Office of the Registrar of Regulations,
Legislative Council,
State of Delaware

DEPARTMENT OF JUSTICE

VICTIMS' COMPENSATION ASSISTANCE PROGRAM ADVISORY COUNCIL

Statutory Authority: 11 Delaware Code, Section 9004 (11 **Del.C.** §9004)
1 **DE Admin. Code** 301

PROPOSED

PUBLIC NOTICE

301 Victims' Compensation Assistance Program Rules and Regulations

Brief Synopsis of the Subject, Substance and Issues

The Department of Justice Victims Compensation Assistance Program proposes to add an additional regulation, 29.0, to section 301 relating to payment of Mental Health claims. VCAP currently reimburses victims who lack other insurance for mental health assessment and counseling services. VCAP is the payer of last resort for these mental health claims. Other health insurance, Medicaid and/or Medicare must pay first, before VCAP pays. This provision is intended to mirror the provisions of recently-enacted Rule 28, covering medical expenses.

This regulation would require that VCAP pay all mental health providers at 80% of the usual and customary charge for services. This amount would be deemed payment in full, and the mental health provider would be unable to collect any additional monies from the victim, or from third parties, through "balance billing". VCAP would pay any co-payment amounts in full, on approved assessment and treatment. Enactment of this regulation would help preserve and extend the Victims Compensation Assistance Program funds and bring VCAP more in line the practices of insurers and other government programs in paying mental health claims.

Notice of Public Comment:

The Department of Justice Victims Compensation Assistance Program will hold a public hearing on these proposed amendments on Wednesday, February 23, 2011 at 2:00 p.m. at Dover Police Department, 400 S. Queen Street, Dover, DE 19904. Interested persons may submit comments in writing to Barbara Brown, VCAP, 900 King Street, Suite 4, Wilmington Delaware 19801, no later than February 28, 2011. Statements and testimony may be presented either orally or in writing at the public hearing.

Prepared by: Barbara Brown
302 255-1770
December 14, 2010

301 Victims' Compensation Assistance Program Rules and Regulations

1.0 Statement Of Goals

1.1 The Victims' Compensation Assistance Program, hereby, declares that it serves a public purpose, and is of benefit to the victims of violent crimes committed within the State of Delaware, and to Delaware residents who are victims of crimes committed in States that do not have a funded Victim Compensation Program offering equivalent benefits. It is the purpose of the Victims' Compensation Assistance Program to promote the public welfare by establishing a means of meeting the additional hardships imposed upon the innocent victim of certain crimes, and the family and dependents of those victims and Delaware residents who are victimized by terrorist attacks committed inside or outside the United States.

12 DE Reg. 1193 (03/01/09)

13 DE Reg. 1213 (03/01/10)

2.0 Definitions

2.1 The definitions set forth in 11 **Del.C.** Ch. 90 are hereby adopted and incorporated by reference in these Rules. "The following words, terms and phrases, when used in these Rules, shall have the meanings ascribed to them except where the context clearly indicates a different meaning:

"**Agency**" shall mean the Victims' Compensation Assistance Program, or VCAP.

"**Appeals Board'** shall mean the Victims' Compensation Assistance Program Appeals Board, or VCAPAB.

‘Child’, shall mean an unmarried person who is under eighteen years of age, and shall include the step-child or adopted child of the victim, or child conceived prior to, but born after, the personal injury or death of the victim.

"**Council**" shall mean the Victims' Compensation Assistance Program Advisory Council, or VCAPAC.

‘Crime' for purposes of this Chapter shall mean:

(1) any specific offense set forth in Chapter 5 of Title 11 of the Delaware Criminal Code as the same appears in Chapter 497, Volume 58, **Laws of Delaware**, if the offense was committed after the effective date of said Criminal Code and contains the characteristics of murder, rape, unlawful sexual intercourse, unlawful sexual penetration or unlawful sexual contact, manslaughter, assault, kidnapping, arson, burglary, riot, robbery, unlawful use of explosives, [or] unlawful use of firearms, stalking, endangering the welfare of a child, driving under the influence of any alcohol or drug or driving with a prohibited blood alcohol concentration, or hit-and-run, or any act of domestic violence or abuse;

(2) any specific offense set forth in Chapter 3, Title 11 of the Delaware Code if such offense was committed prior to the effective date of the Delaware Criminal Code, as set forth in Chapter 497, Volume 58, **Laws of Delaware,** and contains the characteristics of murder, rape, manslaughter, assault, kidnapping, arson, burglary, robbery, riot, unlawful use of explosives, or unlawful use of firearms;

(3) Any specific offense occurring in another state possession or territory of the United States in which a person whose domicile is in Delaware is a victim, if the offense contain the characteristics of murder, rape, manslaughter, assault, kidnapping, arson, burglary, riot robbery, unlawful use of explosives or unlawful use of firearms as set forth in Chapter 5 of this title. (66 **Del. Laws,** c. 269, Section 11.)

(4) Any specific act of delinquency by a child, which if committed by an adult would constitute a specific offense set forth in Chapter 5 of this Title, and contains the characteristics of murder, rape, unlawful sexual intercourse, unlawful sexual penetration or unlawful sexual contact, manslaughter, assault, kidnapping, arson, burglary, robbery, riot, unlawful use of explosives or unlawful use of firearms;

(5) An act of terrorism, as defined in 18 *U.S.C.* §2331, committed outside, or inside, the United States against a resident or domiciliary of this State.

‘Dependent' shall mean a person wholly or substantially dependent upon the income of the victim at the time of the victim's death, or would have been so dependent but for the incompetency of the victim due to the injury from which the death resulted, and shall include a child born after the death of such victim;

"**Executive Director**" shall mean the Executive Director of the Victims' Compensation Assistance Program. [§9005(b)]

‘Guardian' shall mean a person, governmental instrumentality, or private organization entitled by law or legal appointment to care for and manage the person or property, or both, of a child or incompetent;

‘Incompetent' shall mean a person who is incapable of managing his own affairs, as determined by the Board or by a court of competent jurisdiction;

‘Personal Injury' shall mean bodily harm, mental, emotional, or psychological harm, and shall include pregnancy of the victim resulting from the crime.

‘Pecuniary Loss' in instances of personal injury shall include medical expenses, including psychiatric care, non-medical remedial care and treatment rendered in accordance with a religious method of healing; hospital expenses; loss of past earnings; crime scene cleanup, moving expenses, essential personal safety property, insurance deductibles, and loss of future earnings, including, but not limited to, reimbursement for vacation, sick, and compensatory time because of a disability resulting from such personal injury. ‘Pecuniary Loss' in instances of death of the victim shall include funeral and burial expenses and loss of support to the dependents of the victim. Pecuniary loss includes any other expenses actually and necessarily incurred as a result of the personal injury or death, but it does not include property damage. Pecuniary loss", as defined in §9002, shall include only the net amount of enumerated expenses actually and necessarily sustained as a result of personal injury or death occurring due to a crime. Compensation for increased rent or mortgage payments due to relocation of the victim as a result of the crime shall be limited to the net amount of any increase.

“**Secondary Victim”** shall mean any parent, stepparent, grandparent, son, daughter, spouse, sibling, half-sibling, fiancée, caretaker of the victim; any child who resides on a regular or semi-regular basis with any adult who is the victim of, or convicted of, any crime involving an act of domestic violence; the parents of a victim's spouse; or any other person who resided in the victim's household at the time of the crime or at the time of the discovery of the crime.

‘Victim' shall mean a person who is injured or killed by the act of any other person during the commission of a crime as defined in this Chapter.

12 DE Reg. 1193 (03/01/09)

13 DE Reg. 1213 (03/01/10)

3.0 Quorum

3.1 Three members shall constitute a quorum for all hearings of the Appeals Board. Where an opinion is divided, the majority shall prevail.

3.2 A single member of the Appeals Board shall be contacted, and, if available, shall participate with VCAP in the review of an emergency claim pursuant to 11 **Del.C.** §9006(c)(1).

3.3 Pursuant to 11 **Del.C.** §9006(c)(2), a single Appeals Board member shall, in conjunction with the Agency, determine the award for any claim exceeding $12,500.

3.4 When an Appeals Board member has been involved in the initial determination of a claim pursuant to Rules 3.2 or and 3.3, that member is obligated to recuse himself or herself from any subsequent consideration by the Appeals Board of that claim.

3.5 Any Appeals Board member with a direct or indirect interest in a matter before the Appeals Board shall recuse himself or herself from any consideration of that matter, and such recusal shall be noted in the record of the pending matter.

12 DE Reg. 1193 (03/01/09)

13 DE Reg. 1213 (03/01/10)

4.0 Advisory Council

4.1 Meetings of the Council shall be held upon notice mailed by the Council to all interested persons and agencies at least ten days before the meeting date, at such time and place set by the Council.

4.1.1 The Council will maintain a running agenda of all matters to be discussed and acted upon.

4.1.2 A meeting solely for the purpose of addressing Board business shall be held within 30 days. Adopted October 17, 1991. Revised January 7, 1993.

4.2 Records of the Council shall be maintained by the Executive Director. All requests for official information, copies of official records, or opportunity to inspect public records of the Council shall be made to the Executive Director. Public access to records maintained by the Advisory Council shall be governed by the Freedom of Information Act, 29 **Del.C.** Ch. 100.

4.3 All minutes, findings, orders and other actions of the Council shall be authenticated or signed by the Chair of the Council or such other person designated by the Council.

12 DE Reg. 1193 (03/01/09)

13 DE Reg. 1213 (03/01/10)

5.0 Seal

The Appeals Board shall have a seal for authentication of its orders, awards and proceedings, upon which shall be inscribed the words **VICTIMS' COMPENSATION ASSISTANCE PROGRAM APPEALS BOARD**, STATE OF DELAWARE.

12 DE Reg. 1193 (03/01/09)

13 DE Reg. 1213 (03/01/10)

6.0 Availability Of Rules

The rules of VCAP, the Council, and the Appeals Board shall be available to the public at the office of VCAP, and online through the VCAP website. A copy of these rules and regulations shall be on file with all County law libraries.

12 DE Reg. 1193 (03/01/09)

13 DE Reg. 1213 (03/01/10)

7.0 Construction Of Rules

These rules shall be liberally construed to accomplish the purpose of 11 **Del.C.** Ch. 90, as amended, and the goals set forth in Rule 1.

12 DE Reg. 1193 (03/01/09)

13 DE Reg. 1213 (03/01/10)

8.0 Amendments Of Rules

8.1 New rules may be adopted and any rule~~s~~ may be amended or rescinded by the Council at a regular or special meeting, pursuant to 11 **Del.C.** §9004(a).

8.2 New rules, amendments, or revisions shall become effective pursuant to the provisions of the Administrative Procedures Act, 29 **Del.C.** Chapter 101.

12 DE Reg. 1193 (03/01/09)

13 DE Reg. 1213 (03/01/10)

9.0 Filing Of Papers

9.1 The Executive Director shall have custody of the Appeals Board's seal and the official records of VCAP and the Appeals Board, and shall be responsible for the maintenance and custody of the docket, files, records, findings, determinations, opinions, and orders of VCAP and the Appeals Board [§9005(c)].

9.2 All orders and other actions of VCAP and the Appeals Board shall be authenticated or signed by the Executive Director.

9.3 All pleadings or papers required to be filed with VCAP or the Appeals Board shall be filed in the office of VCAP within the time limit, if any, fixed by law or rule for such filing.

9.4 All requests for official information, copies of official records, or opportunity to inspect public records shall be made to the Executive Director. Public access to crime victims' case files and records maintained by VCAP and the **Appeals Board** shall be governed by the Freedom of Information Act, 29 **Del.C.** Ch. 100, and specifically 29 Del.C. §10002(g)(14).

9.5 Communications addressed to VCAP and the Appeals Board and all petitions, and other pleadings, all reports, exhibits, dispositions, transcripts, orders and other papers or documents, received or filed in the office kept by the Executive Director, shall be stamped showing the date of the receipt or filing thereof.

12 DE Reg. 1193 (03/01/09)

13 DE Reg. 1213 (03/01/10)

10.0 Forms

The VCAP shall prepare and furnish claim forms and brochures, and shall provide for the online filing of claims.

12 DE Reg. 1193 (03/01/09)

13 DE Reg. 1213 (03/01/10)

11.0 Filing Of Claims

11.1 In addition to all other statutory requisites, claims must be filed in the office of VCAP on official forms which include subrogation, authorization, and consent agreements. Except for claims on behalf of a child victim subject to Section 9010(d), claims must be filed within one year of the date of the crime, unless an extension is granted by the Agency.

11.2 If VCAP, in its investigation of a claim, requires further documentation from the claimant, such documentation must be submitted to VCAP no later than 45 days of the date of VCAP's request.

11.3 A victim who seeks compensation for temporary housing, rent, security deposit, furniture and/or moving expenses must submit documentation within 45 days of VCAP's request therefor, unless an extension is granted by the Agency.

11.4 If the victim seeks compensation for an injury sustained while in the course and scope of employment, the victim must submit a claim for worker's compensation, and provide documentation thereof, before making application to VCAP for compensation.

12 DE Reg. 1193 (03/01/09)

13 DE Reg. 1213 (03/01/10)

12.0 Access to Records

VCAP, the Advisory Council, and the Appeals Board shall maintain confidentiality of records in accordance with the Freedom of Information Act, 29 **Del.C.** Ch. 100, and specifically 29 **Del.C.** §1004(g)(7).

12 DE Reg. 1193 (03/01/09)

13 DE Reg. 1213 (03/01/10)

13.0 Determination of Claims

13.1 All claimants must fully cooperate with investigators or representatives of VCAP in order to be eligible for an award. In the event that cooperation is refused or denied, VCAP may deny a claim for lack of cooperation.

13.2 Any claimant who is dissatisfied with the initial decision of the Agency may, within 15 days of the date a decision is mailed, request reconsideration of the claim by the Agency. The request should include any additional information from the claimant that supports the claim request. The Executive Director shall review the request and any information provided by the claimant, and render a final decision. [§9009(d); §9012(c)]

13.3 The Agency may arrange for a physical or mental health examination of an injured person filing a claim, to be performed by a physician or practitioner selected by the Agency. A written report of such examination shall be filed by the attending physician with the Agency. The physicians's fee shall be paid directly by the Agency.

13.4 Except as set forth in Section 9009 (11) and (13), and in cases of sexual abuse of a minor by an adult, the Agency shall not reopen or reinvestigate a case after the expiration of two (2) years from the date of the final determination rendered by the Agency. The standard governing such an application shall be that set forth in Superior Court Civil Rule 60 (b), namely that relief shall be granted only in the event of mistake, excusable neglect, newly-discovered evidence, fraud, illegality, or other grounds recognized by the Agency. [Source: §9009(j)]

13.5 Where the Agency has made an initial determination and award, a victim or claimant may submit additional requests for compensation arising out of the same crime within two years of the date of the initial determination by the Agency.

13.6 Where a victim applies for additional compensation for expenses incurred more than one year from the crime occurrence, the Agency may require a new physical or mental examination, in order to ascertain causal connection to the original occurrence.

13.7 Under the circumstances set forth in subsection (13) of 11 **Del.C.** §9009, as amended, a victim or secondary victim may apply for reimbursement for: the cost of mental health counseling services, not to exceed fifty sessions; reasonable expenses incurred due to attendance at criminal proceedings; and expenses for essential personal safety property, not to exceed $1,500; provided that such costs were incurred within one year before or two years after the date of the reopened investigation, judicial or administrative proceeding, release, or execution.

12 DE Reg. 1193 (03/01/09)

13 DE Reg. 1213 (03/01/10)

14.0 Burden Of Proof

14.1 In compensation cases, the burden of proof shall be upon the claimant.

14.2 The claimant also has the burden of proving that he/she sustained a loss or incurred an expense as a result of a violent crime that is compensable according to the statutory authority and the Rules of the Victims' Compensation Assistance Program.

12 DE Reg. 1193 (03/01/09)

13 DE Reg. 1213 (03/01/10)

15.0 Exhibits

Exhibits and case file documents submitted prior to, during, or after the **Appeals Board** hearings shall be maintained in accordance with the provisions of the Department of State, Bureau of Archives and Records Management.

12 DE Reg. 1193 (03/01/09)

13 DE Reg. 1213 (03/01/10)

16.0 Subpoenas, Etc.

16.1 Any Appeals Board member, and the Executive Director, shall have the power to administer oaths, subpoena witnesses, and compel the production of books, papers, and records relevant to any investigation or hearing authorized by 11 **Del.C.** §9019.

16.2 The Appeals Board or any staff member may take, or request, affidavits and depositions of witnesses residing within or without of the State.

12 DE Reg. 1193 (03/01/09)

13 DE Reg. 1213 (03/01/10)

17.0 Hearings

17.1 Notice of hearings shall be posted in the office of VCAP and online at the Agency website at least seven days prior to the scheduled hearing dates. Special meetings or rescheduled hearings shall be posted no later than 24 hours prior to the scheduled time.

17.2 The Appeals Board is not bound by the Rules of Evidence. Hearsay evidence is admissible, if deemed reliable by the Appeals board.

17.3 The Appeals Board may receive as evidence, any statements, documents, information or material, it finds are relevant and of such nature as to afford the parties a fair hearing. The Board may also accept police reports, hospital records and reports, physicians reports, etc., as proof of the crime and injuries sustained, without requiring the presence of the investigating officer or attending physician at the hearing.

17.4 The Appeals Board shall have the discretion to exclude plainly irrelevant, immaterial, insubstantial, cumulative, and privileged evidence. [Source 29 **Del.C.** §10125(b)(3) and (4). Former Rule 6.0]

17.5 All witnesses shall testify under oath (or by affirmation), and a record of the proceedings shall be recorded. The Appeals Board members may examine the claimant and all witnesses.

17.6 Appeals Board hearings shall be open to the public. However, the Appeals Board may hold private deliberations under the following circumstances:

17.6.1 When the claim to be considered derives from any sexual offense;

17.6.2 When the claim to be considered derives from any offense by a child, unless such child has been deemed amenable to the jurisdiction of a criminal court;

17.6.3 When the claim to be considered derives from any matter not yet adjudicated.

17.7 Within 90 days of the conclusion of any and all hearings before the Appeals Board, the Appeals Board shall mail a written final decision to the claimant. The decision shall state whether the claim had been denied or an award has been made to the claimant, shall set forth the contentions of the parties, and the findings of fact and the conclusions of law reached by the Appeals Board, and shall set forth any and all conditions governing an award.

17.8 A request to reopen a claim may be heard by one Member if the reopen request for compensation is less than $5,000.00. If the reopen request for compensation is more than $5,000.00, the request to reopen shall be heard by a quorum of the Board.

17.9 If a claim is filed more than one (1) year after the crime occurrence, or if the claim was reported to law enforcement more than 72 hours after the commission of the crime, the claim may be reviewed by one member to accept or deny for processing.

17.10 Under no circumstances shall the Board reopen or reinvestigate a case after the expiration of two (2) years from the date of decision rendered by the Board.

17.11 Where a victim applies for additional compensation for expenses incurred more than one year from the crime occurrence, the Board may require a new physical or mental examination, in order to ascertain causal connection to the original occurrence.

12 DE Reg. 1193 (03/01/09)

13 DE Reg. 1213 (03/01/10)

18.0 Attorneys

18.1 Claimants have the right to be represented before the Agency and the Appeals Board by an attorney, who is licensed to practice in the State of Delaware. The attorney shall file a notice of appearance.

18.2 Service upon the claimant's attorney shall be deemed as service on the party he represents.

18.3 An attorney licensed in a jurisdiction other than Delaware who seeks to represent a client before the Agency or the Appeals Board must first comply with the Rules of the Supreme Court of the State of Delaware regarding pro hac vice admission to practice.

12 DE Reg. 1193 (03/01/09)

13 DE Reg. 1213 (03/01/10)

19.0 Attorney Fees

19.1 The attorney representing a claimant before the Appeals Board must submit an affidavit setting forth the total number of hours expended and describe the nature of the work performed.

19.2 The Attorney's fees shall not exceed $1,000.00.

19.3 Attorney's fees shall be awarded at the discretion of the Appeals Board.

19.4 Attorney's fees may be 15% of the total amount awarded to the victim, but not to exceed $1000.00; or a fee based on the number of hours spent in representing the claimant. The hourly fee rate will be determined by the Appeals Board.

19.5 No prior agreement between an attorney and a client to pay the attorney a fee out of the client's award will be honored by the Appeals Board. Any such arrangement is unlawful.

19.6 Upon application to the Appeals Board for attorney's fees, the service rendered the injured victim, as well as the time spent and uniqueness of the case, will be considered in determining the allowance of attorney's fees.

19.7 The amount of any attorneys fee award shall not be included within the total compensation subject to the limits set forth in §9007(d).

12 DE Reg. 1193 (03/01/09)

13 DE Reg. 1213 (03/01/10)

20.0 Appeal of Appeals Board Decisions

20.1 All questions relating to an appeal shall be determined in accordance with Chapter 90, Section 9009, Title 11, of the Delaware Code.

20.2 Any claimant who is aggrieved by the Appeals Board's decision concerning compensation or any conditions attached to the award of such compensation, may appeal to the Superior Court within (30) thirty days of the decision of the Board. Any appeal to Superior Court shall not be de novo.

12 DE Reg. 1193 (03/01/09)

13 DE Reg. 1213 (03/01/10)

21.0 Denial Of Claim; Reduction

21.1 All questions relating to denial of a claim shall be determined in accordance with Chapter 90, Title 11, Section 9010, of the **Delaware Code**.

21.2 The Agency and the Appeals Board are not compelled to provide compensation in any case, nor are they compelled to award the full amount claimed. The Agency and the Appeals Board may make an award of compensation dependent upon such condition or conditions as they deem desirable.

12 DE Reg. 1193 (03/01/09)

13 DE Reg. 1213 (03/01/10)

22.0 Dependency

22.1 All questions relating to dependency shall be determined in accordance with 11 **Del.C.** Ch. 90 §9002 which reads as follows:

22.2 Section 9002(f) "Dependent shall mean a person who is wholly or substantially dependent upon the income of the victim at the time of the victim's death, or would have been so dependent but for the incompetence of the victim due to the injury from which the death resulted, and shall include a child born after the death of such victim."

12 DE Reg. 1193 (03/01/09)

13 DE Reg. 1213 (03/01/10)

23.0 Emergency Awards

The Agency will make an emergency award only upon a showing of dire necessity. The claimant, must, in writing, request an emergency award when submitting his claim form and show just cause as to why such an award should be considered. No such award will be made until the police report or other official documentation from the appropriate law enforcement agency is acquired. An Appeals Board member shall be contacted and, if available, participate in the determination of any such emergency award.

12 DE Reg. 1193 (03/01/09)

13 DE Reg. 1213 (03/01/10)

24.0 Mental Health Practitioner Qualifications/Licensure

24.1 To be eligible for crime victim's compensation for psychological assessments and mental health counseling treatment, within and without the State of Delaware, a practitioner possessing an advanced degree in an applied mental health discipline must provide assessment and treatment. The advanced degree should be in Psychiatry, Psychology, Social Work, Counseling, or Psychiatric Nursing.

24.2 To be eligible for crime victim's compensation for psychological assessments and mental health counseling treatment in the State of Delaware, a licensed mental health practitioner must provide services. The five disciplines recognized by the Agency for payment of mental health counseling benefits are: Licensed Psychiatrist, Licensed Psychologist, Licensed Clinical Social Worker, Licensed Mental Health Counselor, and Licensed Clinical Nurse Specialist.

24.3 Payment for mental health treatment received outside the State of Delaware will be evaluated for practitioner's licensure on a case-by-case basis by VCAP.

24.4 VCAP may consider payment for mental health counseling services rendered by an unlicensed provider if the provider is practicing under the direct supervision of a licensed practitioner in one of the disciplines recognized by VCAP, as set forth in Rule 26.1 below. VCAP will decide claims for payment of services rendered by an unlicensed practitioner on a case-by-case basis.

2 DE Reg. 1670 (3/1/99)

12 DE Reg. 1193 (03/01/09)

13 DE Reg. 1213 (03/01/10)

25.0 Burial Awards

The aggregate award for funeral and burial shall not exceed $8,500.00

12 DE Reg. 1193 (03/01/09)

13 DE Reg. 1213 (03/01/10)

26.0 Child Victim Counseling and Assessment Program (CCAP) Provisions

For the purposes of section 9024(c), up to $1,200.00 may be paid from the victim's compensation fund on behalf of each child victim of crime for reasonable costs incurred for psychological assessments and short-term counseling.

2 DE Reg. 1670 (3/1/99)

13 DE Reg. 1213 (03/01/10)

27.0 Collateral Sources of Compensation; Subrogation

27.1 Any award made by VCAP shall be reduced by the amount, if any, of compensation the claimant has received or will receive as indemnification from any other source, including insurance of any kind. The proceeds of any life insurance policy shall not be deducted from the award. [Source: §9005(1)]

27.2 VCAP shall deduct from its award the amount of any compensation for personal injury of death arising from the crime or incident and received by the victim, or by the victim's dependents. Such compensation includes payments by or on behalf of the offender, from any insurer, and from any governmental entity. The amount of compensation to be deducted from VCAP award shall be the net amount of compensation paid to the victim, after deductions for costs or attorney fees. The proceeds of any life insurance policy shall not be deducted from the award. [Source: §9008(d)]

27.3 Where an award has been made, and the claimant subsequently receives reimbursement from any source set forth above, with the exception of life insurance, VCAP may recover reimbursement from the claimant, up to the amount of the award.

27.4 Prior to making an award, VCAP shall require the claimant to execute an agreement acknowledging the claimant's understanding that any award is net of funds received from collateral sources, and further acknowledging the claimant's obligation to reimburse the Board to the extent of any such funds received from collateral sources.

27.5 Any attorney representing a client before the Board is bound by the Rules set forth herein regarding collateral sources of compensation.

2 DE Reg. 1670 (3/1/99)

12 DE Reg. 1193 (03/01/09)

13 DE Reg. 1213 (03/01/10)

28.0 Payment of Claims

28.1 Medical expenses shall be paid on behalf of the victim to a hospital or other licensed health care facility or provider at a rate set by VCAP. If VCAP accepts a claim, the hospital or other licensed health care facility or provider shall accept the VCAP payment as payment in full, and may not attempt to collect from the victim or third parties any amount exceeding the amount of reimbursement made by VCAP. In the absence of an

existing provider agreement, VCAP payments may be accompanied by a notice that provider acceptance constitutes acknowledgement of payment in full.

28.2 VCAP will pay a hospital or other licensed health care facility or provider at the rate of 80% of the usual and customary charge for such services. The VCAP may pay a lesser amount if payment under this section would exceed a statutory or regulatory cap.

28.3 If the usual and customary charge cannot readily be established, or in special circumstances, VCAP may, in its discretion, determine the reasonable charge for the procedure performed or the services rendered.

14 DE Reg. 666 (01/01/11)

29.0 Payment of Mental Health Claims

29.1 Mental health assessment and counseling expenses shall be paid on behalf of the victim to a qualified mental health practitioner at a rate set by VCAP. If VCAP accepts a claim, the mental health treatment practitioner shall accept the VCAP payment as payment in full, and may not attempt to collect from the victim or third parties any amount exceeding the amount of reimbursement made by VCAP. In the absence of an existing provider agreement, VCAP payments may be accompanied by a notice that provider acceptance constitutes acknowledgement of payment in full.

29.2 VCAP will pay a mental health provider at the rate of 80% of the usual and customary charge for such services. When a third party has made payment, and the victim is responsible for a co-payment, VCAP may reimburse for the amount of the co-payment. VCAP may pay a lesser amount if payment under this section would exceed a statutory or regulatory cap.

29.3 If the usual and customary charge cannot readily be established, or in special circumstances, VCAP may, in its discretion, determine the reasonable charge for the procedure performed or the service rendered.

14 DE Reg. 771 (02/01/11)