often control the victim's finances the victim's ability to pay may be beyond their control.

- **Sexual Assault:** Financial obligations owed by a victim of sexual assault will be waived UNLESS the obligation arose from restitution owed another victim as a result of a violent crime perpetrated by the applicant. If the financial obligation is restitution associated with a violent crime, then the Department will follow the policy outlined above.

In cases of sexual assault the Department will waive these financial obligations in the interest of justice to ensure that victims of sexual violence have access to the services and support necessary to allow them to heal. Sexual assault is an epidemic and reports and studies across the nation acknowledge that approx. 20% of college students alone have been the victims of unwanted sexual contact. These cases are underreported and under prosecuted. It is in communities' best interests to provide these survivors with support and services as they face potentially long term physical and emotional trauma as a result of their victimization.

Good Cause

The department may consider "good cause" exists for the applicant's failure to satisfy a financial obligation if:

- The Department can document that the applicant/victim has made an earnest effort to make consistent payments on their financial obligations.
- If the applicant establishes that a serious/life threatening medical condition has hindered the applicants ability to satisfy the financial obligation.

The Department may consider other circumstances as a basis for good cause waiver on a case-by-case basis.



DEPARTMENT OF JUSTICE
CRIME VICTIMS' SERVICES DIVISION

Date:

«Victim»
«VAddr1»
«VAddr2»
«VCity» «VState» «VZip»

Claim Number: «ClaimNbr»

Court:
Case No.:
Amount owed:

Re: Case Suspension

The Oregon Department of Justice Crime Victims' Compensation Program has received your application for compensation benefits. However, Court records available to this office show you owe money resulting from a criminal conviction. As a result, we are unable to process your application at this time. Oregon law reads:

Unless the department finds good cause exists for the applicant's failure to satisfy a financial obligation or unless the interest of justice requires otherwise, the department shall not process an application filed by or on behalf of a victim who owes a financial obligation ordered or imposed as a result of a previous criminal conviction until the department receives information or materials establishing to the satisfaction of the department that the financial obligation has been satisfied. If the department does not receive the information or materials within one year after the department notifies the applicant of the need to fulfill this requirement, the application is void. ORS 147.105 (6).

Good cause exists for failing to pay your financial obligation if you can establish that you have made an earnest effort to make consistent payments toward your obligations or if you have a medical condition that has impacted your ability to pay. **It is your responsibility to submit to this office the receipt(s) or other documentation showing that there is good cause for failure to fully pay your financial obligations. You have one year from the date of this Notice to submit the required documentation.** If proof of payment is not received and good cause is not established within one year from the date of this Notice, the application is void.

Once this office receives sufficient documentation to proceed with your claim you will receive an Administrative Order indicating the decision to either accept or deny your claim for Crime Victims' Compensation benefits.

Sincerely,

Crime Victims' Compensation Program

finanob 7/25/00

***** Policy III.A.1.d. – Attachment A *****

POLICY NUMBER: III.A.2.a.b.c.d.
Revised: 02/09/2018

Approved by: ___RS1___
Date: 02/12/2018

SUBJECT: TIMELINES

PURPOSE: To restate essential statutory timelines and set forth a protocol for establishing exceptions to statutory timelines for crime reporting, filing a CVCP application, providing requested information to the department and defining claim/benefit life.

AUTHORITY: ORS 147.015(2); 147.035 (9)(a)(b) (10) (a); 147.105 (3); OAR 137-076-0010; (12) & 137-076-0030;

DEFINITIONS: *Crime Date:* The date or dates during which the compensable crime occurred.

Disclosure Date: The date upon which a child, or an adult with developmental disabilities or mental illness, or an elderly person initially disclosed to a mandatory reporter (as defined by Oregon state law) that a crime (criminal abuse) had been perpetrated against them. This date could be significantly later than the date of the actual perpetration of the crime. Disclosure date may be used in place of the crime date when the actual date of the crime cannot be ascertained.

Reported Date: The date that the crime or disclosure of a crime was actually reported to a law enforcement agency (LEA)

Claim Expiration: The date (usually after three years from the date of determination or in the case of a child victim the greater of three years or upon a child's 21st birthday) that the victim's claim for compensation expires and no further benefits are available.

Claim Closure: If there is no activity on a claim it will be placed in "inactive" status. In such cases, the claim benefits remain available to the victim until the claim expires. A claim may be closed prior to its expiration date if the benefits have been exhausted.

POLICY: III.A.2.a. 72-Hour Crime Reporting

Under ORS 147.015(1), (c) the applicant/victim must have notified the appropriate law enforcement agency within 72 hours after the perpetration of the crime with the following exceptions:

The applicant/victim can establish "good cause" for waiver of the 72-hour-reporting mandate under OAR 137-076-0010(12) and OAR 137-076-0010 (12). Good cause for failure to report a crime within the 72-hour timeline includes physical or mental trauma or personal safety issues causing an

inability to report the crime as required. Good cause may also include delays in reporting in cases of child abuse.

Examples of good cause for failure to report within 72 hours:

- Victim of a physical assault does not immediately contact law enforcement due to fear of retribution.
- Victim is traumatized by the criminal act and does not immediately contact law enforcement.
- Any child abuse case where a child does not disclose immediately after the criminal act.

In a case where a victim reported late to L.E. and there is a request for medical expenses, pay particular attention to when the victim sought treatment and to the chart notes describing the injury.

III.A.2.b. One Year Filing of CVCP Application

Under ORS 147.015(1) (A), the application for compensation will be filed within one year of the date of injury to the victim with the following exceptions:

The applicant would have to establish “good cause” for their failure to file an application within one year of the date of the crime under OAR 137-076-0030(2). Good cause for failure to file an application within one year of the crime date includes lack of knowledge of the CVC program, failure of an investigating officer to provide information regarding the program, or mental or physical trauma sustained by the victim rendering the victim incapable of filing the application in a timely fashion.

Examples of good cause for failure to file within one year include:

- Victim was unaware of the program.
- Victim was sexually abused but did not make any disclosure until years after the abuse
- Victim was abused as a child and made a disclosure but the parent/guardian never filed an application on the victim’s behalf.

III.A.2.c. 30-Day Record/ Request for More Information

If a Claims Examiner is unable to determine a claim due to lack of information, the Examiner will send a letter specifying what information is needed in order to make a determination. The applicant has 30-days to respond. The 30-day response requirement may be extended if the applicant (within the 30-day period) requests either verbally or in writing an extension to provide the Department with the requested information. The Claims Examiner has the authority to grant an extension after being provided with a justifiable explanation by the applicant. This extension must be noted in CMS both under the notes tab and on the claim detail screen.

III.A.2.d. Claim Life

Under ORS 147.035(9),(a),(b), a claim for benefits expires and no further payments shall be made with regard to the claim when three years have elapsed since the issuance of a determination order or upon the victim's twenty-first birthday (whichever comes later). The life of the claim begins upon the date of the initial determination order, regardless of whether the original order was an acceptance order or denial order.

Exception In the case where the victim is fatally injured as a result of the compensable crime, survivor counseling would be available to qualified family members for a period of five-years.

Exception: A claim in which the original determination order was issued prior to August 5, 1991 would not be subject to expiration; hence all awarded benefits would remain available to the victim until the time when those benefits have been fully paid out. Note: Statutory award benefits and their corresponding caps and other requirements were significantly different than those available today.

Under OAR 137-076-0037, if the department determines the victim's injuries to be catastrophic in nature, all awarded benefits under this rule would remain available to the victim indefinitely or until those benefits have been paid out up to the extent of the statutory award limit in effect at the time of determination.

Under OAR 137-076-0043(3), the department may authorize payment of services involved in a medical or dental procedure which continues past the claim expiration date when the department has previously approved the cost of the procedures and has been made aware of the duration of treatment prior to claim expiration. Such treatment must also have been started prior to the date of the claim's expiration. If clarification is needed, Examiner should contact the provider regarding the nature of the subsequent treatment.

POLICY NUMBER: III.A.2.e.
Revised 02/09/2018

Approved by: RS1
Date: 02/12/2018

SUBJECT: RECONSIDERATION AND APPEAL REQUESTS

PURPOSE: To establish protocol regarding the timely submission of an applicant's request for reconsideration of their claim. To establish protocol regarding submission of an applicant's request for appeal of a previously denied reconsideration order.

AUTHORITY: ORS 147.145; ORS 147.155; OAR 137-076-0056

DEFINITIONS: *Reconsideration:* A written request submitted by an applicant asking that the Department review its earlier determination which denied (or reduced) the applicant's initial claim for compensation as a crime victim. Within this written request, the applicant would usually provide specific points of contention with issues or conclusions expressed by the Department in the initial determination order.

Appeal: A written request submitted by an applicant to the Workers' Compensation Board requesting that the Board schedule a hearing for the purpose of appealing the Department's prior determination order which had been issued upon reconsideration upholding the Department's initial determination to deny (or reduced) compensation to the applicant.

POLICY: Under ORS 147.145, if the applicant disagrees with the order entered under ORS 147.135, the applicant may submit a written request for review by the Department of Justice (Department). The request for review from the applicant needs to be in writing. The Department shall reconsider any order for which a request for review is received. The Department shall notify the applicant of its decision on review within 30 days of the department's receipt of the request for review.

The Department has established through Administrative Rule (137-076-0056), a 90-day period after an initial determination order to request reconsideration in all original denial/reduction orders for adult victims. The Department may consider whether "good cause" exists if the department receives a request for reconsideration beyond the 90-day period. No exceptions will be made in regards to reconsideration requests that are received beyond the time when three years have elapsed from the date of the original order. The Department's requirement to notify the applicant of its decision upon review within 30 days of the department's receipt of the written request for reconsideration can be extended with verbal or written permission from the applicant. When additional time is necessary to process the applicant's reconsideration request, the Claims Examiner should initiate contact with the applicant as soon as possible and before the 30 days have gone by.

Due to the nature and circumstances involved in cases of suspected child physical and sexual abuse, the 90-day requirement for reconsideration requests does not apply. For the same reason, the Department will consider any requests for reconsideration that is received within three years of the original denial/reduction order, or until the time when the child victim attains the age of 21, whichever occurs later.

The Department may consider the following types of justifications as constituting “good cause” for an applicant’s submission of a request for reconsideration beyond the 90-day period:

- The applicant can document that, through law enforcement investigations new (post 90 day period) and convincing evidence has been brought forth pertaining to the criminal incident in question;
- That physical or mental trauma has caused an inability on the applicant’s part to submit a request for reconsideration within the 90 day period;
- Documentation can be presented that shows the applicant did not receive the Department’s certified mailing of the original denial/reduction order.

An *example* of “good cause” for an applicant to submit a reconsideration request beyond the 90-day requirement would be in the case of a “missing person” case in which, based on the evidence initially presented to the Department, the claim was denied for failure to prove that a compensable crime had been committed. A year later the victim’s body is found under suspicious circumstances and police subsequently reclassify the case as a homicide investigation with the spouse of victim being the prime suspect. This new evidence occurring outside of the 90-day period would justify good cause to review a request for reconsideration at that time.

An *example* illustrating where the Department should proactively request extension of its 30-day notification of decision would be in a case where the department initially denied a claim and the applicant immediately requested reconsideration. The Claims Examiner involved then determines that it is imperative to wait on the findings of the criminal trial in order to come to a conclusion regarding the reconsideration order. However, the trial does not end until 45 days from the date the reconsideration was received by the department. The Claims Examiner would then contact the applicant, explain the circumstances involved and request permission to extend the notification period until some point after the criminal trial has been concluded. The agreement of the applicant to extend this period should either be written or if verbal, thoroughly documented by the Claims Examiner in CMS.

If an applicant disagrees with the Department’s determination of denial upon reconsideration of their claim, they may appeal the Department’s denial (or reduction of benefits due to contributory behavior) directly to the Worker’s Compensation Board. Instructions regarding this appeal are included under “Notice” at the end of the Administrative Order issued by the Department which upholds the initial denial upon reconsideration.

The Department has not set a “time limit” after the issue of the reconsideration order denying the claim during which the applicant may appeal the decision to the Workers’ Compensation Board. The appeal hearing would be presided by an Administrative Law Judge with the Workers’ Compensation Board. The decision of the Worker’s Compensation Board is final and is not subject to further review.

POLICY NUMBER: III.A.3.
Revised 02/09/2018

Approved by: RS1 _____
Date: 02/12/2018

SUBJECT: LOCATION OF CRIME

PURPOSE: To establish eligibility for Oregon Crime Victims' Compensation based on the actual location of the compensable crime. This is one of the primary statutory eligibility requirements for compensation.

AUTHORITY: ORS 147.005(15) (A) through (F).

DEFINITIONS: *State:* Includes the fifty U.S. states, the District of Columbia, the Commonwealth of Puerto Rico and all other territories of the United States of America.

International Terrorism: Includes any attempt by a person or persons which appears to be intended to coerce a civilian population or government policy at a location outside the United States.

POLICY: For a victim to be eligible for Crime Victims' Compensation the crime must (under most circumstances) have occurred within the State of Oregon. If an Oregon resident is killed or injured as a result of a compensable crime in another state, the applicant must apply to the compensation program in the state where the crime occurred. Although ORS 147.005 (15) (E) includes an exception for an Oregon resident who is killed or injured in a state that does not have a reciprocal CVC program, this no longer applies as the fifty states, the District of Columbia, Guam and Puerto Rico now have established compensation programs for crime victims.

Non-residents of this state who are injured as a result of a compensable crime that occurred in Oregon are entitled to the same compensation benefits as Oregon residents through the Oregon program. Legal status in the United States is not a consideration for compensation eligibility.

EXCEPTIONS:

1. A person may be eligible for Oregon CVC benefits if that person is killed or injured in another state as a result of a compensable crime (e.g. kidnapping) that originated in Oregon and continued across the state line. If a person had been a victim of a crime that began in another state but concluded in the State of Oregon, that person may still be eligible for Oregon benefits secondary to the state where the crime originated.

2. A person who is the victim of a compensable crime that occurred in multiple states, including Oregon, would be eligible for benefits from the Oregon program as well as from the programs in the other involved states. *The most common example of a crime occurring in multiple states is child sexual abuse, where the offender had sexual contact with the victim in multiple states.*

When claims involving multiple states occur, our program will encourage, but not require, the victim or applicant to file an application with the other state program(s). If the CVC claim in another state is approved, the Oregon program will coordinate benefits and services with that state's program. Considerations for coordination of benefits (e.g. equal, primary, and secondary) include where the victim is currently residing, as well as the severity of the crimes in each state.

The program will provide benefits to residents of Oregon who are victims of international terrorism outside the United States if the country where the terrorism occurred does not have a crime victims' compensation program. An Oregon resident who becomes a victim of international terrorism should additionally file an "ITVERP" (International Terrorism Victim Expense Reimbursement Program) claim with the Office for Victims of Crime of the U.S. Department of Justice. This federal program offers generous reimbursement for medical and mental health care costs; property loss, repair and replacement; funeral and burial costs, and; other miscellaneous expenses. Miscellaneous expenses include temporary lodging, local transportation, and emergency travel for family members to country involved. Wage Loss is never reimbursable through this program.

POLICY NUMBER: III.A.4.
Revised: 02/12/2018

Approved by: RS1_____
Date: 02/12/2018

SUBJECT: COMPENSABLE CRIMES – ORS 147.005 / EXCEPTIONS

PURPOSE: To establish a policy and guidelines for determination of compensable crimes as defined by statute.

AUTHORITY: ORS 147.005 (4) (9) (15 –A) (A-F), 147.015 (1)(a) & ORS 163.205 (D)
OAR 137-076-0010

DEFINITIONS: *Compensable Crime:* An intentional, knowing, reckless, or criminally negligent act that results in serious bodily injury or death of another person and which, if committed by a person of full legal capacity, would be punishable as a crime in this state. (In addition, the abuse of (a) corpse in any degree.)

Victim: A person killed or injured in this state as a result of a compensable crime perpetrated or attempted against that person.

Intentionally: (ORS 161.085 (7)): a person acts with a conscious objective to cause the result or to engage in the conduct so described.

Knowingly :(ORS 161.085 (8)): a person acts with an awareness that the conduct of the person is of a nature so described or that a circumstance so described exists.

Recklessly: (ORS 161.085 (9)): a person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or the circumstance exists. The risk must be of such nature and degree that disregard thereof constitutes a gross deviation from the standard of care that a reasonable person would observe in the (same) situation.

Criminal Negligence: (ORS 161.085 (10)): “Criminal negligence” or “criminally negligent” when used with respect to a result or to a circumstance described by a statute defining an offense, means that a person fails to be aware of a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that the failure to be aware of it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

Injury: Actual bodily harm and, with respect to a victim, includes pregnancy and mental or nervous shock. Bodily harm includes any pain or injury that interferes with the health or comfort of the victim, and which is more than brief or trivial.

Mental or Nervous Shock: The psychiatric injury or other mental harm directly incurred in response to traumatic event experienced as a result of a

person crime as described in ORS chapter 163 or ORS 164.395 through ORS 164.415. It includes persons who were at risk of personal injury or threat to life but may only have sustained psychiatric injury; but could include someone who sustained psychiatric injury as a result of witnessing injury to another. Mental shock is also referred to as “Acute Stress Disorder or Reaction which is a variation of Post-Traumatic Stress Disorder (PTSD) and is the mind’s and body’s response to feelings (whether real or perceived) of intense helplessness and vulnerability in a “dangerous world.”

POLICY:

When an application for compensation is investigated and evaluated for statutory eligibility requirements by a DOJ-Claims Examiner, the facts of the case must substantiate that a compensable crime as defined under ORS 147.005 (4) occurred against a victim as defined under ORS 147.005 (15) (a) (A) thru (F).

When evaluating a case for the compensable crime requirement, the alleged conduct of the offender if true, must constitute a crime against a person as defined in ORS Chapter 163 and ORS 164.395 through 415. Specifically, the conduct of the offender must constitute a crime against the victim, not their property.

It is not required that a person be charged with a crime or that a conviction rendered against the offender in order to have a compensable crime. Oftentimes, offenders are never located, but the medical and/or physical evidence supports the belief that a compensable crime did occur. Although a conviction proves that a crime was committed, the crime committed against the victim may not in every case be compensable. When considering whether a compensable crime has occurred, a Claims Examiner must consider whether the actions of the offender were intentional, knowing, reckless or criminally negligent and whether those actions resulted in serious bodily injury (including nervous or mental shock) or death to the victim. Assuming that the crime was perpetrated against the victim by an identified person of full legal capacity; that offender should potentially be facing prosecution and if found guilty subject to legal punishment including incarceration, fines, assessments and restitution.

Injuries sustained by a person as a result of another person’s careless actions such as a Class A or B traffic violation (infraction) would likely not be compensable through CVCP. Carelessness involves the failure of a person to use “reasonable care “which is the degree of attentiveness, caution and prudence that a reasonable person in the circumstance would use. Recklessness as defined above involves both awareness of the potential risks as well as the gross deviation from the “standard of care” that a reasonable person would observe in the situation. There is a significant difference in the potential penalties faced by a person convicted of careless driving and reckless driving.

If there is property damage or destruction involved in the criminal conduct, but no actions that constitute a person crime, then there would be no

“victim of a compensable crime” as defined by statute. The claimant’s application would therefore be denied.

If there is a victim and a compensable crime, the injury to the victim need not be a physical injury. (See definition of Mental/Nervous Shock as well as CVCP policy on Mental/Nervous Shock.)

EXAMPLES:

Property Crimes:

Under most circumstances, burglary is not a compensable crime because the crime was not committed directly against the victim and the victim was not home at the time when crime occurred.

If the victim had been at home when the burglary occurred and the offender was not charged with a person crime such as an assault, the victim may still be eligible for benefits if he/she can meet the requirements of injury through mental or nervous shock. (See definition above as well as CVCP policy on Mental/Nervous Shock.)

While acknowledging that a person could suffer adverse consequences as a result of “identity theft,” the crime is not compensable as the initial crime was not directed at their person. The same would hold true in the case of theft of a person’s credit card, their mail or any other personal property.

Elder Abuse/Financial Fraud:

An elderly or otherwise dependent person would be eligible for counseling benefits only when evidence shows that their caregiver has been hiding or misappropriating the dependent’s person’s money or other assets. The offender would then be charged with Criminal Mistreatment in the first degree, a Class C felony under ORS 163.205(D). The program cannot reimburse such a victim for the value of the property or for pain and suffering.

Hit and Run Collisions:

Although the act of leaving the scene of a motor–vehicle accident when there is resulting personal injury or property damage is a felony crime in this state (Oregon Vehicle Code 811.700 & 811.705); “Failure to Perform Duties of Driver” is not the crime or offender’s action that the injury can be attributed to. A compensable crime requires that the actions of the suspect leading up to the collision must be reckless, knowing, intentional or criminally negligent. If the at-fault driver is charged with (vehicular) assault or reckless driving, we would very likely have a compensable claim. Unfortunately, drivers involved in motor vehicle collisions leave the scene without stopping for many different reasons. While such a driver may have been intoxicated, they may also have been unlicensed and uninsured, or had been using the vehicle without the knowledge or permission of the actual owner of the vehicle. It is even possible that all these conditions were applicable.

During the police investigation of a motor vehicle crash, witness interviews are very important. Some of these witnesses may have been on the road themselves in other motor vehicles or they may have been pedestrian bystanders. The witnesses' statements to police may indicate that the "at-fault" driver had been operating the vehicle in a reckless or erratic manner just prior to when the collision occurred. Often the actions or intent of the suspect cannot be determined in these types of cases, most notably when the crash was not witnessed or the suspect has not been identified. If physical and /or circumstantial evidence is available providing proof of a compensable crime (traffic Reconstructionist report concludes excessive speed on the part of the driver), the application may be approvable. Without such evidence, we may not be able to conclude that the claimant had been injured as the result of a compensable crime.

Accidental Injury (Hunting, Auto Accidents):

For a claim to be compensable in cases involving hunting accidents there must be evidence to show that the acts of the suspect causing the injuries to the victim were reckless or criminally negligent. Often during hunting related injuries, the person responsible is charged with "negligently wounding another." "Negligent wounding another" is a class B misdemeanor (ORS 166.180) and implies that the act was unintentional and the person charged only failed to use "ordinary care" under the circumstances. Conversely, "Criminal negligence (ORS 161.085) requires that the act involved a "gross deviation" from the standard of care. Reckless Use of a Firearm constitutes a compensable crime.

Animal (dog) Bites:

Regulations pertaining to dogs and other animals are in most cases contained within municipal or county ordinances. However, ORS Chapter 609 deals with issues involving persons keeping dogs identified as either a public nuisance or "potentially dangerous" that may have previously without provocation inflicted injury or killed a person. Owners of such dogs must agree to reasonable restrictions in the interest of public safety.

CVCP receives some claims annually from persons injured as a result of animal bites. A common scenario involves a person (often a child) coming in contact with a dog who may be unrestrained and is subsequently attacked, resulting in serious bodily injuries. Even though the owners are often times sighted for violations regarding keeping their dog secured, these claims are not compensable as they are not "committed by a person" as required under the compensable crime definition.

Exceptions where dog bite injuries would likely constitute a compensable crime:

1. If the owner of a dog purposely causes the dog to attack another person, the owner could then be charged with a crime such as assault against the victim and the incident would then be viewed as a compensable crime.

2. The owner uses a dog during the perpetration of a crime for the purpose of threatening or intimidating other persons. The owner of such a dog is charged with menacing.
3. If through criminal negligence, the owner of the (potentially dangerous) dog causing the bite to the victim is subsequently found to have been guilty of “maintaining a dangerous dog” (ORS 609.098(1)(2)(3), that person has committed a Class C misdemeanor.

Non Compensable crimes involving sexualized behaviors.

Two young children (e.g. 6 & 8 years-of-age) are discovered by an adult engaging in sexualized touching. Unless there is evidence of “forcible compulsion” (physical force, threats or other coercive behaviors expressed or implied placing the more submissive child in fear) by the dominant child, we would not likely have a compensable crime.

Unless there is evidence of forcible compulsion or coercion, the same result (no compensable crime) may apply to two teenagers (both at least 15 years of age and less than 3 years apart) engaging in behaviors of a sexual nature.

SUBJECT: MENTAL OR NERVOUS SHOCK

PURPOSE: This policy is to clarify the definition and procedure for assessing “mental or nervous shock” as a compensable alternative or secondary loss to serious bodily injury of the involved victim (s). This is one aspect of eligibility that must be assessed, as dictated by ORS Chapter 147.

AUTHORITY: ORS 147.005 (9), 147.015

DEFINITIONS: *Mental or Nervous Shock:* The psychiatric injury or other mental harm directly incurred in response to a traumatic event experienced as a result of a person crime as described in ORS chapter 163 or ORS 164.395 through 415It includes persons who were at risk of personal injury or threat to life but may solely had sustained a psychiatric injury; but could include someone who sustained psychiatric injury as a result of witnessing injury to another person. Mental shock is also referred to as “Acute Stress Disorder which is a variation of Post-Traumatic Stress Disorder (PTSD) and is the mind’s and body’s response to feelings (whether real or perceived) of intense helplessness and vulnerability in a “dangerous world.” By statute, this is a compensable type of injury.

Post-Traumatic Stress Disorder (PTSD): is a debilitating psychological condition triggered by a major traumatic event such as a sexual assault or other violent crime. It is marked by upsetting memories or thoughts of the ordeal, “blunting” of emotions, increased arousal and sometimes severe personality changes.

Some common symptoms of PTSD include:

1. Sleeping Disorders & continued nightmares;
2. Constant flashbacks & intrusive thoughts;
3. Extreme tension and anxiety;
4. Irritability & outbursts of anger;
5. Non responsiveness or lack of involvement with external world (depression);
6. Prolonged feelings of detachment or estrangement of others;
7. Memory trouble.

Substantial: Consisting of or relating to substance; not imaginary or illusory; real, true.

Contemporaneous: Existing, occurring or originally at the same time as the criminal accident or act.

POLICY: The ORS definition of “injury” includes “mental and nervous shock,” ORS 147.005 (9). Claims Examiners must therefore consider two classifications of personal injury when determining whether or not a

compensable crime occurred. Bodily injury includes actual physical injury to the body of the victim such as a fractured jaw, stab wound or facial laceration. These types of injuries are very tangible and under most circumstances not difficult to evaluate. However, a person does not necessarily have to incur a physical injury to be considered as a victim of a compensable crime. A victim of crime can also suffer “mental or nervous shock”. Unlike physical injuries, mental or nervous shock is far more difficult to measure or evaluate as it cannot be viewed on a CT Scan or other diagnostic procedure. We must instead rely on the victim’s words and thoughts.

When there is no physical injury, then the mental or nervous shock must be the result of a criminal act that had posed a threat of personal injury or death. The threat experienced by the victim must have been real and present as opposed to imaginary or illusory. A case by case analysis should be undertaken by the Claims Examiner for the purpose of ascertaining the impact of the experience upon the victim.

Are witnesses to a crime eligible for Crime Victims’ Compensation? According to ORS 147.005 (15) (B) a person who is killed or injured while attempting to assist a person against whom a compensable crime is being perpetrated or attempted would be eligible for compensation as a direct victim had their attempt of assistance been expected of a reasonable person under the circumstances.

The factors to consider in determining eligibility in these types of situations include:

1. (the) Person’s proximity to the location of the crime;
2. Relationship between (the) person and the actual victim;
3. Whether the threat was directed towards the individual;
4. Shock directly attributable to a sensory experience; and
5. Contemporaneous observance of the incident.

In determining whether a threat of personal injury or death which may cause mental or nervous shock, exists, the Claims Examiner shall take into consideration the following factors. All five of the factors do not have to be present. The reviewer, after gathering the relevant facts, should evaluate each factor and make the determination based on all the factors. It may be necessary for the Claims Examiner to staff such a claim when there are remaining questions. It should be noted that witnesses to a crime involving violence may very likely be called to testify at grand jury and ultimately at trial. Not unlike a direct victim, the legal process may impede a person’s recovery from a traumatic event.

1. Proximity – The Claims Examiner shall review the incident report for information documenting a person’s proximity to the scene of the crime. It may be necessary for the reviewing Claims Examiner to obtain this information from the police investigator or the District Attorney’s Office. Proximity is an essential criterion for qualifying a victim under the mental and nervous

shock definition. The presumption is that the closer to the actual crime scene, the more likely a person can be expected to suffer mental or nervous shock. If a person is standing next to a victim who is shot at from a passing car, that person is more likely to have experienced vulnerability than a person observing the same incident from further away.

2. Relationship to the assaulted victim – If the person claiming “mental or nervous shock” had an intimate relationship with the assaulted victim, then this must be considered in the assessment of injury. The presumption is that the closer the relationship to the assaulted victim the more likely the person may suffer mental harm. For example, it is more likely that a person that witnesses the assault of a sibling or parent will suffer mental or nervous shock than if the assaulted person had been a complete stranger.

3. Threat – The alleged criminal conduct must be directed towards the individual who is claiming mental or nervous shock. However, in hostage situations or cases when a suspect is randomly assaulting or shooting people in a public place, there is a presumption that the conduct was directed towards all individuals within close proximity of the incident. The more serious or extraordinary the type and nature of the crime, the more likely that a person will suffer mental harm or nervous shock. The presumption is that a person is more likely to suffer “mental or nervous shock” if that person is the target of the crime versus the threat of harm to another person.

4. Shock directly attributable to a sensory experience – This criterion shall be assessed based upon:

- a. The report of the victim’s mental health provider;
- b. The context of the criminal conduct, including:

1. The nature of the crime;
2. The personal significance of the crime to

the claimant.

3. The age of the victim, physical health and any other factor reducing the victim’s ability to cope adequately with the criminal conduct.

5. Contemporaneous Observation- Means that the person (bystander) claiming mental/nervous shock had actually witnessed the occurrence of the crime including the impact upon the victim. Was the bystander within the “zone of danger? The closer the person’s observations in relation to the (real-time) perpetration of the crime, the more likely the potential of the victim fearing injury to themselves and therefore suffering mental mental/nervous shock.

POLICY NUMBER: III.B.1.a.
Revision 03/05/2018

Approved by: RS1
Date: 03/05/2018

SUBJECT: COLLECTION OF PRE-DETERMINATION INFORMATION
PURPOSE: To identify the essential information needed to process an application.

AUTHORITY: ORS 147.005, ORS 147.015, ORS 147.025, , OAR 137-076-0010

POLICY: In order to assess an applicant's initial eligibility, certain documents must be reviewed in order to determine whether the applicant meets the following statutory eligibility criteria:

- Applicant is the victim of a compensable crime;
- The crime occurred in Oregon;
- Reported within 72-hours, or showed good cause for not reporting, or was the victim of DV or sexual assault
- Applied to CVC within one year of the date of the crime or showed good cause;
- Was not engaged in criminal activity at the time of the crime;
- Cooperated with law enforcement or had good cause for not cooperating;
- Was not incarcerated at the time of application.

The benefit of the doubt shall be given to the victim in each case. Conflicting information in a police or medical report, including statements by independent witnesses to the incident, may be used to evaluate the credibility of the information in the application. To Determine whether the eligibility requirements are met, a Claims Examiner should use the following sources of information:

- Law enforcement reports
- Medical reports associated with the incident
- Statements from the victim or witnesses
- Criminal Charging Instrument
- Protective order

Additional information that may be helpful:

- Police 911 Computer-Aided Dispatch Reports (CAD).
- Statements made by Deputy District Attorney or Victim Assistance Advocate.
- Others as deemed necessary (consultation with Lead or Manager advised).

Absent extraordinary circumstances, a written statement from an alleged victim, in and of itself, will not constitute sufficient documentation that eligibility criteria have been met.

When information is requested from the victim (with a VRL), the victim has 30 days to respond to an initial request. Failure to respond may, but does not require, a denial of the claim application. Any request for a victim's written statement that is essential for determining eligibility must be sent by certified mail.

POLICY NUMBER: III.B.1.b.
Revised: 03/05/2018

Approved by: RS1
Date: 03/05/2018

SUBJECT: STANDARD OF PROOF

PURPOSE: To establish a policy for evaluating evidence and determining if a compensable crime was committed.

AUTHORITY: ORS 147.015

DEFINITIONS: *Reasonable Cause to Believe:* Sufficient facts that would lead a reasonable person to conclude that a crime had been committed.

POLICY: In order to approve a claim there must be “reasonable cause to believe” that the applicant was a victim of a compensable crime. The Department does not conduct an independent investigation into the facts of the case. Upon receiving an application for Compensation, the Department will request law enforcement investigatory reports and relevant medical records. The Department will review available records, including charging decisions by the District Attorneys’ offices, in order to make a determination as to whether a criminal act was committed. Ultimately, there must be reasonable cause to believe that the suspect’s actions meet the definition of a crime listed in the Oregon Criminal Code (Chapter 163).

The fact that a District Attorney’s office declines to charge the alleged perpetrator, or later dismisses a case, is not conclusive evidence that a crime did not occur. When the Department has information that a case was submitted to the District Attorney’s office and subsequently not prosecuted, the Claims Examiner shall contact the District Attorney’s office to inquire about the case and make necessary notes in the Claims Management System.

Effect of Conviction: It is not necessary that the offender be prosecuted or convicted to show that a crime occurred. However, a conviction is conclusive evidence (‘beyond a reasonable doubt’) that a crime was committed. (ORS 147.305)

Victim Statement: In cases of an incomplete police report or conflicting statements between witnesses, the Department may request a “victim statement.” The victim statement request allows the victim the opportunity to provide the Department with additional facts or clarification to assist the Department in advancing the claim. A victim statement should not be sent in cases involving sexual assault or domestic violence.

The Claims Examiner must keep in mind that a “Victim Statement” is routinely sent out via certified mail and by regular mail or email and requires the claimant to return it within 30 days of the mailing. Wording contained within the opening paragraphs of the Victim Statement”

indicates that failure to return the “Victim Statement” within the 30 days could result in the denial of their claim.

EXAMPLES:

Child Abuse: In order to establish reasonable cause to believe that a crime has occurred an allegation of child abuse should be substantiated by one of the following:

- Law Enforcement Report
- Forensic Medical Assessment
- Department of Human Resources (DHS) Child Protective Services (CPS) Report

Domestic Violence: The Department should be able to locate at least one of the following documents in order to consider the application:

- Police Report
- Emergency Room/Hospital Record or physician’s report
- Restraining Order in effect for at least 45 days
- Court Record
- Shelter Log

(For applications filed on or after January 1, 2018)

DV/SA/Stalking claims:

If a claim involves DV, sexual assault or stalking, that is prima facie evidence for good cause for failing to report to L.E. w/in 72 hours and failure to cooperate with L.E.

If an applicant fails to report to L.E. completely, a claim may be accepted if the victim obtained any of the following:

- a) A temporary or permanent stalking protective order
- b) A sexual abuse restraining order
- c) An abuse prevention order
- d) A medical assessment for sexual assault

If a victim did not report to L.E. and did not obtain one of the above, the applicant may still be eligible for the new limited DV/SA counseling award.

Child Witness to Domestic Violence: If a police report notes that a child was present during an incident of domestic violence or if a child discloses having witnessed domestic violence, that child may be eligible for counseling. In order to be eligible, the child must be three or older at the time of the incident.

POLICY NUMBER: III.B.2.a.
Draft Revised Dated: 03/05/2018

Approved by: ___RS1___
Date: 03/05/2018

SUBJECT: CONTRIBUTORY MISCONDUCT

PURPOSE: To establish CVSSD's policy for fairly and consistently assessing reductions in benefits due to a claimant's contributory misconduct.

AUTHORITY: ORS 147.125(1)(c); OAR 137-076-0017

DEFINITIONS: *Contributory Misconduct:* Voluntary conduct/act on the part of the victim that while not unlawful, is so egregious that it constitutes a reckless disregard for known risks that would not be acceptable to a reasonable person, and that conduct/act directly t contributes to the injuries sustained by the victim.

POLICY: Department may reduce the award for compensation in rare cases where it is determined that the victim's own actions directly contributed to their injury or death. As a matter of policy, the Department shall only apply reductions for contributory conduct when it is determined that the victim's behavior was so egregious that it would amount to no less than 25 percent contribution.

It should be noted that unlike a claim denial for wrongful act, any claim reduction or denial of benefits due to contributory misconduct shall include the Department's acknowledgement of that claimant's victimization and entitlement to benefits. Such reductions are actually assessed after the claimant is determined to have been the victim of a compensable crime and their claim has been approved.

All cases involving any potential reduction for contributory misconduct must be staffed by the assigned Claims Examiner.

Evaluation

In order to assess contribution on the part of the victim, the following must be considered:

1. Did the victim's misconduct while not unlawful, demonstrate a reckless disregard for known risks that would not be acceptable to a reasonable person;
2. Is the evidence of the misconduct corroborated and/or clearly documented by official documents or communications from law enforcement, prosecutors or medical professionals;

3. Were the victim's actions/misconduct part of a continuous flow of events leading to the injury, and;
4. Was the injury sustained by the victim a foreseeable result of the misconduct?

An exception to the criteria requiring contributory conduct to exist in a continuous, unbroken flow of events may include retaliatory gang-related crime where it can be established that the victim participated in a recent violent act toward the suspect.

Contributory Misconduct resulting in Death:

A deceased victim will not have an opportunity to present their explanation of events in cases where contributory misconduct is determined. It is not the intent of the program to disallow or reduce benefits to survivors of deceased victims whose application meets all other eligibility requirements, unless the evidence corroborates that the death of the victim was due in large part to the victim's contribution or wrongful act.

Important change: A passenger in a vehicle driven by a person under the influence who is injured or killed in a DUII crash will NOT be assessed contribution for riding in the vehicle with an impaired individual.

EXCEPTIONS:

Domestic violence, sexual assault, self-defense or defense of others, minors

Contributory misconduct shall not be considered in any sexual assault case. Contributory misconduct will not result in a reduction if the behavior was intended as a defensive action or in the case of a domestic assault.

No contribution will be assessed to a victim under age 16 as a child cannot be held liable for contributing to events leading to a crime against himself or herself. However, contribution may be considered in cases of minors 17 or older. Furthermore, in these cases, the same standards that apply in evaluating adult contribution may be adjusted.

POLICY NUMBER: III.B.2.c
Revised: 03/02/2018

Approved By: RS1
Date: 03/02/2018

SUBJECT: Cooperation with Law Enforcement

PURPOSE: To establish policy and set guidelines for establishing good cause for failure to cooperate with law enforcement.

AUTHORITY: ORS 147.015(1) (c) (2) (a) (b) (A) (B) (C) (D) OAR 137-0076-0010 (5) (12)

DEFINITIONS: Law Enforcement: A law Enforcement official includes a sheriff, constable, marshal, municipal police officer or member of the Oregon State Police and such other persons as may be designated by law as a peace officer. Law Enforcement official shall also include staff members of county District Attorney's Offices and Oregon Department of Justice including the Attorney General.

POLICY: When determining whether a crime victim has cooperated with the reasonable requests of the law enforcement agency investigating the crime, the Claims Examiner may consider the following factors:

- Whether the victim provided a complete description of the circumstances that led to the crime.
- Whether the victim participated in the follow-up investigative activities.
- Whether any act or omission by the victim prevented law enforcement from timely investigating the crime or caused the agency to abandon its investigation. Or, whether the act or omission prevented the prosecution of the crime or contributed to a decision by the prosecution to drop the case.

What constitutes acceptable cooperation will be determined on a case-by-case basis taking into consideration the victim's age, physical condition and psychological state.

EXCEPTIONS: Good Cause
The Department may waive the requirement that the victim cooperate with law enforcement for "good cause." There are some circumstances where failure to cooperate on the part of the victim or survivor shall be waived. They include cases involving sexual assault, domestic violence, human trafficking, child victims and other crimes where good cause can be shown.

Sexual Assault

There are many reasons survivors of sexual assault may appear uncooperative to law enforcement: historic failure of the criminal justice system to prosecute perpetrators, systemic victim blaming, trauma and fear are a few of the often cited and well recognized reasons why sexual assault survivors do not cooperate. The Department recognizes that the priority must be on providing access to services so survivors can recover and move forward in the manner they feel most comfortable.

Domestic Violence

Victims of domestic violence may have many reasons for not cooperating with the investigation: fears of physical violence/retaliation, concern for the safety of their children, isolation from family and friends, etc. The Department recognizes that the best way to assist victims of domestic abuse is to support and encourage their access to services.

Child Victims

In cases involving child victims the child's cooperation should not be taken into consideration. A child is not accountable for his/her parent's actions or inactions.

Other "good cause"

Other compelling reasons for a victim's failure to cooperate may include health or safety concerns. Additional examples include:

- The victim is emotionally or physically unable to cooperate because of the severity of trauma resulting from the crime.
- The victim has a genuine fear of retaliation from the offender.

SUBJECT: FRAUDULENT INFORMATION AND/OR COLLUSION

PURPOSE: To set forth a procedure for determining whether an applicant has intentionally provided the department with fraudulent information and/or whether an applicant has colluded with their assailant to provide false or fraudulent information to the Department for the purpose of obtaining crime victims' compensation.

AUTHORITY: ORS 147.015(1)(d): *The application for compensation is not the result of collusion between the applicant and the assailant of the victim.*
OAR 137-076-0055: *Any applicant who misrepresents information in an application for crime victims' compensation or in any other materials requested by the Department, forfeits any eligibility for compensation and the applicant's application for compensation shall be denied with prejudice.*

DEFINITIONS: Collusion: A secret agreement or cooperation between two or more persons for a fraudulent, illegal or deceitful purpose such as personal gain

POLICY: If, during the Claims Examiner's review of the applicant's claim for compensation, it can definitively be determined that the applicant did one of the following:

1. Intentionally provided the Department with false) information;
2. Deliberately withheld information essential to the eligibility determination, or;
3. Colluded with his/her assailant to provide the Department with fraudulent information for the purpose of obtaining crime victims' compensation.

Then the Department shall issue an Administrative Order denying compensation to the applicant with prejudice.

The Claims Examiner shall thoroughly review all claim- related documentation necessary to make a claim eligibility determination. If, during a review of the documentation, a Claims Examiner becomes concerned that an applicant may have submitted a fraudulent claim or that the crime alleged may have involved collusion it would then be necessary for the Claims Examiner to investigate the claim further for the purpose of either ruling out this possibility or confirming that collusion or misrepresentation on the part of the applicant may be involved. Consequently, it will then be necessary for the Claims Examiner to obtain additional documentation or information to be reviewed and compared with other documentation to either corroborate or discredit the information

initially provided by the applicant to the Department for the purpose of obtaining compensation as a crime victim.

Possible sources of information during the Claims Examiner's claim eligibility review:

1. The applicant's description of the crime as included under Injuries and Expenses on their application for compensation.
2. The applicant's submitted "Victim Statement" if requested by the Department.
3. Official Law Enforcement and DHS reports;
4. Statements made by independent witnesses to the crime
5. The Claims Examiner's detailed notes pertaining to telephone conversations or communication by e-mail with Deputy District Attorneys, Law Enforcement officials, Victim Advocates, DHS Caseworkers etc.
6. Other forensic reports and documentation.
7. Post Mortem Reports prepared by the State Medical Examiner's Office.
8. Hospital Emergency Department chart notes containing medical history (pre-existing conditions, prescription medications) mechanism of present injuries, crime description, Blood Alcohol Content (BAC), presence of drugs, current diagnosis, treatment rendered, discharge notes etc.
9. State Crime Lab reports including toxicology reports.
10. ECourts-Verification (or telephone contact) verifying that criminal charges have been filed against the alleged offender. Were the charges consistent with crime alleged? What if the criminal charges don't substantiate the crime alleged?

The Claims Examiner shall thoroughly examine all of the evidence pertinent to the crime for which the applicant is applying. Any inconsistencies will be summarized and presented during a Claim Staffing. If after being presented with the relevant facts of the case during a "Claim Staffing," it is determined that there is substantive evidence supporting that the applicant submitted false information to the Department, or that the applicant colluded in any way with the suspect to falsify information about the crime alleged; the Department will subsequently issue an order denying the applicant's claim with prejudice.

Approved Claims

What if an approved claimant, fraudulently misrepresents their situation when seeking specific benefits?

Medical & Counseling benefits: The Claims Examiner shall routinely require chart or session notes by medical providers and mental health therapists to verify that the treatment for which payment is requested is actually crime-related. At times, payment will be denied as the treatment is determined by the Claims Examiner to be related to a pre-existing or otherwise unrelated condition. In most cases it will be difficult to

determine whether a particular claimant had been deliberately deceptive when requesting payment of a medical expense. However if the Claims Examiner finds that a claimant had materially misrepresented their injuries to a particular provider for the purpose of obtaining treatment payable by the program, the specifics of the case should be brought to the attention of the Compensation Manager.

Loss of Earnings: Unlike other benefits, Loss of Earnings benefits involve direct reimbursement to the claimant. Therefore fraudulent misrepresentation of the facts or the potential for collusion exists when this award is involved. The Claims Examiner must be diligent when reviewing all required documentation for loss of earnings. Whenever indicated, "Employer's Verifications" should be matched with reported quarterly earnings through the Oregon Department of Employment. Any noted inconsistencies should be investigated further. Self-Employed individuals such as business owners and independent contractors must provide the Department with their complete Federal Tax Returns (Form 1040, (applicable) Schedules such as A, B, C, D, E, SE etc.) for the year preceding the compensable crime date. Under certain conditions the Department may also accept a federal tax return for the same year as that of the compensable crime. When reviewing a tax return for loss of earnings consideration, it is crucially important that the Claims Examiner review the entire tax return and confirm that amounts appearing on the supplemental forms are consistent with those appearing on the actual Form "1040." Self-prepared tax returns require additional scrutiny for obvious reasons. Any concerns of suspected alteration, inauthenticity or misrepresentation of income should be addressed with the Compensation Manager.

SUBJECT: AWARD LIMITS

PURPOSE: To establish a uniform policy regarding award limits on individual crime victim compensation claims.

AUTHORITY: ORS 147.035,

POLICY: Compensation awards are limited by statute on each individual claim and have changed somewhat dramatically since the inception of the program in 1978. Very few of the changes have been retroactive. Therefore, it is up to the Examiner to determine what type of an award and the limits of that award each individual crime victim may be granted. The following are the determining factors that are most commonly used to make such determinations:

- Date of the criminal injury;
- Date CVCP received the application;
- Date of CVCP's determination order; and
- Date treatment began.

Rehabilitation Award:

If the rehabilitation award is exhausted, the examiner will be notified before any further bills are paid. The examiner will staff with the lead examiner to see if it is appropriate to continue paying rehabilitation under the medical award. To continue paying under the medical award, the treatment must be clearly related to a traumatic injury.

The following is a chronological breakdown of CVCP award limits and which of the above determining factors are used for that specific award.

Effective 1-1-78 (program inception) to 9-28-87

Determinant is the date of the criminal incident. Crimes that occurred prior to 1/1/1978 would not be eligible for any awards.

- Medical Award Limit = \$10,000 (Includes up to \$1,000 for counseling expenses.)
- Loss of Earnings/Loss of Support Award Limit = \$10,000 (Up to a maximum of \$200 per week.)
- Funeral Award Limit = \$1,000
- Rehabilitation Award Limit = \$3,000

Effective 9-28-87

Determinant is the date of the criminal incident.

- Medical/Counseling Award Limit = \$10,000 (Combined award.)
-
- Funeral Award limit \$2,000

Effective 10-4-89

Determinant is the date of criminal incident.

- Survivor Counseling Award Limit = \$10,000 (New award created.)

Effective 08-15-91

- 3 year claim limit

Effective 7-07-93

Determinant is the date of criminal incident.

- Abuse of Corpse Counseling Award Limit = \$10,000

Effective 10-4-97

Determinant is the date of criminal injury.

- Medical/Counseling Award Limit increased to \$20,000
- Rehabilitation Award Limit increased to \$4,000
- Loss of Earnings/Loss of Support increased to \$20,000 (Up to \$400 per week.)
- Funeral Award increased to \$3,500
- Survivor Grief Counseling Award Limit increased to \$20,000
- Child Witness to Domestic Violence Counseling Award = \$10,000 (New award created.)
- Emotional Distress Counseling for Abuse of Corpse - \$5,000
- Abuse of Corpse Funeral Expense Award Limit = \$3,500
- Transportation Award Limit = \$3,000 (New award created.)

Effective 08-15-97

- **Child Abuse Medical Assessments**

Effective 01-01-04

- Counseling for relatives of victims of International Terrorism \$1,000
- Crisis counseling for the first discovery of a corpse (if person had been a friend or acquaintance), up to \$500
- Funeral award limit increased to \$5,000

Effective 03/01/2004

- **SAVE fund established**

Effective 01-01-2010

- In cases of homicide, a claim for reasonable counseling expenses for surviving family members may continue until five (5) years have elapsed from the date of the determination order.
- If a case against the assailant of the victim is under direct or collateral review or if the assailant of the victim has a parole hearing scheduled before the State Board of Parole or the Psychiatric Security Review Board and Post-Prison Supervision compensable losses may include:
 - Counseling benefits up to \$5,000
 - Transportation and lodging expenses up to \$3,000
- (these claims expire six months from the date of the hearing or release of the assailant)Maximum award in aggregate for claim is \$47,000.00

Effective 03-25-16

- Counseling for relatives of victims of International Terrorism-\$1,000

Effective 06-01-2017

- SA/DV Counseling award created \$5,000

Effective 01-01-2018

DV/SA/Stalking claims

- If a claim involves DV, sexual assault or stalking, that is prima facie evidence for good cause for failing to report to L.E. w/in 72 hours and failure to cooperate with L.E.
- If an applicant fails to report to L.E. completely, a claim may be accepted if the victim obtained any of the following:
 - a) A temporary or permanent stalking protective order
 - b) A sexual abuse restraining order
 - c) An abuse prevention order
 - d) A medical assessment for sexual assault
- If a victim did not report to L.E. and did not obtain one of the above, the applicant may still be eligible for the new limited DV/SA counseling award.
- Loss of earnings is increased to \$600/week
- Each survivor of a deceased victim is eligible for up to \$1,500 for prescription medications prescribed in conjunction with counseling

SUBJECT: MEDICAL - ELIGIBLE PROVIDERS

PURPOSE: To establish the eligibility of medical providers and to define the level and frequency of treatment that may be compensable under the Crime Victims' Compensation Program (CVCP).

AUTHORITY: ORS 147.035, OAR 137-076-0010 (15) OAR 137-076-0020

DEFINITIONS: *Medical Practitioner:* A medical provider who is licensed under ORS Chapters 677 through 679 and ORS 685 and who is able to prescribe controlled substances in the course of professional practice.
Necessary Service: Those services necessary for the treatment of physical and /or psychological injury suffered by the victim as a direct result of a crime.

Reasonable Medical Expense: For purposes of ORS 147.035, reasonable medical expenses shall be limited to ambulance expenses and expenses for necessary services provided by medical practitioners licensed under ORS Chapters 677 through 679 and ORS Chapter 685. Medical treatment provided by any other medical provider may be reimbursable if at the time treatment began it was approved by and provided under the supervision of a medical practitioner licensed under ORS Chapters 677 through 679 and ORS Chapter 685. Medical treatment provided by any other medical provider without a referral from a medical practitioner, licensed under ORS Chapters 677 through 679 and ORS Chapter 685, may be compensated so long as the medical provider is licensed under the provisions governing that provider's profession. (OAR 137-076-0020(3))

POLICY: III.C.2.a.b. Licensure and Prescriptions

The department shall compensate reasonable and necessary medical services provided by a medical practitioner licensed in the State of Oregon under ORS Chapter 677 and 679, and who is able to administer, dispense and prescribe controlled substances (medical prescriptions) during the course of their medical practice. Medical practitioners falling into this category would include:

- ORS Chapter 677 (MD, DO, PA, DPM)
- ORS Chapter 678 (Nurse Practitioner)
- ORS Chapter 679 (DMD, DDS)
- ORS Chapter 685 (Naturopathic Doctor)

The above medical practitioners are exclusive in their ability to write medical referrals for additional medical treatment (i.e., home health care, prosthetic devices), prescribe controlled substances and document periods of medical disability (work release), and must be licensed under ORS Chapter 677 through 679 and ORS 685.

III.C.2.c. Referrals

Other medical professionals/practitioners not meeting the dual criteria of being licensed under ORS Chapter 677 through 679 and ORS Chapter 685, and being able to prescribe controlled substances (medical prescriptions) may be compensated up to 5 visits without a referral from a medical practitioner,. Any treatment for chiropractic, acupuncture or massage therapy beyond this time frame will require a referral from the treating medical practitioner. The referral must contain number of sessions allowed. referral is not required for physical therapy, notes from the physical therapist are sufficient. Therapy needs to occur within 6 months of the date of crime. If treatment begins after 6 months, payment consideration must be staffed with a manager.

III.C.2.d. Alternative Treatment

Those medical professionals that do not meet the dual criteria referenced above to be considered a “medical practitioner” by the department include, but are not limited to the following:

- Chiropractors
- Massage Therapists
- Homeopathic Doctors
- Occupational and Physical Therapists
- Acupuncturists
- Optometrists

Traditional, Cultural Healing: Alternative therapies in accordance with cultural and religious practices (i.e., Native American traditional healings) will be reviewed on a case by case basis.

III.C.2.e. Rehabilitation

Physical Rehabilitation or Physical Therapy must be administered by a licensed provider. . These providers, with the exception of a licensed physical therapist, would need a referral from a medical practitioner if treatment extends beyond the 90-day or 5 session limit referenced above.

Vocational Rehabilitation is usually administered with the help of a caseworker from the Oregon Dept. of Vocational Rehabilitation. As a general rule, CVSSD will work with and accept treatment/vocational strategies that the Voc. Rehab. Caseworker creates for the victim. If ever there is any doubt regarding prosthetic devices, special treatments, education and ability to perform work functions, clarification from the victim’s treating medical practitioner can be required on a case by case basis.

SUBJECT: REVIEW OF MEDICAL/REHABILITATION EXPENSES

PURPOSE: To establish a uniform policy in determining whether or not medical/rehabilitation expenses are compensable, reasonable and medically necessary and thus payable through CVCP.

AUTHORITY: ORS 147.025, 147.035, 147.125
OAR 137-076-0020, 137-076-0043
42 USC 10602 SEC.230202 (Payers of last resort)

DEFINITIONS: *Medical Fee Schedule:* The Oregon Workers' Compensation Medical Fee and Relative Value Schedule. This fee schedule is applied to all medical bills submitted to the department in order to calculate the appropriate amount of payment for each service. *Note: The victim/patient may not be charged for the percentile amount reduced by the department.*

Necessary Service: Those services necessary for the treatment of physical injury suffered by the victim as a direct result of the crime.

Reasonable Medical Expenses: Expenses limited to ambulance expenses and expenses for necessary services provided by persons licensed under ORS Chapters 677, 679 and ORS 685. Medical treatment provided by any other medical provider is not reimbursable unless at the time treatment began it was approved by and provided under the supervision of a physician licensed under ORS Chapters 677, 679 and 685, and further that the other medical provider is licensed under the provisions governing that provider's profession.

Reasonable Hospital Expenses: Expenses limited to those necessary services provided by licensed hospitals and by other health care facilities licensed to provide services that may otherwise be supplied by hospitals.

Compensable Rehabilitation Expenses: Expenses for necessary services to provide physical rehabilitation or vocational training.

POLICY: When a crime victims' compensation claim has been accepted and appropriate awards granted, it is the ultimate responsibility of the Claims Examiner to review each medical bill received in order to determine whether or not CVCP will pay. A list of criteria/issues must be addressed during this review and include the following:

- Whether the victim/applicant is eligible for compensation;

- The timely submission of the bill;
- Assessment of whether or not there is a prior resource available to pay that bill; and
- Whether the treatment or expenses billed for are compensable, reasonable and medically necessary.

III.C.3.a. Eligibility of a Person Who is Not the Victim/Applicant or Dependent of Deceased Victim

Pursuant to ORS 147.025, notwithstanding that a person is not the victim, applicant or dependent of a deceased victim, a person still may be eligible for compensation for reasonable medical expenses for the victim if:

- Such expenses were paid or incurred by the person, and
- The person files a claim

III.C.3.b. Timely Submission of Medical Bills

Rules governing the timely submission of bills (OAR 137-076-0043), cover two areas of bill submission:

- Those bills being received when a claim is getting ready to expire/close; and
- Bills received after a year has passed from the date of service that the provider is billing for.

When a claim is getting ready to expire (i.e., three year limit for adults or child victim has turned 21) all bills must be received by the department within 60 days after the date of file closure. If a provider is unable to submit actual billings within the 60-day period, the provider can submit a written notice of intent to submit bills and the reason for late submission. The department will evaluate the reason and determine if good cause exists to grant additional time beyond the 60-day period. In all cases, the actual treatment would have had to occur before the date of file closure.

The one exception to this rule would be in a situation where completion of a specific medical or dental procedure will extend beyond the three-year period. The cost of these procedures and the duration of the treatment must be submitted to the department and be approved prior to the date of file closure. No payment will be made beyond the approved amount.

All billing statements submitted to the department for payment consideration must be submitted in a timely fashion, and no later than one year from the date of service. Failure to submit bills to the department within a year from the date of service may result in denial of payment.

The department will evaluate, on a case-by-case basis and decide whether good cause exists to waive the one-year period.

III.C.3.c. Payer of Last Resort

The U.S. Constitution now, unequivocally designates State victim compensation programs as “payers of last resort,” which means that they are not required to provide benefit payments for expenses that a Federal or federally financed State or local program would otherwise pay. This amendment recognizes that crime victim compensation programs were never intended to serve as a substitute for public or private health plans. The level of funding for compensation programs is limited and meant only to fill gaps resulting from either no health plan coverage or limited coverage for medical needs. U.S.C. 10601(g)(1), Section 230202 states that:

“(e) Notwithstanding any other law, if the compensation paid by an eligible crime victim compensation would cover costs that a Federal program, or a federally financed State or local program would otherwise pay –

- (1) such crime victim compensation program shall not pay that compensation; and*
- (2) the other program shall make its payments without regard to the existence of the crime victims compensation program.”*

Federal Agencies that this law may affect include Medicaid, Veterans Administration and CHAMPUS.

State law also instructs CVCP to analyze prior resources the victim/applicant may be entitled to and make appropriate reductions in compensation benefits. ORS 147.125 (1)(d) states:

“shall deduct the amount of benefits, payments or awards that are payable under the Workers’ Compensation Law, from local governmental, state or federal funds or from any source...”

III.C.3.d. Medical Fee Schedule

Pursuant to ORS 147.035(12)(b) and OAR 137-076-0019, all medical billing statements submitted to CVCP where no prior resource exists, or in which the prior resource applied the bulk of the bill to the deductible and/or did not take any write-offs shall be subject to possible reduction

using the Oregon State Workers' Compensation Medical Fee and Relative Value Schedule. An applicant or victim may not be charged for the percentile amount reduced by the department.

III.C.3.e. Compensable, Reasonable and Medically Necessary

When assessing a medical bill to determine whether or not the treatment or service provided was compensable, reasonable, and medically necessary, the following considerations should always be explored:

- What were the specific injuries that occurred during the crime?
- Does the date of the crime and dates of the medical treatment match up?
- Past medical history, current condition as opposed to pre-existing or unrelated conditions?
- Does the frequency of treatment seem appropriate?
- Are there any other complications or exacerbations?

If any of the above issues are of concern, clarification should be requested from the treating physician or specialist depending on where the issues lie. The department is charged by the legislature to govern this program. The department has a fiduciary and legislative responsibility to pay for just crime-related treatment.

Note: It is imperative that chart notes are requested and reviewed when evaluating all medical bills for payment.

III.C.3.f. Physicians

Medical bills and chart notes from Physicians are fairly straightforward. The biggest problem seen here is regarding follow-up visits in which other diagnosis and treatments may be mixed in with the follow-up for the crime-related treatment. An example might be when a victim is seen for follow-up regarding their crime-related healing broken finger and are also treated during the same Dr.'s visit for a non-related bacterial infection

III.C.3.g. Hospitals

Be advised that during hospital stays you may also receive separate billings for anesthesiology, X-ray, surgeon and lab.

Emergency Room: Again, these bills and chart notes are fairly straight forward and are some of your best sources of crime history, medical

history of victim, presenting complaints and diagnosis and treatment plan. Review notes for relationship to crime.

In-patient care: All crime-related medical treatment is compensable. Review present complaints and reason for stay.

Reconstructive/Cosmetic Surgery: This type of surgery/treatment due to disfigurement from the crime may be compensable. A report from the surgeon giving rationale for the treatment, if not evident from medical records, should be requested and submitted prior to treatment being done or payment.

Pregnancy: Costs for pregnancy resulting from the criminal incident are compensable. Compensable expenses include prenatal care, labor and delivery. Any cost for post-partum care and the general care of the child following birth is prohibited. In most cases, the Oregon Health Plan would assume responsibility for support and medical care if eligible. Note: In some cases, the victim will be sexually active during the same time of the rape or sex abuse. In these instances paternity would need to be established between the offender for these pregnancy costs to be compensable, (i.e., blood testing, calendar of sexual and non-sexual dates).

Termination of Pregnancy: Expenses for the termination of a pregnancy are compensable if the pregnancy is a direct result of the criminal incident. Paternity may need to be established and/or verify approximate date of conception.

III.C.3.h. Ambulance

Emergency or medically necessary transportation is compensable. Expenses for non-emergency transports (i.e., to court, appointments, etc.) are not compensable. In some cases, more than one ambulance expense is incurred. For example, the victim is transported from the scene of the criminal incident to the nearest hospital, then from that hospital to another hospital that may have a trauma center with a higher classification. Life Flight is also considered a compensable ambulance service.

II.C.3.i. Prescriptions

When reviewing prescription expenses you must determine whether or not the prescription was needed as a direct result of injuries sustained from the criminal incident. Drug name, indication and usage, along with the dates of the prescription must all be reviewed to determine compensability. Sources of verification are prescription purchase receipts, insurance statements (eob's) pharmacists and the prescribing physician. Prescription

costs that do not appear to be related should not be paid for by CVCP. For example, you may discover that a victim was taking anti-depressants prior to the crime of rape and is now requesting CVCP reimburse for continued medication. A clarification letter to the physician may be your best solution here.

Over-the-counter medication and supplies may be compensable if they fit with the time and type of injury suffered from the crime. If there is ever any doubt, always request a prescription or referral from the victim's treating physician or a receipt from the victim.

III.C.3.j. Child Forensic Assessments

Expenses for the evaluation of suspected child sexual or physical abuse, whether it be psychological or medical treatment, is compensable through CVCP. Please refer to the "Medical Assessment Only" policy section.

III.C.3.k. Nursing Home Care

Nursing home care is compensable if the victim receives services under the orders of a physician and the health care facility is licensed to provide services that may otherwise be supplied by hospitals. Services for Foster Home Care are not compensable.

III.C.3.l. Home Health Services

These medical services are compensable only if ordered by a physician and if provided by a doctor, licensed or registered nurse (RN), certified nurse's assistant (CNA), licensed physical therapist (LPT) or other licensed health care provider. Potential problem faced here is usually separating medical type services as opposed to homemaker services like cooking, cleaning, transportation, which are not compensable.

III.C.3.m. Eyeglasses, Dentures, Hearing Aids

If any of the above items were taken lost or destroyed during the criminal incident or become necessary as a direct result of the injury, CVCP can cover the cost. If replacing these medical supplies due to being lost, stolen or destroyed, CVCP must document this fact through review of the police reports or medical reports. If CVCP is not able to document the loss as a result of the criminal incident, the cost to replace may not be compensable.

III.C.3.n. Prosthetics

An artificial replacement of a limb or other body part would be a compensable expense if it was taken, lost or destroyed during the criminal incident, or if it became necessary as a direct result of the criminal injury. A physician's prescription will be necessary prior to authorizing or paying for the prosthesis. Again, with replacement, CVCP would need some kind of documentation that the crime has caused a need for replacement of the equipment. These expenses have been paid under medical and rehabilitation awards in the past.

III.C.3.o. Medical Equipment and Misc. Supplies

Bandages, gauze, catheters, crutches, wheel chairs, beds, canes, walkers are but a few of the supplies and equipment that CVCP can cover if either prescribed by a physician or through review of medical records and other documents is determined to be necessary. A crime relationship must also be established.

III.C.3.p. Dental

Crime-related dental treatment is compensable. The biggest challenge here is making sure all dental treatment is related to criminal incident. Sometimes damaged teeth will not show up for months or maybe years. Decay, periodic cleanings and check- ups other possible pre-existing problems makes this, at times, a daunting task. Clarification letters from the Dentist or an IME may be your best solution here.

III.C.3.q. Expenses Not Covered

The following is a list of common expenses that the CVCP sees, but would not be able to cover by statute:

- Any crime-related expense that the victim is not legally responsible for. An example of this would be if a counselor who normally charges \$75 per one hour counseling session sets up a crime victim on a sliding fee schedule, only charging \$20 per session. If the counselor then goes back and tries to bill CVCP for the \$55 difference, CVCP would not pay, as the victim has not incurred this expense.
- Medical expenses in the case of a deceased adult would not be compensable unless another living person had incurred the debt on behalf of the deceased victim, such as a spouse or relative.
- Any expense related to pain and suffering.
- Any expense related to loss of property, unless the property was prescription drugs or some other prosthetic device or medically

necessary device that the victim relied upon for normal life functioning.

POLICY NUMBER: III.C.4.a.b.c.d.

**Approved by: _____RS1_____
Revised 03/12/2018**

SUBJECT: MENTAL HEALTH – ELIGIBLE PROVIDERS

PURPOSE: To establish the eligibility of mental health providers for payment by the Oregon Crime Victims' Compensation Program.

AUTHORITY: ORS 147.035 (2) (a), (3) (d) OAR 137-076-0020 (4), Legal Opinions dated 12-12-00 and 12-13-00

DEFINITIONS: Mental Health: (CDC definition) is *“a state of well-being in which the individual realizes his or her own abilities, can cope with the normal stresses of life, can work productively and fruitfully, and is able to make a contribution to his or her community. A person struggling with his or her behavioral health may face stress, depression, anxiety and relationship problems, grief, addiction, learning disabilities, mood disorders or other psychological concerns. A mental health professional can help manage behavioral health concerns with treatments such as therapy, counseling or medication.*

Mental Health Professional: is a health care practitioner who offers services for the purpose of improving an individual's mental health or to treat mental illness.

Types of (compensable) Mental Health Professionals licensed in Oregon:

Psychiatrist: *are physicians with either a doctor of medicine (M.D.) degree or doctor of osteopathy (D.O.) who also has at least four additional years of specialized study and training in psychiatry. Psychiatrists provide medical and psychiatric evaluations, treat psychiatric disorders, provide psychotherapy and prescribe and monitor medications.*

Psychologist: *have a doctoral degree (Ph.D., Psy.D or Ed.D) in clinical, educational, counseling or research psychology. They can provide psychological testing, evaluations; treat emotional and behavioral problems and mental disorders providing a variety of psychotherapeutic techniques.*

Psychiatric Mental Health Nurse Practitioner (PMHNP): *have a four-year college degree in nursing (BSN) and also complete approved masters in science in nursing (MSN) or doctor of nursing practice (DNP). PMHNP provide a wide range of services to adults, children, adolescents and their families including assessment and diagnosis, prescribing and managing medications and providing therapy for individuals with psychiatric disorders or substance abuse problems.*

Licensed Clinical Social Worker (LCSW): *have a bachelor's degree and a master's degree (MA, MS, MSW or MSSW. Social workers provide case*

management, inpatient discharge planning services, assessment and treatment of psychiatric illnesses including psychotherapy.

Licensed Professional Counselors (LPC): *have a master’s degree (MA or MS) in psychology, counseling or other mental health fields and typically have two years of supervised post-graduate clinical experience. They provide services including assessment and diagnosis of mental health as well as providing individual, family or group therapy.*

Licensed Marriage and Family Therapists (LMFT): *have a master’s degree (MA or MS) in psychology, counseling or other mental health fields and typically have two years of supervised post-graduate clinical experience. They provide services including assessment and diagnosis of mental health as well as providing individual, family or group therapy. Trained in psychotherapy and family systems, marriage and family therapists focus on understanding their clients’ symptoms and interaction patterns within their existing environment*

Qualified Mental Health Professional (QMHP): *according to OAR 309-039-0510:(10), must meet minimum qualifications such as a graduate degree in psychiatric nursing and licensed in Oregon, or a graduate degree in psychology, social work, or other mental health- related field. Additionally, OAR 309-032-1520 (2) (f) defines minimum competencies such as ability to conduct an assessment, conduct a mental health status evaluation, complete a five-axis DSM diagnosis, provide individual, family or group therapy within the scope of their training.*

III.C.4.a. Eligible Providers

The department shall compensate mental health expenses provided by a therapist licensed in the State of Oregon under:

ORS Chapter 675 (LPC, LMFT, LCSW, Psy’D, PhD or EdD licensed as a psychologist);
ORS Chapter 677 (M.D., D.O. (including Psychiatrists) ;
ORS Chapter 678 (Psychiatric Mental Health Nurse Practitioner)

III.C.4.b. Unlicensed Counselors

The Department can also compensate mental health treatment expenses provided by an unlicensed master’s level therapist that meets the qualifications of a “Qualified Mental Health Professional as defined in OAR 309-039-0510 (10).

III.C.4.c. Waivers pertaining to licensure.

See policy III.C.6.a.b.c.d.e.f.

III.C.4.d. Out of State Providers

Approved victims living outside of the State of Oregon and requiring mental health services in their home state can seek treatment with any mental health providers qualifying for payment by that particular state's Crime Victims' Compensation Program.

- SUBJECT:** REVIEW OF MENTAL HEALTH EXPENSES
- PURPOSE:** To establish guidelines for determining whether mental health expenses are payable through CVCP.
- AUTHORITY:** ORS 147.025, 147.035,?
OAR 137-076-0020 (1) (), (4)
- DEFINITIONS:** Mental Health Fee Schedule: An Oregon CVCP specific fee schedule that applies solely to billings for mental health counseling sessions. The fees are based upon a session hour (45-50 minutes) and the licensure of the therapist providing the treatment.
- Necessary Service: (OAR 137-076-0020(1)). As used in rule, “necessary services” are those required for the treatment of physical and psychological injury suffered by the victim as a direct result of the crime.
- Reasonable Psychiatric, Psychological or Counseling Expenses: Limited to those expenses for necessary services provided by mental health providers qualifying for reimbursement by the Crime Victims’ Compensation Program pursuant to OAR 137-076-0020(4).
- POLICY:** Once a claim is accepted it is the ultimate responsibility of the Claims Examiner to review each mental health bill received in order to determine whether or not CVCP will pay. In order to be compensable, the mental health expenses must be crime related and reasonable in cost. An initial 30 sessions, (treatment plan required after session 15), will typically be awarded under the Mental Health award (for exceptions see Policy on Mental Health Benefits for Indirect victims). In determining if a bill is payable, the following questions should be reviewed:
- Whether there is a prior resource that should pay for all or a portion of the bill.
 - Were the services provided by an appropriate mental health provider
 - Is the bill for counseling covered by the initial 30 sessions awarded as part of the MH benefit
 - If the bill is for additional counseling sessions (at session 15), was a treatment plan received.
 - If there is a request for additional sessions, are the additional sessions a necessary service justified by the treatment plan submitted by the provider

All of the above issues have been addressed in a previous chapter of the policy manual. (See Review of Medical/Rehab. Expenses, Policy Number III.C.3.)

II.C.5.a. Mental Health Fee Schedule

CVCP has developed a program specific, mental health fee schedule to apply to mental health billings based upon a session hour (45-50 minutes) and the licensure of the therapist providing the treatment. The fee schedule can be prorated for shorter or longer sessions. As of 1/01/2018, the schedule for counseling is as follows:

- Qualified Mental Health Professionals (QMHP) \$55/hr
- Licensed Masters Level Counselors including \$85/hr
 - Marriage and Family Therapists (LMFT)
 - Licensed Clinical Social Workers (LCSW)
 - Licensed Professional Counselors (LPC)
 - Psychologist Assoc. (LPA)
- Psychologists (Ph.D. & Psy. D.) \$110/hr
- Psych. Mental Health Nurse Practitioners (PMHNP) \$110/hr
- Medical Doctors including Psychiatrists (MD & DO) \$140/hr

III.C.5.b. Initial Assessment and Group Sessions

The initial assessment (90801/02) will be paid up to the maximum of twice the normal session charge (e.g.: the maximum benefit payable is \$170.00 for an initial assessment by an LCSW) and will be in addition to the 15 authorized sessions. Group sessions will be paid at maximum ½ of the individual fee schedule rate for the particular licensure of provider and will be counted as one full session.

III.C.5.c. Approval of Initial Mental Health treatment.

As a rule, CVCP will initially award 30 sessions of counseling for all approved victims. Depending upon the individual circumstances, the Claims Examiner may require that the mental health counselor provide the Department with a (legible) copy of the client's intake assessment and possibly additional documentation such as a treatment plan and/or individual session notes with their submitted billings. The Claims Examiner must ensure that this requirement be clearly communicated to the Claims Assistant by indicating this on the Claim Detail Screen as well as to the actual provider via the authorization letter. Most often, session notes would not be required. A treatment plan is required at session 15 and 30.

Importance of a Therapeutic Treatment Plan.

- The treatment plan is an essential tool providing a map for both therapist and client. The plan should include treatment priorities,

setting targets for accountability and providing a framework for treatment and outcomes.

- The treatment plan addresses problems as identified in the client's Evaluation/Diagnosis. It should define and measure interventions as well as provide a measurement of the progress attained in treatment.
- The treatment plan is a key to demonstrating the effectiveness of treatment for the client.

What is Evidence-Based Practice (EBP)?

Mental health care providers subscribe to different “schools of thought” or philosophies on how to effectively reduce psychological symptoms. Some of these philosophies are based directly on scientific evidence that indicates the best routes to symptom relief. However, other mental health care providers may offer treatment that is not based upon strong scientific evidence, or for which no evidence is available to date. Adherence to psychological approaches and techniques that are based on scientific evidence is referred to “Evidence-based Practice” (EBP). Due to the lack of knowledge of Evidence based practices by many mental health care providers; Patients (clients) may remain in treatment for long periods of time with limited results.

III.C.5.e. Alternative Therapies

A treatment plan must first be submitted and prior authorization required for consideration of alternative mental health therapy. A referral from a medical doctor (M.D) or Osteopathic Physician (D.O.) would also be helpful but is not required. Examples of alternative treatment include Equine Therapy and Eye Movement Desensitization and Reprocessing (EMDR). The Program's licensure requirements shall continue to apply to any mental health provider utilizing alternative therapies.

III.C.5.f. Inpatient Residential Treatment

Full Service (General) Hospital/Medical Center.

In general, CVCP can only pay for inpatient mental health expenses when the facility where an approved victim is receiving psychiatric treatment is classified as an accredited full service hospital and the need for such treatment can be determined to be crime-related. Such stays are usually relatively short in duration and are due to the victim having a severe case of major depression with thoughts of suicide or attempted suicide. In order to determine whether this type of psychiatric hospitalization is crime related, the Claims Examiner should first review the following hospital reports:

1. Hospital admission notes
2. Psychiatric Evaluation
3. Hospital discharge notes.

Not unlike any other inpatient stay, all (most) charges could be considered for payment after it is determined that the need for such hospitalization was crime related. In the absence of the required hospital reports, CVCP would be unable to pre-authorize or otherwise commit to the payment of in-patient mental health. As usual, the use of a victim's prior resources would apply.

Specialized Hospital-Psychiatric Hospital

At times, CVCP may be asked to pre-authorize or commit to pay for a victim's hospitalization at a specialized psychiatric facility. Often these facilities are located out-of- state. These types of hospitalizations are typically long-term stays consisting of weeks or months at a time. CVCP is not able to consider payment for the facility charges such as room, board, recreation etc. CVCP may however consider payment for the actual counseling sessions held during such a stay if the counseling can be determined to be crime-related and the actual counselor involved can be determined to have appropriate licensure. In addition, the facility involved must also be able to break down the actual counseling charges for all sessions being considered for payment. Particular care must be exercised when reviewing session notes as these types of hospitals often utilize supervised interns instead of actual licensed therapists during one-on-one sessions or group therapy. A psychiatric evaluation normally conducted by a psychiatrist, psychologist or other licensed mental health professional would routinely be completed shortly after the patient is admitted. This particular report would be most helpful in determining the reason for admission, presenting mental health issues and the patient's diagnosis.

In the absence of the required hospital reports, CVCP would be unable to pre-authorize the payment of these types of charges, even though most psychiatric hospitalization facilities often require such. It should be explained that we can review the billing statements and pay for direct mental health therapy by qualified licensed therapists, but cannot pay for charges that are associated with the actual stay at the facility, such as schooling, recreation, room and board, etc.

In-Patient substance abuse or alcohol treatment.

In patient substance abuse or alcohol treatment will not be considered for payment unless it can be documented that the need for such treatment was definitively directly crime-related and the victim involved was a minor at the time of the perpetration of the crime. Prior resources requirement would apply. Counselors must be licensed or certified.

Out-patient substance abuse or alcohol treatment.

Out- patient substance abuse or alcohol treatment will not be considered for payment unless it can be documented that the need for such treatment was definitively directly crime-related and the victim involved was a minor at the time of the perpetration of the crime. Prior resources requirement would apply. Counselors must be licensed or certified.

Oregon Certification for Addiction Counselors

CADCI- No Degree required-not compensable

CADCII-Associate or Bachelor's Degree-not compensable

CADCIII-Master's Degree-compensable \$85.00 per session hour

SUBJECT: MENTAL HEALTH – BENEFITS FOR INDIRECT VICTIMS

PURPOSE: To establish guidelines for counseling services/benefits available to indirect (secondary) victims of a compensable crime.

AUTHORITY: ORS 147.035 (Compensable losses); ORS 147.005 (definitions including child; survivor and victim) & ORS 147.015 (eligibility for compensation)

OAR 137-076-0010 (1),(6),(7),(9) & (11)

DEFINITIONS: *Indirect Victim:* A person who has experienced psychological symptoms as a result of either witnessing someone else being victimized or knowing someone (close friend or relative) who has been victimized in a violent manner.

Survivor (ORS 147.005 (14)): Any spouse, parent, grandparent, guardian, sibling, child or other immediate family member or household member of a deceased victim.

POLICY: Accepting that violent crimes affect more people than just the direct victims, CVCP is able to provide counseling benefits to the following categories of “indirect victims”:

- A child under the age of 18 who witnesses domestic violence;
- A survivor of a homicide victim;
- A family member of a child sex abuse victim;
- A friend or acquaintance of a deceased victim who is the first person to discover the corpse of the deceased victim; and
- A relative of a victim of international terrorism.
- A family member of a decedent whose remains had been criminally abused at any time after death

Reasonable Counseling Expenses: For the purposes of ORS 147.035, reasonable psychiatric, psychological or counseling expenses are limited to expenses for necessary services provided by:

Psychiatrists or **physicians** (M.D, D.O.) licensed under ORS chapter 677.
Psychiatric-Mental Health Nurse Practitioners (PMHNP) licensed under ORS chapter 678.

Licensed Psychologists (PhD, PsyD.) licensed under ORS chapter 675

Licensed Clinical Social Workers (LCSW) also under chapter 675

Licensed Professional Counselors (LPC) also under chapter 675

Licensed Psychologist Associates (LPA) also under chapter 675

Licensed Marriage and Family Therapists (LMFT) under chapter 675

Qualified Mental Health Professionals (QMHP) as defined in OAR 309-039-0510(10).

The Program Director or Compensation Manager shall have the authority to grant an exception to the above requirements when justification is provided that none of the above referenced mental health treatment providers is an appropriate option for addressing the crime-related therapeutic needs of a specific victim.

Important Notes:

- The current CVCP mental health fee schedule shall apply to all bills submitted under this provision.
- **30sessions** will be initially authorized for survivor counseling.
- **30sessions** will be initially authorized for a child witness to domestic violence.
- **10 sessions** will be initially authorized for family member of child sexual abuse victims. Notes are only required if the victim requests additional session.
- **\$500.00** is the maximum benefit available for “discovery of a corpse” counseling. This would normally equate to 4-5 sessions with a psychologist or 7 sessions with a Master’s degree level counselor.
- **\$1,000.00** is the maximum benefit available for counseling of bona fide “Relatives of Victim of International Terrorism.”
- **\$5,000.00** is the maximum benefit available (per incident) for counseling expenses for emotional distress due to “abuse of corpse.”

POLICY NO.:

III.C.6.a.

Revised 12/12/17

SUBJECT:

FAMILY MEMBERS OF CHILD SEX ABUSE VICTIMS

AUTHORITY:

ORS 147.035(1)(a)(4)(a) OAR 137-076-0020 (4)

DEFINITIONS:

Family: Pursuant to OAR 137-076-0010 (6), family means any person related (to the child victim) by blood, marriage or adoption, the partner, domestic partner, or fiancé of the victim or parent of the victim or any person who had the same primary residence as the victim at the time of the perpetration of the compensable crime.

POLICY:

In the case of an approved claim for child sexual abuse, rape of a child or exploitation of a child, the CVCP may award counseling benefits for the victim's family to be paid from the victim's \$20,000 medical/counseling award. The primary purpose for awarding family counseling in these specific types of cases is to educate family members as to the mental and behavioral effects the trauma may be having on the victim. Equally important is for family members to learn about what types of supportive techniques and practices would best facilitate the victim's post-abuse recovery.. The Department shall initially authorize ten sessions.

Family (member) therapy that inordinately deviates from the above listed focus of treatment, (i.e.; issues relating to marriage counseling, parents own victimization issues, divorce, parenting problems or any type of offender related treatment) would not be compensable through the CVCP. Brief and occasional deviation from the stated goals of family counseling where other issues are brought up during the therapy, should not under most circumstances impact CVCP's payment for that session.

Family Counseling must be provided by a licensed therapist (see Policy III.C.4.a.). If additional sessions are requested, pre-authorization by the assigned Claims Examiner is required.

POLICY NO.:

III.C.6.b.

Revised:12/12/17

SUBJECT:

CHILD WITNESS TO DOMESTIC VIOLENCE

AUTHORITY:

ORS 147.035(1)(a)(4)(b)

DEFINITIONS:

Domestic Violence: As defined in ORS 135.230 (3), domestic violence means abuse between family or household members.

Family or Household Member: As defined in ORS 135.230 (3) (a-f) includes any of the following: spouses, former spouses, adult persons related by blood or marriage, persons cohabiting with each other, persons who have cohabited with each other or who have been involved in a sexually intimate relationship, unmarried parents of a minor child.

POLICY:

The Department shall award payment for counseling expenses to be provided by licensed counselors (see Policy II.C.4.a.) up to \$10,000 for each child aged three to eighteen who has been identified as a child witness to domestic violence as defined above. This award can be listed on an individual child's claim or as an additional award added to the award(s) of the direct victim. Documentation confirming that the child was present (or within hearing range) during a reported domestic assault is normally required. The type of documentation most often used is an "Incident Report" prepared by a law enforcement agency within the State of Oregon. Other reports that may be relied upon include reports prepared by DHS-Child Protective Services or a Child Assessment Center report which includes a detailed disclosure of witnessing domestic violence made by the child being assessed.

A child witness to domestic violence shall be eligible for counseling services for the later of (a) three (3) years from the date of the CVCP Determination Order or (b) the child's 21st birthday.

Under normal circumstances, CVCP shall (initially) authorize 30 sessions of counseling for a "Child Witness to Domestic Violence. A counseling packet should therefore be sent to the indicated provider.

C.A.C. Forensic Medical Assessment for children who may have witnessed domestic-violence in the home.

The Department will not pay for a forensic medical assessment referred solely on the basis that the child witnessed, or may have witnessed domestic violence in the home.

POLICY NO.:

III.C.6.c.

Revised 12/12/17

SUBJECT:

SURVIVORS OF DECEASED VICTIMS

AUTHORITY:

ORS 147.035 (1) (a), (3) (d)

DEFINITIONS:

Survivor: ORS 147.005(12) defines ‘survivor’ as “any spouse, parent, grandparent, guardian, sibling, child or other immediate family member or household member of a deceased victim.”

Immediate Family: Pursuant to OAR 137-076-0010(7), immediate family means father, mother, child, sibling, parent, spouse, grandparent, stepparent, stepchild and any relative of the victim or victim’s spouse, or any other person who had the same primary residence as the victim at the time of the compensable crime.

POLICY:

The Department shall award up to \$20,000.00 (aggregate) per claim for counseling expenses specifically intended for survivors of deceased victims. Compensable treatment must be provided by licensed counselors (see Policy III.C.4.a). Unlike other awards such as funeral (expenses) which expire three (3) years from the date of the Determination Order; the awarded benefits for survivor counseling shall expire after five years have elapsed from the date of the original determination order, or until the survivor attains 21 years of age, whichever occurs later.

As of 01/01/2018 each survivor of a deceased victim is eligible for up to **\$1,500** for prescription medications prescribed in conjunction with counseling

POLICY NO.: III.C.6.d.

Revised 12/12/17

SUBJECT: CORPSE DISCOVERY - \$500 COUNSELING AWARD

AUTHORITY: ORS 147.025(2) (a) thru (d), 147.015
OAR 137-076-0010 (11)

DEFINITIONS:

Friend or Acquaintance: A person the victim knew well and with whom the victim had an amicable relationship, or someone who had been introduced to, or knew the victim, but may not have been a close friend.

Reasonable Counseling Expenses: See above or OAR 137-076-0020 (4).

POLICY:

For dates of crime that occur after January 1, 2004, a friend or an acquaintance of a deceased victim of crime who had been the first person to discover the victim's corpse can apply for, and be awarded reimbursement or payment toward up to \$500 worth of incurred counseling expenses necessitated as a result of the traumatic event of discovering the dead body of a victim of their friend or acquaintance.

ORS 147.025(2): Notwithstanding that a person is not a survivor or dependent of a deceased victim under ORS 147.015(1), a person may be eligible for compensation for reasonable counseling expenses up to a maximum amount of \$500 if the person:

- *Paid or incurred such expenses;*
- *Was a friend or acquaintance of the victim;*
- *Was the first person to discover the corpse of the victim; and*
- *Files a claim in the manner provided in ORS 147.105 and the eligibility conditions of ORS 147.015(1)(b) through (f) are met.*

POLICY NO.: III.C.6.e. **Revised 12/12/17**

SUBJECT: **INTERNATIONAL TERRORISM - \$1,000 COUNSELING FOR RELATIVES OF VICTIM**

AUTHORITY: ORS 147.035(1)(a)(4)(c), 147.005(10) (a) (b) (A) (B) (C) (c).

DEFINITIONS: *Relative:* A person related to the victim within the third degree as determined by the common law, a spouse, or an individual related to the spouse within the third degree as so determined and includes an individual in an adoptive relationship.

International Terrorism: Activities that:

- Involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or any state or that would be a criminal violation if committed within the jurisdiction of the United States or of any state;
- Appear to be intended to:
 - Intimidate or coerce a civilian population;
 - Influence the policy of a government by intimidation or coercion; or
 - Affect the conduct of a government by assassination or kidnapping; and
 - Occur primarily outside the territorial jurisdiction of the United States or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to intimidate or coerce, or the locale in which their perpetrators operate or seek asylum.

POLICY: For dates of crime (international terrorism) that occur after January 1, 2004, the CVCP can award up to \$1,000 of counseling to each relative of a victim of international terrorism applying for this award.

Pursuant to ORS 147.035(1)(a)(4)(c), relatives of victims of international terrorism can individually file a claim in order to gain access to counseling benefits up to the maximum amount of \$1,000.

Prescriptions:

The \$1000.00 award applies strictly to counseling services. Medication or Medication Management would therefore not be compensable.

If the indirect victim does qualify as a survivor or dependent, the claim would remain open until 3-years had elapsed from the date of the original determination order, or until the indirect victim turns 21, whichever occurs later.

POLICY NO.: III.C.6.f. added 12/12/17

SUBJECT: ABUSE OF CORPSE-\$ 5,000 COUNSELING (per incident)

AUTHORITY: ORS 147.035 (6) (b)

DEFINITIONS: Abuse of Corpse in the first degree (ORS 166.087 (1) (a) (b):
A person commits the crime of abuse of corpse in the first degree if the person:

- (a) Engages in sexual activity with a corpse or involving a corpse ;or
 - (b) Dismembers, mutilates, cuts or strikes a corpse
- Abuse of corpse in the first degree is a Class B felony

Abuse of Corpse in the second degree (ORS 166.085 (1) (a) (b):
A person commits the crime of abuse of corpse in the second degree if, except as otherwise authorized by law, the person intentionally:

- (a) Abuses a corpse; or
 - (b) Disinters, removes or carries away a corpse
- Abuse of corpse in the second degree is a Class C felony

Loved one: A family member or very close friend of the decedent whose corpse has been “abused.”

POLICY: (The) abuse of corpse in any degree constitutes a compensable crime pursuant to ORS 147.005 (4). Family members of a decedent expect that the physical body of their “loved one” shall eternally “rest in peace.” An applicant demonstrating that they have suffered “emotional distress” as a result of the abuse of the corpse (human remains) of a loved one may be eligible for counseling expenses (up to \$5,000.00) per incident.

Abuse of Corpse counseling is not survivor counseling. The issues involved are very different. Compensable counseling should largely be related to the “emotional distress” of a “loved one resulting from the criminal act(s) perpetrated against the human remains of a deceased individual without regard to the cause of death of the decedent.

POLICY NUMBER: III.C.7.
Final Revised: 12/12/17

Approved by: _____
Date: December 12, 2017

SUBJECT: CHILD ABUSE ASSESSMENT

PURPOSE: To identify requirements for paying or denying a child abuse medical assessment.

AUTHORITY: ORS 147.390, 419B.005 (1) & (2)

DEFINITIONS: *Child:* An unmarried person who is under 18 years of age.
ORS 419B.005(2)

Child Abuse Medical Assessment: As defined in ORS 418.782 (2) “Child abuse medical assessment” means an assessment by or under the direction of a licensed physician or other licensed health care professional trained in the evaluation, diagnosis and treatment of child abuse. “Child abuse medical assessment” includes taking a thorough medical history, a complete physical examination and an interview for the purpose of determining whether or not the child has been abused, making a medical diagnosis and identifying the appropriate treatment or referral for follow-up for the child.

POLICY: The Department will pay for child abuse medical assessment (“medical assessment”) in cases where the child has been referred for allegations of physical or sexual abuse and the abuse is alleged to have occurred in Oregon. The medical assessment can be paid even if there isn’t evidence or a compensable crime (see Med Assessment Only policy).

If the abuse occurred outside the state, the initial requests for payment of the medical assessment should be denied and the applicant should be provided with contact information for the Compensation Program in the state where the incident occurred. In the (unlikely) event that payment is denied by the redirected state, CVCP will pay for the medical assessment if the abuse was substantiated. The link to other state programs is:
<http://www.nacvcb.org/index.asp?sid=6>

EXAMPLES NOT COVERED BY CVSD:

Payment of In-Hospital Physical Exams

A medical examination conducted by an Emergency Department physician does not meet the standards for a child abuse medical assessment as defined by ORS 147.390. However, the Department will pay for the physical exam if:

- The child is subsequently referred to a child assessment center for a forensic evaluation, or
- The case is subsequently accepted by CVC.

Child witness to DV

When police respond to domestic situations involving physical violence with children present, those children will often be referred to a CAC by police or DHS in order to determine whether the children have personally experienced family violence and whether a therapeutic intervention is indicated. If the child discloses witnessing domestic violence a claim may be approved with a sole award for Counseling for a Child Witness to Domestic Violence. Claim approval under such a circumstance would have no impact on the denial of a request for payment of the forensic medical assessment.

Concerns of neglect

Unless the child assessment center can determine and document that an actual injury, medical condition or developmental delay is the result of parental or caregiver neglect, the claim must be completely denied (due to insufficient evidence of a compensable crime). Subsequently any request from a CAC for payment of the forensic medical evaluation would be denied.

Exposure to high risk-environment (HRE) or drug endangerment

In order to approve a claim for “exposure to a high risk environment” or “drug endangerment” the CAC must be able to diagnose a definitive injury to the child such as a medical condition, developmental delay, physical or sexual abuse. A positive toxicology report of a test of the child’s hair or urine will also constitute a definitive injury. Any request from a CAC for payment of the forensic medical evaluation would be denied.

ADDITIONAL DEFINITIONS:

Child Abuse: In Oregon, child abuse is defined by the affect abusive actions have on a child, not by parent or caregiver’s intention. Child abuse describes many different types of behavior including:

- Physical injury to a child that is not accidental.
- Sexual abuse or exploitation.
- Rejecting, abandoning, or neglecting a child.
- Endangering a child’s health or safety by exposing them to drugs, alcohol or placing them in proximity to the manufacture of methamphetamine.
- Teaching a child inappropriate behavior in areas such as aggression, sexuality or substance abuse.

- Exposing a child to domestic violence.
- Buying or selling a child.
- Other forms of emotional abuse

ORS 419B.005 (1) (a) (A)

Physical Abuse of a child: includes any assault, as defined in ORS Chapter 163 of a child and any physical injury to a child which has been caused by other than accidental means, including any injury which appears to be at variance with the explanation given of the injury.

Karly's Law: Named after a 3 year-old Corvallis girl, Karly Sheehan, who died in 2005 after abuse allegations went unchecked. Karly's Law requires that children in Oregon who exhibit suspicious physical injuries must receive medical attention within 48 hours. Suspicious physical injuries include, but are not limited to:

- Burns or scalds
- Extensive bruising or abrasions on any part of the body
- Bruising, swelling or abrasions on the head, neck and face
- Fractures of any bone in a child under the age of three
- Multiple fractures in a child of any age
- Unconsciousness or difficulty maintaining consciousness
- Dislocations, soft tissue swelling or moderate to severe cuts
- Loss of the ability to walk or move normally according to child's developmental ability
- Injuries causing serious or protracted disfigurement
- Any other injury that threatens the physical well-being of a child

SUBJECT: LOSS OF EARNINGS/LOSS OF SUPPORT

PURPOSE: To establish criteria for reimbursement of lost wages to a victim, and to establish criteria for loss of support for qualified dependents of deceased victims.

AUTHORITY: ORS 147.035(1) (a), (c), (A), (B), (2) (b), (3) (c), 147.105(1) (b) (f) (g), 147.165; OAR 137-076-0025, 137-076-0040,

POLICY: A victim may be eligible for reimbursement of lost wages if the victim is disabled from work due to a compensable injury. Dependents of deceased victims may be eligible for loss of support due to the death of the victim who had been (actively) employed at the time of the compensable fatal injury. Loss of earnings/support is based on the victim's net wage- just prior to the-injury/death, and shall be computed from the next scheduled workday. Possible future earnings including income from a job not yet started shall not be considered as a base for lost earnings compensation. The current maximum reimbursement for wage loss and loss of support is \$400 per week (\$1733.20) per month to the victim or his/her dependent survivors. (As of 01/01/2018 the maximum reimbursement for wage loss and loss of support is \$600 per week or \$2,599.80 per month.)

As CVCP wage loss benefits are based upon net earnings after tax withholdings they are not reportable (for tax purposes) as income by those receiving this benefit.

A. Loss of Earnings

1. Loss of Earnings- "Basis":

This is the calculated amount of benefit that a victim would be entitled to have replaced. In the case of wage loss, this amount will be equal to either the normal gross wage earned less withholdings for taxes including FICA and Medicare or 70% of gross wages if actual withholdings cannot be determined.

See . Additional Topics for manual calculation method.

2. Wage Documentation:

Verification of actual earnings will be based upon the amount indicated by the employer on the Department's Verification of Employment. When verification of employment cannot be obtained from the employer and the victim provides paystubs a wage report should be requested from a Revenue Agent who has the ability to check the Oregon Employment Department database.

3. Undocumented Earnings:

Without proper documentation (verification of employment, wage report, pay stubs or receipts showing consistent and consecutive support was paid) the Department will be unable to replace loss of earnings/loss of support benefits based upon any unreported income.

4. Overtime:

Overtime compensation must be established for three consecutive months prior to injury. This can be determined through employer provided documentation and if necessary, from a wage report. The Department will pay the average of the net overtime for those three months.

5. Part Time Employees:

Victims who are employed at part-time work at the time of injury/death may document net wage for the last three months worked, and this wage will be averaged (unless the victim earned the same net wage each month).

6. Minor Under 18:

If a person is eligible to receive an award for wage loss and is under age 18, the Department may pay the award directly to the eligible person.

B. Types of earnings:

1. Self-employment:

If a victim had been self-employed including work as an Independent Contractor at the time of injury/death, a net wage can be established by reviewing the victim's previous year's federal tax returns, including all schedules. If no tax return had been filed by the victim claiming self-employment for the previous year, the Department may consider reviewing Quarterly Estimated Tax Statements (Form 1040-ES) if available or the same year's Federal Income Tax Return (when/if available) and prorate the amounts for the months worked (prior to the date of injury)

Victims claiming income from Self-employment will under most circumstances be required to submit their complete prior year's Federal Tax Return to substantiate their claim of entitlement. Under no circumstances should "Passive Income" (from investments, rents, business interests etc.) ever be taken into consideration.

Circumstances where the Department may accept alternative documentation in lieu of prior year's tax return:

- Claimant’s business is a recent start-up (end of prior year or during same year as compensable crime).
- Claimant contends that prior year’s tax return does not reflect more recent (profitable) status of business.
- Claimant had been employed during the prior year.

Suitable alternative documentation:

Current year’s (during which incident occurred) complete Federal Tax return (if/when available) or current year’s 1040-ES Vouchers with corresponding worksheets. The 1040-ES documents must include victim’s signature and statement of attestation. Proration of this type of documentation will be required to adjust for monthly/weekly or daily wage.

According to the IRS, a “*self-employed*” individual is required to file an annual return and pay estimated tax quarterly. “*Self-employed*” individuals generally must pay self-employment tax (SE) as well as income tax. SE tax is a Social Security and Medicare tax primarily for individuals who work for themselves.

You have to file an income tax return if your net earnings from self-employment were \$12,000.00 or more.

Estimated tax is the method used to pay Social Security and Medicare taxes and income tax, because you do not have an employer withholding these taxes from you. Form 1040-ES, Estimated Tax for Individuals (PDF) is used to figure these taxes.

2. Contract Work:

LOE Benefits for Individuals working under a “contract of employment: In addition to the normal documentation, a copy of the employment contract should be reviewed by the Claims Examiner as it will likely contain information germane to the payment of the loss of earnings award.

3. Seasonal Employees & Temporary Employees:

Employers have no legal obligations to provide benefits to a seasonal employee.

To be eligible for wage loss reimbursement through CVCP, a victim must have been employed and actively working at the time that they sustained an injury preventing them from being able to work and caused as a result of the compensable crime. Since these wages can fluctuate from pay period to pay period, it will be necessary to receive past wages for at least 90 days or longer. The computed “basis” should represent a fair average net wage received by the victim.

Seasonal Employment: Additional information should be obtained from the employer pertaining to the anticipated seasonal patterns of the victim’s employment. This is especially important when longer periods of disability have been indicated by the certifying medical provider in the case of a seasonal worker.

Temporary Worker: Additional details should be obtained from the employer pertaining to the (temporary worker’s) anticipated remaining period of employment or placement at a job site for an eligible temporary worker. This information is not requested from the employer within the Department’s “Verification of Employment”.

4. Passive Income (Ineligible Income): is income received on a regular “basis”, with minimal effort to maintain it. During the Claims Examiner’s review of the submitted Federal Tax Return, it is very important to identify this type of unearned income and not include this amount into the calculation of the “basis”. Some examples of passive income which should not be considered:

- Property Income (from rent, royalties from natural resources, interest, profit.)
- Earnings from a business interest that does not involve direct involvement.
- Interest and Dividends from banks, or investment portfolios (stocks, bonds.)
- Earnings from internet advertisements on websites.
- Pensions and Annuities
- Royalties from publishing or from patents or other intellectual property.

C. Loss of Unemployment Benefits:

If a victim had been receiving unemployment benefits at the time of their injury and subsequently loses these benefits due to their (crime related) inability to become employed; the Department may replace those benefits (up to \$400.00 per week or as of 01/01/2018 \$600 per week) until the victim is released back to work or otherwise returns to work on his/her own. Unemployment benefits are fully taxable and therefore will need to be adjusted to a net rate (benefits less state and federal taxes including FICA and Medicare). **Unemployment Benefits in Oregon are currently available up to 26 weeks. CVCP cannot pay benefits over/above what the victim had been entitled to.** CVCP will terminate benefits after the disabled victim reaches their scheduled 26th week of Unemployment Benefits. CVCP will also discontinue benefits when/if Unemployment Benefits are resumed after the victim is released to work or in the event that the victim becomes (re-)employed.

D. Prior Resources:

1. Wage Loss Insurance “Differential”:

This pertains only to those victims having any collateral resource(s) paying cash benefits which would be primary to CVCP. In such cases, CVCP will pay a “differential” which is equal to the difference between the computed “basis” of entitlement and the amount received from the available primary resource such as:

- Short Term Disability (STD)
- Long Term Disability (LTD)
- Worker’s Compensation
- Social Security Disability (SSDI)
- PTO (paid time off) combined time off. 50% of PTO is considered a prior resource.

The program can pay a wage loss differential when the victim has disability insurance or workers compensation by sending in this information. The Claims Examiner must establish the reason for the victim’s disability before relying on these other sources. The Disability Insurer would also be a reliable source for medical and/or wage related documentation.

E. Medical Certification of Disability:

Reimbursement for up to two weeks wages without a medical release may be made for a victim who has documented injuries and a verification of employment.

Additional reimbursement for wage loss shall require a medical release from work signed by an acceptable provider.

1. Providers who can provide medical release from work:

Only a medical practitioner as defined in OAR 137-076-0010(15) can certify (as true) a period of medical disability during which a victim can accrue lost earnings. Currently this includes: Medical Doctors (M.D.), Osteopathic Physicians (D.O), Doctor of Podiatric Medicine (D.P.M.), Dentist (D.D.S., D.M.D.), Nurse Practitioner (N.P.), Naturopathic Doctor (ND) & Physician’ Assistant (P.A.) with drug dispensing authority from the Oregon Board of Medical Examiners.

2. Medically stationary is a term that means that the person’s condition or injury is not expected to get better with further treatment or the passage of time. Workers’ Compensation benefits will often cease at this point, potentially with an offer of a one-time final settlement payment from the W.C. carrier. This settlement is considered to be prior resource and would be in addition to any Social Security Disability (SSDI) payments that such a victim may have been receiving or will now be eligible for.

3. Disability based upon Emotional Stress (“mental disorders”)

Payment can be made for mental trauma up to one month with Physician Certification of related emotional (mental health) disability. Verification of Employment is applicable.

In certain instances, accumulated sick leave or Paid Time Off (PTO) may be waived when a victim with a certification of disability due to PTSD is unable to return to work for a period greater than one month. In such cases, the “one month” benefit period shall begin after the victim’s accumulated sick leave or PTO has been exhausted. All such exemptions shall require approval of program management.

Normally classified as anxiety-related disorders (panic disorder, social anxiety disorder, specific phobias, and generalized anxiety disorder) and Post-Traumatic Stress Disorder (PTSD) are in most cases subject to a two-week (without certification) or four-week (with certification) maximum. Depending upon the specific circumstances involved (extent of trauma upon the individual) an extension of additional time for “wage loss” payments may be approved by program management.

Disability Insurance benefits (which are a prior resource) limit benefits to a specified period of time if the disability is caused or contributed to by a “mental or nervous disorder.” This usually relates to long-term disability insurance.

Mass Casualty Victims suffering a mental or nervous disorder as a consequence of their experience.

4. Ongoing Loss of Earnings: Claimant is certified by a Medical practitioner as disabled for an extended length of time and would be eligible for additional LOE payment.

5. Continued Verification of Disability:

Under most circumstances, a medical release shall be considered valid for three-month intervals requiring “Updated Disability Statements” to be sent to the appropriate physician. An update would be required when the original medical release doesn’t have a date to return to work. In cases where a physician certifies a permanent disability, it will not be necessary for the Claims Examiner to obtain further updates from the physician in this type of situation. The victim will likely be eligible for (retroactive) Social Security Disability (SSI) and would have to repay CVCP.

Claims Examiners should attempt to remain in contact with those victims who will likely remain unable to work for extended periods of time. This type of contact can be very beneficial to both the victim and the Claims Examiner. Through this contact, the Claims Examiner is able to obtain information about the victim’s progress in their recovery, possible current treatment or consultation by a Medical Specialist as well as upcoming appointments.

An annual update should be sent to the victim or survivor (or their guardian) of the victim for the purposes of learning about any changes in marital status, attorney retention, custodial situation or changes in prior resources.

F. Additional Loss of Earnings Benefits:

Benefits can also be paid to victims for subsequent periods of disability, such as surgeries. Only victims who were initially eligible for wage loss at the time of injury can be considered for this additional wage loss benefit. The wage loss may need to be recalculated by the victim's net wage at the time of surgery. An updated Verification of Employment would need to be sent to the employer of record to reconfirm the victim's employee status and wage rate. If a victim is released by his/her physician back to modified or part-time work, the victim may submit pay stubs from those periods of work for evaluation of partial wage loss to equal wage-at-injury or wage-at-surgery.

Example: A victim who had been working for Employer "A" at the time of the compensable crime would be eligible for wage loss during the initial period of disability. As a direct result of the crime, the victim is scheduled to undergo a surgical procedure four months afterward. At that time, they are working for Employer "B" earning a higher rate of pay. Victim would qualify for additional wage loss under employer B.

G. Loss of Support (dependents of deceased victims)

The surviving spouse of a deceased victim would normally be eligible for the Program's "Loss of Support" benefits as a "dependent" regardless of the surviving spouse's own employment status. Assuming that there were no additional dependents, the surviving spouse would be Eligible for fifty-percent of the victim's net wages (after tax). It is important to note that a surviving spouse with young children (under 16 years of age) would be eligible for Social Security Survivor benefits. Refer to # 3. Social Security Survivor benefits for surviving spouse with young children (shown below).

Child dependents of deceased victims who had been custodial parents may be entitled to loss of support if the social security benefit for all eligible dependents is less than the deceased victim's net wage-at-injury divided by the number of dependents, including the deceased. Loss of support shall include documented loss of child support that was actually being paid to dependent children on a consistent "basis" by the victim at the time of the victim's death.

Occasional or erratic payments for children would not constitute child support for program purposes unless some pattern of consistency can be established.

In order to qualify as a dependent of a deceased victim, the applicant may submit a copy of birth certificates for children under 18, a marriage license to establish legal marriage for the applicant, and/or a copy of the previous year's tax return listing the persons applying as dependents of the deceased victim. In order to establish that child support was being paid to a dependent not living with the deceased victim, a copy of the child support order and definitive proof of consistent payment may be submitted.

Note; A deceased victim's federal tax return (Form 1040) lists (qualified dependents under the heading "Exemptions." In certain instances, it may be necessary to request this documentation.

1. Loss of Support- "Basis":

This is the calculated amount of benefit that a victim's dependents would collectively be entitled to have replaced. This amount will be equal to either the normal gross wage that the victim had been earning prior to their death, less withholdings for taxes including FICA and Medicare or 70% of gross wages if actual withholdings cannot be determined. The amount remaining would be divided by the number of dependents plus the victim. The resulting amount would be the individual "basis" for each surviving dependent. See additional topics for manual calculation method.

In certain cases, a victim of homicide (who had been gainfully employed at time of injury) may have provided (regular and ongoing) support to individuals outside of their immediate household. As previously mentioned, court ordered child support is one example of this which is often easy to document such as through DOJ-Support Enforcement Division or payroll deduction. Another example of support may involve family members living outside of the United States. These dependents may not be eligible for Social Security Survivor benefits. With proper documentation such as "money transfer" receipts demonstrating a pattern of regular and consistent intervals, loss of support benefits may be payable. A pattern showing regular (weekly, bi-weekly, monthly) payments of the same amount for a period of at least 6 months would be required. This verified amount would constitute the "basis" for this type of payment. If the amount sent varied from month to month, it would be advisable to get money transfer receipts for the prior twelve-month period so that the basis can be computed by averaging the monthly amount of such payments.

It should be noted that our current Claims Management System (CMS) is not equipped for such type of payments and therefore requires manipulation of inputted dollar amounts in order to achieve the manually calculated "basis".

2. Minor Under 18:

If a person is under the age of 18 and eligible to receive an award for loss of support, the Department after verifying Social Security Survivor

Benefits would still be entitled to the payment of a differential, special care must be taken to ensure that the proper adult person receives the payment on behalf of the child. This is particularly important when the children are younger in age. The Department may pay the award to a documented surviving parent having legal custody, other documented legal guardian or court appointed conservator of the surviving parent.

3. Social Security Survivor benefits for surviving spouse with young children.

Note: The following information is provided for illustrative purposes only. There are many factors involved in the Social Security Administration's determination of survivor benefits. There is no substitute for actual Social Security documentation detailing the amount of the retroactive monthly survivor benefit.

Social Security Survivor benefits may be payable to the surviving spouse (under age 60) of a deceased victim if the spouse is taking care of the victim's children younger than age 16 or disabled. This would be a prior resource that must be taken into consideration for the applicable period of time. Documentation from the Social Security Department should be provided to the Department by the applicant for this type of consideration.

Social Security Survivor benefits may be payable to the surviving children of a deceased victim depending upon the victim's work history. In general, the more the victim had paid into the Social Security, the greater the benefits would be. The actual amount is based upon a percentage of the decedent's benefit. Dependents of a younger deceased victim with a very short work history or no work history would be eligible for little or no benefits through Social Security. There is a maximum family limit which may also impact the benefits available to (multiple) surviving children.

Social Security Survivor benefits remain payable to children of the deceased until the age of 18 or 19 if the child remains enrolled in secondary school or is disabled.

4. Social Security Survivor benefits for surviving spouse at/near retirement age.

Surviving spouse may be eligible for substantial benefits from Social Security Administration as early as age 60.

5. Social Security Benefits Cost of Living Adjustments (COLA).

The Department shall under no circumstances reduce the benefit amount payable to a victim or dependents of a deceased victim (as a differential) in cases where Social Security adds a cost of living (COLA) adjustment.

H. Other:

1. If as a result of a compensable crime, a victim's injuries render them incapable of managing their own finances and that person had been gainfully employed at the time of the perpetration, they may be eligible for loss of earnings benefits. The person may be eligible for (retroactive) Social Security Disability (SSDI) benefits which are primary to CVCP. CVCP would only pay loss of earnings as primary if that victim can document that they are ineligible for SSDI. CVCP may be able to pay the victim loss of earnings benefits as secondary payer to SSDI in the form of a differential. Payment for eligible victims should be made to the court appointed Conservator for the "protected person." Documentation of the court appointed Conservatorship should be requested before payments are actually made. Documentation from the Social Security Administration pertaining to SSDI whether approved or denied would also be required prior to starting payments. This documentation shows the amount paid to each eligible dependent.

2. A person who is incarcerated would not be entitled to lost wages for the period of incarceration.

3. If/when a replacement person is hired to fulfill the duties of the injured victim, and the cost of this replacement person is a direct financial cost to the victim, such documented replacement cost shall be used as the "basis" for lost earnings compensation.

4. Neither loss of earnings nor loss of support is payable in advance. Lump sum awards shall be given only when the lost earnings/support payment includes an amount that has already accrued and has been calculated from the victim's date of injury/death.

5. Loss of earnings may be paid while the victim is actively participating in a vocational rehabilitation program. Grants or scholarships may preclude loss of earnings/loss of support payments as they constitute prior resources. Prior Resource changes that are cost of living increases will not result in a reduction of CVC LOE/LOS payments.

I. ADDITIONAL TOPICS:

Under most circumstances, the "basis" for a claimant's loss of earnings benefit shall be determined from the (employer) completed "Verification of Employment."

Calculating the "basis" for entitlement amount from the "Verification of Employment."

Gross Earnings less: Federal Income Tax (FIT), Social Security Tax (SSI), State Income Tax (SIT), and Medicare=Net Earnings for applicable pay period (monthly, semi-monthly, bi-weekly or weekly).

Converting Non Weekly pay periods to Weekly Net Earnings (“basis”):

Monthly: divide amount by 4.333 (2000.00/month=\$461.57/week)

Semi-Monthly: multiply amount by 2 and then divide by 4.333(1000 per pay period*2=2000/month=\$461.57 week)

Bi-Weekly: divide amount by 2. (\$923.14 bi-weekly/2=\$461.57)

Manual Calculation of the “basis” for entitlement amount

Net pay (after withholding of all taxes)
 ----- *100 = net/gross %
 Gross pay

This calculation method may be useful in certain cases when available documentation is limited and we need to make projections of income based upon what we know.

E.g. Claims Examiner determines that claimant’s hourly wage has been \$13.75 per hour and they had been averaging 30 hours per week. Their net to gross ratio (%) is 80%. The computed “basis” for reimbursement by CVCP would be $\$13.75 * 30 * .80 = \330.00 per week.

In cases where we are unable to determine the net/gross % (take home amount), the Claims Examiner shall use 70%.

No Employer Verification available:

Oregon employers are required to report wages to the Department of Employment on a quarterly “basis”. The Employer information such as address and phone number is also available and accessible to the Revenue Agents. Unemployment claim information including amounts paid or claim denials are also available.

The Employment Department wage screen looks like:

Acct #	Employer Name	Qtr.	Wages	Wk/Hr
454544	CVCP	4/15	5,369.30	444
		3/15	7,450.50	590
		2/15	5,811.40	470
		1/15	5,867.50	487
		4/14	5209.20	434
545455	ABCD	3/14	3683.15	326

A person working full time (40 hours) for an entire quarter would work approx. 520 hours. (40*4.333*3).

A person showing hours worked greater than 520 hours during a single quarter likely worked overtime or received a bonus.

Dividing the Wages/Wk Hr for a particular quarter will result in an average gross hourly wage for the particular quarter. From the Employment Department Screen, the fourth quarter average hourly wage was $\$5369.30/444=\12.09 . The third quarter gross earnings were $\$7450.50/590=12.63$. This employee likely worked some overtime during the third quarter. The second quarter average gross hourly wage was $\$5811.40/470=\12.36 and the first quarter average gross wage was $\$5867.50/487=\12.05 .

When using the Department of Employment wage screen, the Claims Examiner will determine during which quarter the claimant was injured as a result of a compensable crime and normally use the earnings from the previous (from incident) quarter.

Methods of computing “basis” for victim injured on December 2, 2015:

Average hourly wage taken from earnings during the prior quarter:
This would be the usual method.

$\$12.63 * 40 * 0.70=\353.64 per week.

For the benefit of the claimant or dependents of a deceased victim, the Claims Examiner may attempt to use multiple quarters (prior to the crime date) to more fairly estimate the “basis” for reimbursement. This method might be attempted when a claimant’s net earnings regularly fluctuate from month to month. This method would not apply to a claimant whose compensation remains constant such as a Government employee.

Average hourly wage taken from earnings during prior 3 quarters:
 $\$12.63 + \$12.36 + \$12.05= \$37.04/3=\$12.35 *40*.70=\345.80 per week. In this particular situation, the difference amounts to about \$7.84 per week less.

Determining the “basis” for CVCP “loss of earnings” reimbursement of Self-Employed Individuals

Verified by Federal tax return (Form 1040) for prior year (from date of compensable injury), including all schedules (A) (B) (C) (D) & (SE).
Schedule A: Itemized Deductions - only required for verification of authenticity of entire return
Schedule B: Interest and Ordinary Dividends:-only required for verification of authenticity of entire return

Schedule C: Profit or Loss From Business-required for verification of amounts entered on form 1040

Schedule D: Capital Gains and Losses- only required for verification of authenticity of entire return

Schedule SE: Self Employment Tax- required for verification of amounts entered on form 1040

How to compute the “basis” for a self-employed individual. A “very basic” illustration.

1. Review prior year’s Form 1040. C-sample in DM #7352583 (example below)
2. Is this an individual or joint return? C-sample Filing Status-box 2 indicating it is a joint “return”
3. Line 7 indicates that Wages, Salaries & Tips in the amount of \$10,000.00 were paid to one or both of the filers. Verify that the wages were entirely paid to the spouse of the victim by reviewing the corresponding W2, Schedule C or Employment Department Screens (available to Revenue Agents). It may be necessary at times to contact the actual tax preparer. Schedule C lists the name of the proprietor of the business. For obvious reasons, it will likely be the victim. Schedule C line 26 lists any wages paid by the business and could possibly explain the spouse’s wages in box 2. In the unlikely event that the wages were earned by the victim in addition to any business income, that amount will be treated differently (verification of employment required) and added to the amount derived from the business (if any). If the business is jointly owned by the claimant and their spouse, the final amount determined to be the “basis” will then need to be adjusted by 50%.
4. Review line #12 to verify whether the business was profitable or ran at a loss. If the amount is negative, the “basis” for reimbursement would be zero (\$0.00). If the amount is positive, refer to Schedule C line 31 and verify that the amounts shown are consistent with the amounts entered on line #12 of Form 1040.
5. If the business generated income to the owner, review the amount entered on line #57 of Form 1040 for Self-Employment tax. Confirm that the amount is correct by checking Schedule SE line #5.
6. Subtract the amount shown in line #57 from the amount included in line #38. The result will be the (annualized) “basis” which will need to be converted to a weekly amount by dividing result by 52.
7. Calculation: \$10,000.00 (net earnings) less \$1412.00 (self-employment tax) = \$8588.00/52 (weeks) = \$ 165.15 per week (\$715.60 per month).

NOTE: The above illustration is very basic and does not reflect some potential complexities that a Claims Examiner may have to consider during their review of a Federal Tax Return of a self-employed individual.

Definitions

Conservator: The person appointed by the Court to manage finances of a person who is unable to make their own decisions about their finances or health care for reasons such as minority, mental illness, physical disability.

Contract Work: Employment of a person through an agreement for a specified length of time for a specified rate of pay performing specific type of work. May be temporary in nature; may or may not be seasonal or qualify as “self-employment”. Under most circumstances, contract work is usually defined via a formal contract signed by both parties.

Dependent: A person who is reliant on another for financial assistance. For CVCP purposes, this applies to the “legal spouse” of the deceased victim and/or the qualifying child/children of the deceased victim.

Dependent of deceased victim: Any child dependent under age 18 or under age 21 if a full time student, dependent spouse of the deceased victim until remarriage, and any family member who was a (documented) financial dependent of the deceased victim at the time of the victim’s death.

Disabled from work: Wholly or partially incapacitated from performing regular work duties due to injuries sustained as a result of the compensable crime as verified by a physician.

Full-Time Student: Student registered for 12 or more semester hours (units) during a particular academic undergraduate semester (term). A graduate student qualifies when enrolled for 9 or more semester hours.

Guardian: A person appointed by the Court to make personal and health-care decisions for a minor, developmentally delayed adult or other incapacitated person such as an elderly person.

Qualifying Adult (IRS Definition): Legal Spouse (must have been living with victim at time of death) If in doubt, refer to most recent Federal Tax Return.

Qualifying Child: (IRS Definition): (Verifiable via recent Federal Tax Return)

- Must be related to the (victim) by blood, marriage, adoption.
- Must be under age of 18 or 21 if a full-time student. No age limit applies if child is permanently and totally disabled.
- Had they been living with victim for more than 6 months during past year? (Not applicable to students).

Retroactive LOE payment: Claimant’s initial award payment covers an extended period of time (more than one month) from the date of the compensable crime up through the current processing period. In the case of ongoing loss of earnings, it would often be the initial payment.

Seasonal employment: Seasonal employment: person works only during a specific time period during the year usually with a particular employer, e.g., agricultural work (planting or harvest), student summer work, retail holiday work etc. The Federal Government defines a seasonal employee as one working one-hundred-twenty days a year or less for an employer. The dates need not be consecutive. Employers have no legal obligations to provide benefits to a seasonal employee.

Self-employed: The act of generating one's income directly from customers through working, clients or other organizations as opposed to being an employee of a business or another person.

- A person who carries on a trade or business as a sole proprietor or an independent contractor.
- A person who carries on a trade or business as a partner.
- Possible examples: musicians, accountants, real-estate agent, consultant, attorney, IT Software developer, taxi driver

Social Security Disability Benefits (SSDI): Social Security pays benefits to people who are unable due to a Medical condition that's expected to last at least one year or result in death. Partial disabilities do not apply. To be eligible a person must have worked for a sufficient period of time and have become disabled during a period where they had been working.

SUBJECT: TRANSPORTATION EXPENSES

PURPOSE: To establish policy and guidelines for compensable transportation expenses.

AUTHORITY: ORS 147.035

DEFINITIONS: *Transportation:* In the case of injury, the transport of victim to and from medical or mental health treatment. In the case of death, the transport of surviving family members to and from mental health treatment.

In the case of direct or collateral review, the lodging, transportation, and other expenses as defined in this policy, to and from the hearings and/or oral arguments.

Compensable Treatment: Under ORS 147.035 (1)(a)(A)(B)(C)(band 4 (a) (b), crime related medical, mental health, and rehabilitation services administered by licensed providers. In the case of death, mental health treatment includes grief counseling for surviving family members.

Other Expenses: Under ORS 147.035 (7)(b) and (8)(b) expenses related to the direct or collateral review necessary for the victim to attend hearings and oral arguments, up to a maximum of \$3,000.

POLICY: Under ORS 147.035 (1)(a)(A) (2)(d)(A)(B) and (C), the department shall reimburse for transportation to and from appointments with medical and mental health providers for compensable treatment. Compensable forms of transportation would include, but not be limited to, personal vehicle, taxi, bus, plane, or train. (Note: Compensation for plane fare or train fare is restricted to coach class only.) Verification of medical or mental health services is required. A receipt is also required when public transportation is utilized.

Compensable treatment must be provided more than 30 miles away from the victim's residence and adequate treatment is not available closer to the victim's residence. Payment will be made at a rate of \$.30 per mile up to a maximum amount of \$3000.

In unique cases, the department has also paid for the mileage expense of a medical or mental health provider driving to the victim's place of residence to administer treatment.

Under ORS 147.035 (7)(b) and (8)(b) in the case of post-conviction review, the Department shall reimburse for transportation, lodging, and

other expenses necessary for the victim to attend oral arguments and hearings up to a maximum of \$3000.

Hearings are defined to include:

- Trials
- Hearings
- Oral Arguments and
- Any other appearances before a court as well as related activities such as attendance at depositions.

Transportation includes travel:

- From the victim's residence and between places of lodging or hearings (or oral arguments), and includes personal vehicle, taxi, bus, coach plane or coach train fare.
- Payment for gas reimbursement will be paid at \$.30 per mile.
- Parking costs

Other expenses include:

- Fees and tips given to porters, baggage carriers, bellhops, and hotel personnel. Fees and tips cannot exceed 15% of the federal per diem (e.g. a \$3.00 tip would be compensable for a \$20.00 meal).
- Payment for gas reimbursement will be paid at \$.30 per mile rate and be calculated using a website such as Mapquest or Google maps. Payment for lodging and meals will be paid at no more than the current federal per diem unless approved by the Director.
- If the direct of collateral review carries through the lunch hour, lunch will be reimbursed for no more than the current federal per diem.

Receipts are required for reimbursement/payment of all compensable expenses.

SUBJECT: FUNERAL EXPENSES

PURPOSE: To establish policy and guidelines for compensable funeral expenses.

AUTHORITY: ORS 147.005 (8), 147.025, 147.035 (3) (a), 147.125 (d)

DEFINITIONS: *Funeral Expenses:* Any expense related to the final disposition and/or memorial of a deceased victim.

Eligible Applicant(s): Any family member, family friend or other person(s) who has made payment(s) toward funeral expenses of a deceased victim or any other person(s) who had assumed financial responsibility for funeral expenses of a deceased victim. A funeral home owner or employee shall not under any circumstances be considered as an eligible applicant.

POLICY: The Department shall either reimburse an eligible applicant or make payment directly to a funeral service provider for any compensable funeral expenses related to an eligible deceased victim up to the statutory benefit limit.

An itemized funeral bill or contract totaling the requested payment amount is required. The contract should be either signed by the CVC claim applicant indicating financial responsibility for the funeral. If reimbursement is applicable some proof of payment including the Department's own "Funeral Expense Verification" or other receipt shall be required prior to processing payment.

A copy of a signed (claim applicant) "Purchase Agreement" for a cemetery space shall always be required prior to payment. The purchase of one space for the approved victim is compensable. The cemetery may also add an additional charge for a (required) concrete grave liner and a flat marker. These added expenses are also compensable. Cemetery property is usually payable at the time of purchase and will usually require reimbursement to the applicant (or an additional applicant). When applicable, an abbreviated CVC application (for additional applicant) should be sent to any other person requesting reimbursement for funeral expenses.

Examples of Compensable Funeral Expenses

- Funeral Home Itemized Expenses
- Purchase of "single" cemetery plot or niche at a columbarium
- Purchase of "single" plot in cemetery's urn garden
- Purchase of cemetery required "outer burial container"

- Interment (opening/closing of grave) or Inurnment (placing urn into a niche or other resting place) related expenses
- Purchase of smaller (such as 16" X 8" X 3") inscribed marker for home garden. Must include name of deceased and dates...
- Professional fee for scattering of ashes (cremains)
- Shipping expenses for the deceased (domestic or international)
- Cremation Expenses including purchase of urns
- Pendant Urns (jewelry)
- Floral Tributes
- Garments purchased for viewing of the deceased
- Memorial Service Expenses
- Musician fees
- Purchase of Memorial Plaques or Headstones (a.k.a. grave marker) including installation and footings, lettering, picture.
- Clergy Honorarium and other Religious type of funeral expenses
- Food Purchased exclusively for post funeral gathering (receipt required)
- Expenses related to the scattering of victim's cremains
- Paid Obituaries in local newspapers
- Monument Unveiling Ceremony Expenses held normally 12 months after death
- Other expenses necessitated by cultural tradition will be reviewed on an individual basis

Transportation of Human Remains

Expenses involved in the shipment of a deceased victim's remains to a distant place for final disposition is compensable. Such expenses include airfreight, required containers, forwarding fees and additional funeral provider fees.

Transportation of remains to the Medical Examiner's facility is also a compensable expense when added to the itemized funeral bill.

Examples of Non-Compensable Funeral Expenses

- Transportation or lodging expenses for family members
- Purchases of clothing for family members
- Purchase of items that have obvious value for purposes other than the funeral of the deceased. e.g. electronic equipment
- Memorial (e.g. plaque or other grave marker) without inscription of deceased and dates of birth/death.
- Alcoholic Beverages

Prior Resources

Auto Insurance-Personal Injury Protection (PIP) (benefit amount currently is \$5,000.00) is no fault and applies to persons killed while operating or riding as a passenger in a motor vehicle. It can also apply to a bicyclist or pedestrian fatally injured as a result of a motor vehicle

crash . Refer to prior resource section of Policy Procedures for more information.

Worker’s Compensation Death Benefits (the “burial benefit is currently equal to twenty times the state average weekly wage). This rate is adjusted annually by the Employment Department. Effective July 1, 2015 the state average wage was computed to be \$922.39 making the burial benefit equal to \$18,447.80. This benefit applies to a person who dies as a result of a “compensable worker’s compensation injury.”

For CVCP purposes, determining what constitutes a “compensable worker’s compensation injury” can be complicated. This is best illustrated by the pertinent Workers Compensation related statute which appears below:

ORS 656.005 (7) (b) (A) (B) & (C)

(b) Compensable injury does not include:

(A) Injury to any active participant in assaults or combats which are not connected to the job assignment and which amount to a deviation from customary duties;

(B) Injury incurred while engaging in or performing, or as the result of engaging in or performing, any recreational or social activities primarily for the workers personal pleasure; or

(C) Injury the major contributing cause of which is demonstrated to be by a preponderance of the evidence the injured workers consumption of alcoholic beverages or the unlawful consumption of any controlled substance, unless the employer permitted, encouraged or had actual knowledge of such consumption

Not a prior resource

As a result of Legislative Enactment of House Bill 2259, all proceeds obtained from life insurance beneficiary payments or community contributions including “Go Fund Me” accounts shall not be considered as prior resources and therefore should be disregarded when processing payments toward funeral expenses.

May be a prior resource

CVCP may be precluded from reimbursing funeral expenses paid by the Estate of a deceased victim. ORS 147.025 does not include “estates” as an eligible party for reimbursement. A legal opinion may be necessary in certain circumstances. As a practical matter, this rarely comes up as the personal representative of an estate who may be a relative or friend of the deceased victim may have accepted responsibility for the funeral expenses outside of the estate of the deceased.

Accidental Death Insurance which may be purchased as a stand-alone insurance policy or added to a regular life insurance policy in the form of

rider will pay an additional benefit in the case of an accidental death. Most deaths that occur as a result of a compensable crime constitute an accidental death and therefore a cash benefit can be expected to be paid to the designated beneficiary. This type of insurance may be considered a prior resource as it is a different insurance product than life insurance. As a practical matter, we do not request this specific information within the CVCP application.

POLICY NUMBER III.C.11.

Approved by: _____
Date: 06/02/2008

SUBJECT: Independent Medical Examinations

(Pending Updates)

SUBJECT: PRIOR (COLLATERAL) RESOURCES

PURPOSE: To establish a uniform policy when evaluating whether or not particular prior resources should be taken into consideration when making payments and to reconfirm that the Oregon Crime Victims' Compensation Program (CVCP) remains as the "payer of last resort."

AUTHORITY: ORS 147.125 (1) (d) (e) (Payer of last resort)
42 U.S.C §10602 (e) Federal programs always primary to CVCP.
(Exception IHS)

POLICY: After a crime victims' compensation claim has been approved and appropriate awards granted; it is the responsibility of both the Claims Assistant and the Claims Examiner to independently review each request for payment received in order to determine whether or not CVCP shall approve payment for a submitted expense. The following criteria must be considered during this review:

- Was the request for payment submitted timely?
- Is the treatment or expenses being billed for compensable, appropriate and medically necessary?
- Are there collateral resources available to the claimant/applicant that must be first taken into consideration as primary to CVCP?
- Do we have sufficient information or do we need additional information from the claimant/applicant pertaining to potential collateral resources?

III.D.1. PAYER OF LAST RESORT

Title 42 of the U.S code section 10602 unequivocally designates State Crime Victims' Compensation programs as secondary to any Federal program or any federally financed State or local program which would otherwise pay. This amendment recognizes that crime victim compensation programs were never intended to serve as a substitute for publically financed health or social programs. The level of funding for compensation programs is limited and meant only to fill gaps resulting from either no health plan coverage or limitations in available coverage for medical needs. The amended federal law actually states that:

Relationship to certain Federal programs.

Notwithstanding any other law, if the compensation paid by an eligible crime victim compensation program [note: this means eligible for a Victims of Crime Act (VOCA) grant] would cover costs that a Federal

program, or a federal financed State or local program, would otherwise pay,-

- (1) such crime victim compensation program shall not pay that compensation; and*
- (2) the other program shall make its payments without regard to the existence of the crime victim compensation program.*

The report of the House Judiciary Committee Report that accompanied the change in law included the following:

It is the intent of the Committee that compensation programs funded under this Act [VOCA] be available as “funds of last resort,” and thus not supplant Medicaid, Veterans Administration, CHAMPUS, Indian Health Services*, or similarly available Federal funds. ***Indian Health Services is no longer included.**

Oregon Statute further instructs The Crime Victims’ Compensation Program to review (all) collateral resources the claimant/applicant may be entitled to and make appropriate reductions in all compensation benefits. ORS 147.125 (1) (d):

(CVCP) “...shall deduct the amount of benefits, payments or awards that are payable under the Workers’ Compensation Law, from local governmental, state or federal funds or from any source, and that the victim or survivors or dependents of the victim have received or to which the victim or survivors or dependents of the victim are entitled as a result of the death or injury of the victim ...”

ORS 147.125 (1) (e) Shall not deduct the amount of proceeds from life insurance or contributions from the community that the survivors or dependents of the victim have received or to which the survivors or dependents of the victim are entitled as a result of the death of the victim;

III.D.2. GOOD CAUSE TO WAIVE PRIOR RESOURCE REQUIREMENTS

If an applicant has other available benefits at his or her disposal, the applicant cannot choose to use CVCP funds instead, i.e., having CVCP pay a particular medical bill instead of having the medical provider bill applicant’s insurance company or having applicant filing a claim with their insurance company. Under certain conditions, this requirement may be waived on a case-by-case basis upon written request including justification made by the applicant. All requests for waiver of prior resources should be forwarded to the assigned Claims Examiner. Prior to waiving the requirement, the Claims Examiner should verify that the reason stated for the “waiver request” is legitimate. Under some circumstances (indicated below) the request should be staffed. The following includes a few potential good cause waiver scenarios:

- The offender is the policy holder on the insurance coverage and the victim (family member) does not want the offender knowing what type of treatment he/she is seeking and from whom.
- Victim's insurance does not include or includes limited mental health benefits.
- The victim indicates that all of his/her insurance carrier's approved providers have an extensive waiting list requiring an initial lengthy delay before the victim can see a mental health professional for a treatment evaluation. Verification by the Claims Examiner may be indicated in certain instances. **Staffing with a Manager would be required**
- Victim's indicates that the nearest approved provider is located a great distance from their current residence. CVCP may waive the prior resource requirement allowing the victim to treat with another provider located closer to their residence. **Staffing with a Manager would be required.**
- Cultural/Language Barriers – Prior resource requirements can potentially be waived in order to accommodate certain victims to treat with a bilingual provider or culturally competent practitioner
- Victim had a prior long-term therapeutic relationship with a particular provider and would like to continue to see the same provider about the compensable issues. The particular therapist would not be covered by the victim's current health insurance.
- Victim's group insurance carrier was changed by his/her employer at the beginning of a new year and the (covered) provider that the victim had been seeing is unable to bill the victim's new insurer as an "out of network" provider. A denial from the new insurance carrier verifying this should be required prior to granting the waiver.

III.D.3. TYPES OF PRIOR RESOURCES

It is the responsibility of the CVCP Claims Assistant and the Claims Examiner to review, investigate and identify all potentially available prior resources for all CVCP claims prior to making any claim payments on behalf of approved victims. Most of this information can be obtained from a review of the claim application, subsequent medical billing statements, police reports (vehicular crimes), and the Oregon Health Plan Database. When indicated, a medical (insurance) supplemental should be sent to the victim/applicant.

The following is a comprehensive list of prior resources, which could be available to victims and of which CVCP should be aware of:

Prior resources for medical, dental, rehabilitation and counseling:

1. Health insurance including OHP, Medicare, Medicaid, Kaiser Permanente, Veteran's Administration (VA), Champus etc.
2. Auto (Personal Injury Protection (PIP), Bodily Injury) insurance. PIP is no-fault and pays quickly in most cases. Bodily Injury (BI)

settlement is often delayed and normally not taken into consideration by C/E & C/A when paying benefits.

3. Restitution paid to victim.
4. Civil settlements received by victim or Civil Compromise between the victim and offender.
5. Workers' Compensation (On-the-job-injuries) does not apply to Independent Contractors unless they self-insure.
6. Supplemental Insurance such as AFLAC (Set dollar amount reimbursements for specified medical & rehabilitation services, transportation costs and other expenses some of which are compensable by CVCP) AFLAC often offers specific daily amounts while hospitalized (inpatient) for accidental injuries and may also include very limited short term disability payments. Claimants indicating AFLAC coverage must furnish CVCP with up to date payment ledgers at some point. Payment delays are common. It will be very difficult for CVCP to obtain this from AFLAC.
7. Medicare Supplement Insurance (will pay patient responsibility for covered services) either all/partial. Medicare deductible and non-covered services are normally not covered.

Additional prior resources for loss of income:

1. Sick leave benefits/combination leave (Paid Time Off (PTO))
2. Disability (short and long term) Insurance benefits
3. Social security Disability-(as a result of compensable crime)

Additional prior resources for loss of support:

1. Social Security Survivor's Benefits
2. Accrued Sick leave payable to survivor.
3. Public Safety Benefits specific to Police, Firefighters etc.

Additional prior resources for funeral expenses:

1. Social security Death Benefit (\$255.00 to surviving spouse or child)
2. Veteran's Administration Death Benefit (\$300.00 non-service related death (death did not occur in VA Hospital)+\$747.00 plot-interment in non-national cemetery only)

Sick Leave Benefits are normally paid by the employer. This information should be found on a completed "Verification of Employment" questionnaire sent by CVCP to indicated employer. While sick leave benefits are a prior resource, vacation leave is not. Paid Time Off (PTO) which combines vacation and sick leave time shall be considered equal to fifty percent sick leave.

Disability Benefits are paid through a private insurance company, a Third-Party Administrator (self-insured-employer) or the Social Security Administration (SSD). Private Disability insurance policies are most commonly purchased through a group insurance plan such as an employer or trade association. Disability coverage is also available through the purchase of an individual private plan but at far greater cost than through a group and therefore is uncommon. Disability policies are normally written for short-term (3-6 months) or long-term disabilities

(transitions immediately after short-term disability or commences after a defined period of time has elapsed (e.g., 6 months)) and the insured person remains disabled. Disability insurance usually begin after a defined waiting (elimination) period has passed such as one or two weeks. During this period, the insured would use either sick leave, paid time off, vacation or unpaid leave. The amount of benefits will vary according to the policy. Most group plans pay 50% to 60% of the earned income of the insured. Somewhat higher limits may be available at a considerably higher premium depending upon the insured's type of employment. Higher or full replacement would not be insurable as there would be little incentive for the insured to return to work. While employee paid disability benefits are not subject to income taxes, employer -paid disability benefits are fully taxable as regular income.

Workers' Compensation Benefits related to On-the-Job injuries may be paid by an insurance company that insures workers of a particular employer or by a "Third Party Administrator (TPA)" representing a self-insured company. Some of the larger Workers' Compensation carriers in Oregon include State Accident Insurance Fund (SAIF) Corporation, Liberty Mutual and Liberty Northwest, Sedgwick, Pinnacle Claims Management and Gallagher Bassett Services, Inc... Employers are required by law to provide coverage to all regularly employed workers. The exceptions include "self-employed" individuals or those hired/paid as "Independent Contractors" and domestic servants in or about a private home. Refer to ORS 656.027 for a list of all exceptions. Workers' compensation insurers will normally provide benefits for all (necessary) medical expenses and approximately 66 2/3% of their income. Benefits shall continue to be paid until the person stops receiving treatment, becomes "medically stationary" (no further improvement expected) remain permanently (fully or partially) disabled and therefore entitled to continued benefits or a settlement (one time lump sum payment). CVCP would therefore be secondary providing compensation as a differential (difference between average net earnings after regular withholding or 70% of gross and Workers' Compensation benefit).

Automobile Insurance may be collateral resource for victims involved in DUII crashes, vehicular assaults and injuries resulting from reckless driving on the part of the offender. Automobile Insurance constitutes the primary collateral resource as both (at-fault) Bodily Injury & property damage liability and (no-fault) Personal Injury Protection (PIP). Policy limits will vary for both coverages; however, there are minimum coverages required by law. Oregon requires that an owner of a car carry a minimum of \$25,000 for one person or \$50,000 per crash for bodily injury and a minimum of \$15,000 for PIP. Higher levels of coverage are available at increments of \$5,000.00 for an additional premium. While available at lower coverage levels and higher cost, PIP is not required for a motorcycle in Oregon or for any vehicle in Washington State. PIP benefits include coverages for "reasonable and necessary" medical, chiropractic, dental, hospital, surgical, ambulance and prosthetic services incurred within one year after the date of injury (equal to the greater of the purchased limits or \$15,000 minimum requirement) and 70% of lost

wages, with a maximum of \$3,000.00 per month for up to one year. This coverage is available after an insured is out of work for 14 consecutive days. PIP is “no-fault” and payable promptly after a claim is presented to the victim’s (or his/her family’s) auto insurance carrier. Minimum benefits in Oregon also include funeral expenses (\$5000.00 maximum) and child care.

Important:

- It should be noted that in Oregon, PIP coverage applies to the insured person and member of that person’s family residing in the same household.
- Depending upon the circumstances involved, PIP benefits may be payable when a person is injured while sitting in a parked vehicle (e.g. while removing the key from ignition) or standing adjacent to a vehicle (e.g. while exchanging insurance information after a collision).
- Depending upon the insurer and the specific circumstances, PIP benefits may not apply in cases where an insured is injured inside of a vehicle while they were using the vehicle “non-incidentally” such as for sleeping or having a meal.
- A bicyclist or pedestrian physically injured by a motor vehicle (insured or uninsured) may be eligible for PIP benefits through their auto policy or their family’s auto policy (assuming they live in same household).

The “at fault” person’s auto insurance would potentially pay bodily injury (BI) benefits to the injured person at a later time. If the “at-fault” person did not carry insurance on their vehicle, an injured person may be entitled to benefits through their own insurance coverage via their mandatory uninsured motorist coverage. If the “at-fault” person carried minimal coverage, the injured party may be eligible for additional benefits through their own higher limit policy (underinsurance coverage). It is important to note that all Bodily Injury claims require negotiations with the insurer and can include payment for “pain and suffering” which CVCP also considers to be a “prior resource”.

Veterans’ Administration Benefits although primary to CVCP, may not always be required depending upon the circumstances. There are two Veterans Administration hospitals in Oregon: Portland and Roseburg as well as several clinics located in various parts of the state. Emergency Department visits would usually be payable by the Veterans Administration depending upon the severity of injuries and nearness to one of the two V.A. Medical Centers. The Veterans Administration offers various medical and/or rehabilitation services at Community Clinics located throughout Oregon. If required services are not available within a reasonable distance from a victim, the particular compensable treatment can be paid by CVCP as primary assuming that no other health insurance coverage is available to this victim.

Indian Health Services (IHS). Subsequent to the enactment of the Affordable Care Act, Congress has designated Indian Health Service as the Payer of Last Resort requiring other federal, state funded programs including Crime Victims' Compensation programs and private insurance to pay as primary. Consequently approved victims shall have the option to choose compensable treatment either through IHS facilities or from other appropriate providers.

POLICY NUMBER: III.E.1.2.
Revised 03/15/2018

Approved by: ____RS1____

SUBJECT: ADMINISTRATIVE ORDERS

PURPOSE: To establish a uniform policy regarding types of administrative orders and contents contained within the orders.

AUTHORITY: ORS 147.135

POLICY: After processing an application filed under ORS 147.105 and performing a thorough claim review in order to determine whether or not all of the statutory eligibility criteria has been satisfied, the department shall enter on order stating:

1. Its findings of fact; and
2. Its decision as to whether or not compensation is due under ORS 147.005 to 147.365.

III.E.1. TYPES OF ADMINISTRATIVE ORDERS

Generally speaking, there are 5 types of administrative orders that can be issued by the department after processing a claim application. They include:

1. **Acceptance Order:** If following the claim review it is determined that the claim is compensable and has met all statutory eligibility criteria, an acceptance order is issued. The order is notification to the victim/applicant and other interested parties that the claim has been accepted and lists exactly what types of compensation have been awarded.
2. **Reduced Order:** Pursuant to ORS 147.125(1)(c), if it is determined that the victim meets all of the statutory eligibility criteria in order to accept his or her claim but, it is also determined that, to some degree, the victim's actions or conduct contributed to the injuries or death of the victim, CVCP may reduce or deny the award of compensation accordingly, anywhere from 1 to 100%. Please note that this is not a denial order, but reduces benefits accordingly. In some cases up to 100%.
3. **Denial Order:** If following the claim review it is determined that the victim did not meet all of the eligibility criteria provided in ORS

147.015, a denial order is issued. This order is notification to the victim and other interested third parties that the claim for compensation has been denied. This order consists of information regarding the incident, findings of fact, conclusion and appeal instructions.

4. Amended Order: If after issuing the original order, the department receives additional information regarding the circumstances surrounding the claim, the original order can be amended based on this new information. Generally speaking, acceptance orders are most commonly amended either adding new award benefits that were not in the original order or, in the case of new negative information regarding the victim, denied. .

Reconsideration Order: Pursuant to ORS 147.145 If the applicant disagrees with the order entered under ORS 147.135, the applicant may request review by the Department of Justice. The department shall reconsider any order for which a request for review is received. The department shall notify the applicant of its decision on review within 30 days of the department's receipt of the request for review. If the department determines that the request for review does not contain sufficient information to make a decision within 30 days of the department's receipt of the request for review, the 30-day time period may be extended by the department only with the oral or written permission of the applicant.

5. . This order should include:
 - Original findings;
 - Victims reasons for reconsideration request;
 - New findings or rebuttal of victim's reasoning;
 - Order and conclusion.

III.E.2. ORDER PREPARATION

When preparing to draft an administrative order, the Examiner should always look at the case objectively when reviewing the facts. One suggested way of laying out an order includes:

1. The undisputed facts are...
2. The disputed facts are...
3. My versions of the facts are...

Other things to consider when processing administrative orders:

- State findings of fact in chronological order or in some logical order;
- Always state the steps we sought to gain information when denying claim for lack of information or lack of proof of good cause, i.e., phone calls made on....letter mailed on ...certified letter mailed on ...
- If we're saying there's no crime, explain why. Say why it's significant that no charges were filed.
- Cite who said what to whom. Beware of the word "May". We are fact finders. Better to say "did", or "did not."

POLICY NUMBER: III.F.1.2.
Revised 03/15/2018

Approved by: RS1
Dated: 03/15/2018

SUBJECT: RECONSIDERATION & APPEAL PROCESS

PURPOSE: To establish a uniform policy regarding the processing of a request from the victim for a reconsideration review and/or a request from the victim/applicant for an appeal with the Workers' Compensation Board.

AUTHORITY: ORS 147.145, 147.155 OAR 137-076-0056

POLICY: II.F.1. RECONSIDERATION REQUESTS/TIMELINES

If the victim/applicant disagrees with the order entered under ORS 147.135, the victim may request review by the department. The victim is required to request his or her reconsideration in writing, stating the reasons for the request and also providing any additional evidence to support his or her case at this time.

Pursuant to OAR 137-076-0056, adult applicants shall have a 90-day period after the initial determination order is entered to request a reconsideration review from the department. The department may consider whether "good cause" for an exception exists if the department receives a request for review after the 90-day period. No exceptions will be made when three years have elapsed from the date of the original order. The following events may constitute "good cause" for failure to submit reconsideration requests within the 90-day period:

- Law enforcement has discovered new and convincing evidence after the 90-day period;
- Physical or mental trauma has caused an inability on the victim's part to request a reconsideration within the 90-day period;
- Victim can document that he/she did not receive the department's original order;

In cases of victims that are under the age of 21, the 90-day requirement for reconsideration requests does not apply. The department will consider all requests for reconsideration that are received within three years of the original order, or when the victim attains the age of 21, whichever occurs later.

The department shall reconsider any order for which a request for review is received. The department is required to notify the victim of its

decision on review within 30-days of receiving the request of reconsideration. The review process is as follows::

1. The original examiner reviews the request and any additional evidence that the victim/applicant may have supplied to support his or her reasons for disagreement. Based on the argument and evidence provided, the original examiner may reverse the original order at this time through a reconsideration order. If, after reviewing the request and evidence, the original examiner does not change his/her mind, the entire claim file is assigned to a new examiner.
2. The new claims examiner will review the claim from start to finish, as if working a brand new predetermined file. Additional calls to criminal justice professionals may need to take place, as may additional requests for information. Following this review the second examiner may reverse the original order and findings if warranted, or may uphold the original findings/denial. Either way, the second examiner's decision is relayed through a reconsideration order. If the original findings/denial is upheld, instructions are given on the reconsideration order regarding the victim's next level of the appeal process, the Workers' Compensation Board.

III.F.2. WORKERS' COMPENSATION BOARD

Any victim/applicant who requests a reconsideration review by the department and who disagrees with the decision on review may appeal to the Workers' Compensation Board.

- The request for appeal shall be in writing, signed by the victim (applicant) and include victim's current address;
- The request for appeal must be mailed to the Board.
- The Board shall conduct a hearing upon at least 10 days' notice to all interested parties, including the department.
- The department is required to make three copies of the entire claim file and deliver those copies to the victim, the Board and the department's legal counsel for review.
- The hearing could be either telephonic or in person. The victim may request that the hearing officer just review the record and make a decision, thus eliminating any formal hearing process.
- The department is always represented by legal counsel. The victim may also be represented by legal counsel; however, ORS 147.315 prohibits any legal counsel charging the victim fees for this service.
- No evidence is admissible at a hearing that has not been previously considered by the department. If new evidence is presented, and the Board feels further examination of the claim is required by the department, the claim may be remanded back to the department for an additional review and finding.
- The decision by the Board shall be final and shall not be subject to further administrative or judicial review.

Note: See “Administrative Orders” section for additional information on reconsideration orders.

SUBJECT: VOCA COMPENSATION ADMINISTRATIVE FUNDS

PURPOSE: To provide written guidelines for handling the 5% VOCA Compensation Administrative Funds received by the Crime Victim and Survivor Services Division as directed in 42 USC 10602 (a) (3). The process will ensure that:

- 1) Appropriate safeguards are in place to prevent over-spending of the 5% VOCA Compensation Administrative funds.

AUTHORITY: 42 USC 10602 (a) (3)

POLICY: III.G.1. UTILIZING VOCA COMPENSATION ADMINISTRATIVE FUNDS

General Guidelines

- The maximum amount of the 5% VOCA Administrative funds utilized for staff positions within the Crime Victims' Compensation Program will not exceed 15% per employee.
- In general, the approval, accounting and reconciliation of the 5% VOCA Administrative funds will be assigned to a specific ODOJ Administrative Services Grant Accountant.
- In order to ensure the ODOJ does not exceed the allowed 5% cap on administrative costs, the Grant Accountant will monitor the funds closely. This will guarantee that payroll is charged to the following years grant before the 5% cap is reached and prevent overspending of the administrative funds.
- The balance on the VOCA Compensation grant will be reviewed daily by the ODOJ grant accountant in order to prevent possible overspending of the funds.
- The ODOJ Grant Accountant will communicate every 6 months with the Compensation Manager in order to keep the manager apprised of the remaining VOCA Administrative funds for the specific years grant.

Additional information

- The contact person responsible for the corrective action plan is the Manager ODOJ Administrative Services
- The change in the percent of administrative funds spent on staff salaries (from 25% to 15%) became effective January 1, 2020.
- The balance on the VOCA Compensation grant will be reviewed daily by the ODOJ grant accountant in order to prevent possible overspending of the funds.
- The following staff must be advised of and given a copy of these procedures.
 - a. Crime Victim and Survivor Services Division Director
 - b. Compensation/Revenue Section Manager
 - c. Manager ODOJ Administrative Services
 - d. ODOJ Accountant handling CVSSD grants

SUBJECT: FEDERAL REPORTING PROCEDURES

PURPOSE: To provide written guidelines for the collection of statistical data in order to maintain support for the PMT data reported to OVC and to ensure appropriate safeguards are in place to support statistical data reported to OVC on a quarterly basis.

AUTHORITY:

POLICY: III.H.1. Collection of Statistical Data

General Guidelines

- The Oregon Department of Justice, Crime Victims' Compensation Program will use the CVC Claim Management System (CMS) report manager to collect data for quarterly statistical reporting to OVC through the PMT.
- The data, collected through the CMS report manager system, will be stored in an excel spreadsheet (DM 9593478) and printed in hard copy.
- The quarterly statistical report spreadsheet will be used to capture the data required by OVC.
- Once data has been entered on the spreadsheet and submitted to OVC, the data for that specific reporting period will be locked and password protected by an Administrative Specialist within CVSSD.
- After the document is locked, the data cannot be modified. All data will be retained for a three-year period.

The Program began officially tracking this data during 4th quarter (07/01/19-09/30/19) of 2019.

- Data for the quarterly and yearly PMT report is collected on all compensation claims received during the reporting period.
- This report captures the data described below:
 1. Number of Claims Received
 2. Age of victim (optional)
 3. Gender of victim (optional)
 4. Race/ethnicity of victim
 5. Performance measures
 6. Payment statistics

Additional Information

- The Program will review the reported data one (1) month after the quarterly report has been submitted to OVC in order to reconcile the reported data with the Program's internal records.

- Upon request, the Program will provide OVC with the excel document utilized to submit the reported data.
- The ORDOJ staff person responsible for this corrective plan is the Compensation/Revenue Section Manager

The following staff responsible for managing federal grant funds must receive a copy of this procedure as it maintains support for the performance data reported to OVC:

CVSSD Director
Compensation/Revenue Manager
ODOJ Grant accountant