

STATE OF CALIFORNIA
VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD
VICTIM COMPENSATION PROGRAM REGULATIONS

Title 2, §§ 649, 649.4, 649.8, 649.26, 649.29, 649.32, 649.40, 649.43, 649.62

PROPOSED TEXT

§ 649. Definitions.

(a) As used in this article:

(1) "Applicant" means a person submitting either an application as defined in subsection (a)(2) or a supplemental claim as defined in subsection (a)(23).

(2) "Application" means an initial application for assistance to the Victims of Crime Program (VCP) under Government Code sections 13950- 13974.5.

(3) "Board" means the Victim Compensation and Government Claims Board or VCGCB.

(4) "Certification under penalty of perjury" or "upon information and belief" as applied to the filing of an application or supplemental claim means a single signature under penalty of perjury or information and belief as required to certify that the contents of the application or supplemental claim are true and correct within the knowledge or belief of the applicant.

(5) "Code" means the California Government Code.

(6) "Denial of the application" as used in Section 13958 of the code and as construed for purposes of the Board hearing process means a preliminary determination and recommendation for disallowance by VCP staff and shall not be construed to mean a final administrative decision following a hearing by the Board to deny the application or supplemental claim.

(7) "Derivative victim" means the same as in Government Code section 13951(c).

(8) "Direct payment" as used in Section 13957.7(c)(1) of the code shall be those payments sent directly to providers when there is no objection by the victim or derivative victim, or when good cause is demonstrated, notwithstanding a victim's or derivative victim's objection.

(9) "Family member" means a person who is related to the victim at the time of the qualifying crime by blood, marriage, registered domestic partnership, or adoption.

(10) "Fiancé" or "fiancée" means a person who is engaged to be married or an unregistered domestic partner in a similar relationship.

(11) "File" or "filed" as it applies to an application or supplemental claim for VCP benefits means submitting the application or supplemental claim to the VCP ~~or a joint powers victim witness center~~. An application or supplemental claim shall be deemed filed with the VCP ~~or a joint powers victim witness center~~ on the date that the application or

supplemental claim is postmarked by the United States Postal Service or other private carrier postage prepaid and properly addressed, or on the date that it is personally delivered to the VCP ~~or a joint powers victim witness center~~.

(12) "Fund" means the Restitution Fund as set forth in Government Code section 13964.

(13) "Hearing" means the same as under article 2.5 of these regulations.

(14) "Joint powers victim witness center" means an agency under contract with the Board to process applications under Government Code section 13954(c).

(15) "Law enforcement agency" includes but is not limited to: (A) an agency from California or another state that investigates or prosecutes violations of law that are comparable to agencies listed in Section 13951(d) and (B) Federal agencies that investigate or prosecute violations of law.

(16) "May" means that the conduct or requirement is permissive and discretionary.

(17) "Qualifying crime" means a crime as defined in the Government Code.

(18) "reimbursement sources" shall include but not be limited to the following types of benefits:

(A) All forms of private and public insurance benefits paid to or on behalf of the insured victim, the victim's survivors, or derivative victim, including medical, disability, wage loss, funeral/burial insurance, liability and casualty insurance, including vehicle, commercial and residential insurance.

(B) All forms of public and private assistance paid to, or on behalf of, the victim, the victim's survivors, or derivative victim, including Medi-Cal, social security, state disability insurance, workers' compensation and Medicare.

(C) Any salary, sick leave, or bereavement leave.

(D) Any restitution paid by the criminal perpetrator directly to the victim or his or her survivors whether collected by public agencies and paid over to the recipient or collected directly by the recipient.

(19) "Related to the victim by blood, marriage, registered domestic partnership, or adoption" means:

(A) the victim's spouse or registered domestic partner;

(B) relatives within the 4th degree of the victim or the victim's spouse as follows:

1. first degree relatives include parent and child;

2. second degree relatives include grandparent, brother, sister, and grandchild;

3. third degree relatives include great-grandparent, uncle, aunt, nephew, niece, and great-grandchild;

4. fourth degree relatives include great-great- grandparent, great uncle, great aunt, first cousin, grandnephew, and grandniece;

(C) the spouse of a person or registered domestic partner described in subsection (a)(19)(B); or

(D) the victim's fianc or fiance.

(20) "Resident of California" means the person's place of residence is California as determined by one of the following:

(A) Government Code section 244 for adults; and

(B) Welfare and Institutions Code section 17.1 for minors.

(21) "Shall" means that the conduct or requirement is mandatory and not discretionary.

(22) "State" means the District of Columbia, the Commonwealth of Puerto Rico and any other possession or territory of the; United States.

(23) "Supplemental claim" means a request for payment submitted after the application is received.

(24) "Threat of physical injury" means conduct that meets both of the following:

(A) a reasonable person would feel threatened in the same circumstances as the victim; and

(B) a reasonable person in the same circumstances as the victim would believe both of the following:

1. the threat would be carried out; and

2. physical injury would result if the threat were carried out.

(25) "Victim" means a person who sustained injury or death as a direct result of a qualifying crime and is one of the following:

(A) a resident of California;

(B) a member of the military stationed in California;

(C) a family member living with a member of the military stationed in California; or

(D) a nonresident of California who is a victim of a qualifying crime occurring within California if the Board determines that federal funds are available for compensation of victims of crime.

(26) "VCP" means the Board staff that implement the Victims of Crime Program as specified in Title 2, Division 3, Part 4, Chapter 5, Article 1 of the Government Code, commencing with Section 13950.

(27) "Water vehicle" means the same as "vessel" as defined in Harbors and Navigation Code section 651(g).

(28) "Witnessed the crime" as used in Section 13955(c)(4) of the code means actual physical presence at the scene of the qualifying crime such that the person was a percipient witness to the qualifying crime.

Note: Authority Cited: Sections 13920 and 13974, Government Code. Reference: Sections 13950, 13951, 13952, 13952.5, 13953, 13954, 13955, 13956, 13957.7, 13958, 13959, and 13964, Government Code.

§ 649.4. Eligibility of Felons.

(a) The VCP shall accept an application or a petition for relief to file a late application from a person who has been convicted of a felony in the same manner as for other applicants. The VCP shall not refuse to accept an application because ~~Neither that~~ the applicant is presently incarcerated, ~~nor that~~ because the applicant has been convicted of a felony and has not been discharged from probation or released from a correctional institution and discharged from parole, or because the applicant has not been released from a county jail or county prison and discharged from post-release community supervision ~~shall be reason for the VCP to refuse to accept an application.~~

(b)(1) The VCP shall not grant assistance to a person who has been convicted of a felony committed on or after January 1, 1989, when the assistance is to compensate for pecuniary loss sustained after the person is convicted of the felony and before the person is discharged from probation ~~or~~ has been released from a correctional facility and is discharged from parole, or has been released from a county jail or county prison and discharged from post-release community supervision, if any.

(2) The VCP shall grant assistance to a person otherwise eligible for assistance who has been convicted of a felony to compensate for pecuniary loss sustained as a result of victimization when the loss was incurred after discharge from probation, ~~or~~ parole, or post-release community supervision.

(3) The pecuniary loss for which reimbursement is barred because it was sustained after the person had been convicted of a felony and before the person was discharged from probation, ~~or~~ released from a correctional institution and discharged from parole, or released from a county jail or county prison and discharged from post-release community supervision will not become reimbursable upon the person's discharge from probation or release from a correctional institution and discharge from parole.

(c) As used in this section, "parole" includes "supervised release."

Note: Authority cited: Section 13920 and 13974, Government Code. Reference: Sections 13956, Government Code.

§ 649.8. Emergency Awards.

(a) An applicant may indicate on the application, subsequent application, or bill that he or she is applying for an emergency award.

(b) Upon receipt of an application, subsequent application, or bill for an emergency award, the VCP shall expedite the process of verifying the application, subsequent application, or bill to determine if an emergency award is appropriate. The VCP shall make telephone calls and transmit documents electronically or by facsimile to quickly obtain information necessary to evaluate an application, subsequent application, or bill for an emergency award. A decision regarding an application, subsequent application, or bill for an emergency award shall be promptly communicated to the applicant.

(c) An emergency award may be allowed when it is necessary to avoid or mitigate a substantial hardship to the applicant that is the direct result of the qualifying crime. Substantial hardship shall include the following:

(1) The inability to provide for the necessities of life, including but not limited to shelter, food, medical care, or personal safety, without the emergency award.

(2) The inability to pay for funeral and burial expenses or crime scene cleaning expenses without the emergency award.

(d) The amount of an emergency award shall be based on the applicant's immediate financial need as a direct result of the qualifying crime. Immediate financial need shall be determined by the financial assistance needed to avoid substantial hardship before the receipt of non-emergency assistance.

(e) An applicant for an emergency award shall provide sufficient information to substantiate ~~both of the following: (1) An an emergency award is necessary to avoid substantial hardship, or as a direct result of the qualifying crime; and (2) The the applicant has an immediate financial need for an emergency award as a direct result of the qualifying crime.~~

(f) If sufficient information as required by subdivision (e) is not provided, an application for an emergency award shall be processed as an application for non-emergency assistance. The amount of the emergency award being requested shall be considered when determining the amount or type of information required to verify the application for an emergency award.

Note: Authority cited: Sections 13920 and 13974, Government Code. Reference: Section 13952.5, Government Code.

§ 649.26. Direct Payment to Providers.

(a) If the VCP authorizes direct payment to a healthcare provider of VCP services, the VCP may require the provider to submit bills using CMS 1450, CMS 1500 or American Dental Association bill forms for verification of services provided. Applicants are not required to use the above noted forms to request reimbursement of eligible pecuniary losses that they paid.

(b) The VCP shall inform the victim or derivative victim of his or her right to object to direct payments by VCP to providers of services in accordance with Government Code section 13957.7(c)(1). In the event that the victim or derivative victim asserts such right the VCP may reimburse pecuniary loss to the victim or derivative victim only in amounts equal to sums actually paid out by the victim or derivative victim to the service provider

and only upon submission by the victim, the victim's survivors, or derivative victim of evidence of such payments, subject to the rates and limitations set by the Board in accordance with applicable law. Following such an objection, direct payment shall be made to the provider only upon a demonstration of good cause as determined by the board.

(c) For consideration of payment for mental health counseling over the claimant's authorized session limit, mental health providers must submit the VCP Treatment Plan and the VCP Additional Treatment Plan for review and approval within 90 days after the received date of the bill that exhausts a claimant's authorized session limit. If the VCP Treatment Plan and VCP Additional Treatment Plan are not submitted within the 90 day timeframe, all dates of service submitted that exceed the authorized session limit will be returned and will not be considered for payment. The provider shall not hold the claimant responsible for payment for the returned dates of service. However, dates of service provided after the VCP Treatment Plan and VCP Additional Treatment Plan are received may be considered if the VCP Additional Treatment Plan is approved and the authorized session limit is increased.

Note: Authority cited: Section 13920 and 13974, Government Code, Reference: Section 13957.7, Government Code.

§ 649.29. Authorized Mental Health Providers.

Psychiatric, psychological, or other mental health counseling related expenses that became necessary as a direct result of the crime may only be reimbursed to a licensed mental health professional when if provided by ~~any~~ of the following individuals:

(a) A person licensed as a physician who is certified in psychiatry by the American Board of Psychiatry and Neurology or who has completed a residency in psychiatry.

(b) A person licensed as a psychologist under Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code.

(c) A person licensed as a clinical social worker under Article 4 (commencing with Section 4996) of Chapter 14 of Division 2 of the Business and Professions Code.

(d) A person licensed as a marriage, ~~and family,~~ ~~and therapist child counselor~~ under Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code.

(e) A person licensed as a licensed professional clinical counselor under Chapter 16 (commencing with Section 4999.10) of Division 2 of the Business and Professions Code.

~~(e)~~(f) A person registered as a psychological assistant who is under the supervision of a licensed psychologist or Board certified psychiatrist as required by section 2913 of the Business and Professions Code.

~~(f)~~(g) A person registered with the Board of Psychology who is providing services in a nonprofit community agency pursuant to subdivision (d) of section 2909 of the Business and Professions Code.

~~(g)~~(h) A person registered as a marriage, ~~and family, and child counselor~~ therapist intern who is under the supervision of a licensed marriage and family therapist, a licensed clinical social worker, a licensed professional clinical counselor, a licensed psychologist, or a licensed physician and surgeon certified in psychiatry by the American Board of Psychiatry and Neurology ~~licensed physician certified in psychiatry, as specified in section 4980.44 under Chapter 13 (commencing with Section 4999.10) of Division 2 of the Business and Professions Code.~~

(i) A person registered as a licensed professional clinical counselor Intern who is under the supervision of licensed marriage and family therapist, licensed clinical social worker, licensed professional clinical counselor, licensed psychologist, or a licensed physician and surgeon certified in psychiatry by the American Board of Psychiatry and Neurology, as specified under Chapter 16 (commencing with Section 4999.10) of Division 2 of the Business and Professions Code.

~~(h)~~(j) A person registered as an associate clinical social worker, ~~as defined in Section 4996.18 of the Business and Professions Code~~, who is under the supervision of a licensed clinical social worker, licensed marriage and family therapist, a licensed psychologist, or a licensed physician and surgeon certified in psychiatry by the American Board of Psychiatry and Neurology or a Board certified psychiatrist under Chapter 13 (commencing with Section 4999.10) of Division 2 of the Business and Professions Code.

~~(i)~~(k) A person who qualifies as a psychology intern as described in section 2911 of the Business and Professions Code who is under the supervision of a person licensed by the state to provide mental health services, as approved by the Board.

~~(j)~~(l) A person who qualifies as a postdoctoral psychology trainee employed in an exempt setting pursuant to Business and Professions Code, section 2910, or employed pursuant to a State Department of Mental Health waiver pursuant to Welfare and Institutions Code, Section 5751.2, who is under the supervision of a person who is licensed by the state to provide mental health services as approved by the Board.

~~(k)~~(m) A psychiatric resident who has completed at least the first year of residency and is under the supervision of a psychiatrist licensed by the state, as approved by the Board.

~~(l)~~(n) A person licensed as a registered nurse pursuant to Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code, who possesses a master's degree in psychiatric-mental health nursing and is listed as a psychiatric-mental health nurse by the Board of Registered nursing, or an advanced practice registered nurse certified as a clinical nurse specialist under Article 9 (commencing with Section 2838) of Chapter 6 of Division 2 of the Business and Professions Code, who participates in expert clinical practice in the specialty of psychiatric mental health nursing.

~~(m)~~(o) Any mental health provider approved by the Board under Government Code section 13957(a)(2)(D)(ii).

~~(n)~~(p) Nothing in this section shall prevent the VCP from reimbursing peer counseling services under Government Code section 13957(a)(2), subject to the rates and limitations set by the Board.

Note: Authority cited: Sections 13920 and 13974, Government Code. Reference: Section 13957(a)(2)(D), Government Code.

§649.32. Verification of Income or Support Loss.

(a) The Board shall only pay income or support loss if the victim was employed or receiving earned income benefits at the time of the qualifying crime. The Board will not pay income or support loss if the victim, or derivative victim in the limited cases where a derivative is eligible for income loss, had only a job offer at the time of the qualifying crime but had not begun working.

(b) All cash payments or reimbursement for income or support loss shall be necessary as a direct result of the qualifying crime.

(c) Income loss includes, but is not limited to, time lost from work for medical or mental health appointments necessary as a direct result of the qualifying crime.

(d) Acceptable evidence of income loss for employed individuals shall be in the form of ~~one of the following unless the individual is in a particular situation as stated in subsection (e) below:~~

(1) documentation for the tax year preceding the date of the qualifying crime or during the year of the qualifying crime from the California Franchise Tax Board (FTB) ~~for the tax year preceding the date of the qualifying crime, and either (2) or (3).~~

(2) ~~documentation from the Board of Equalization, Social Security, and/or the California Employment Development Department for the tax year preceding the date of the qualifying crime or during the year of the qualifying crime, or~~ Verification through the Work Number, or similar vendor, if the employer contracts with a vendor for employment verification, or

(3) a statement under penalty of perjury from the employer acknowledging that the applicant was employed, the dates of employment, the time missed from work as a direct result of the qualifying crime, the rate of pay, and any all benefits the applicant received from the employer. ~~or and copies of wage check stubs for a minimum period of one week immediately preceding the date of the qualifying crime. along with an item from (d)(1) or (d)(2) unless the individual is in the particular situation as stated in either subsection (e) or (f).~~

(e) Acceptable evidence of income loss for self-employed individuals or individuals receiving earned income benefits shall be in the form of documentation from the tax year preceding the date of the qualifying crime or during the year of the qualifying crime received from the California Franchise Tax Board (FTB). If FTB cannot provide documentation, the documentation will be required from the Social Security Administration, California Employment Development Department, the Board of Equalization, or the individual's applicable government tax agency. If the victim is a first time job holder or returning to the workforce, either (d)(1), (d)(2), or (d)(3) may be used

~~as evidence of income loss. If (d)(3) is used as evidence of income loss, an additional item from (d)(1) or (d)(2) is not required.~~

~~(f) If the victim is self-employed then (d)(1) will apply unless the victim cannot provide documentation from FTB because of the date of entrance into self-employment; in this case (d)(2) will apply. If the qualifying crime occurred at the individual's work place, in addition to either (d) or (e), documentation from a workers' compensation carrier or Uninsured Employer's Benefits Trust Fund showing benefits paid or available and the duration of payment must be submitted.~~

~~(g) If the qualifying crime occurred at the work place, documentation from a workers' compensation carrier showing earned income at the time of the qualifying crime and benefits paid or available and the duration of payment must be submitted.~~

~~(h)~~(g) The treating medical or mental health provider may verify disability within the scope of his or her licensure. A statement of disability provided by the treating medical or mental health provider should contain sufficient information to verify the disability period that is a direct result of the qualifying crime and shall include information concerning the current diagnosis, prognosis for recovery, the extent and expected duration of the disability, and certification that the disability resulted directly from the qualifying crime.

(1) For physical injuries, a disability statement may come from the following treating providers: medical doctor, osteopath, optometrist, dentist, podiatrist, or a chiropractor. If a chiropractor provides the disability statement, it will only be accepted for the period of time the chiropractor is providing treatment.

(2) For emotional injuries, a disability statement may come from any treating licensed social worker, licensed marriage and/or family therapist, licensed professional clinical counselor, licensed clinical psychologist or treating psychiatrist for a disability period of six months. When the total disability period exceeds six months, the disability statement must be completed by a treating licensed clinical psychologist or psychiatrist.

(3) When a disability statement pursuant to subsection (g) is not available or does not contain sufficient information to verify the disability period, the Board may consult the following sources to verify a disability time period to ensure the disability time period is appropriate, including but not limited to:

- The Medical Disability Advisor: Workplace Guidelines for Disability Duration (most recent edition)
- WebMD

~~(i)~~(h) The maximum income loss cannot exceed the statutory time period in Government Code section 13957.5, even if there are gaps in the victim's disability, or other reimbursement sources which partially or fully cover any income or support loss.

Note: Authority cited: Sections 13920 and 13974, Government Code. Reference: Sections 13957(a)(4) and 13957.5, Government Code.

§ 649.40. Examples of Threat of Physical Injury.

A threat of physical injury includes, but is not limited to the following situations:

- (a) the victim was directly threatened with a weapon;
- (b) the victim was within sight of a person brandishing a weapon and reasonably felt threatened for his or her own safety;
- (c) the victim was directly threatened verbally with serious bodily injury and there was a reasonable probability that:
 - (1) the threat would be carried out; and
 - (2) physical injury would result if the threat were carried out.
- (d) For purposes of sexual battery, physical injury is presumed when there is a non-consensual intimate touching (breasts, buttocks, or genitals) of the victim for the sexual gratification of the suspect.

Note: Authority cited: Sections 13920 and 13974, Government Code. Reference: Section 13955(f), Government Code.

§649.43. Evidence of a child Sexual or Physical Abuse Qualifying Crime.

- (a) Factors that shall be considered evidence of a child sexual or physical abuse qualifying crime include, but are not limited to:
 - (1) a sustained juvenile court dependency petition containing allegations of sexual or physical abuse, unless the court finds that the allegations of sexual or physical abuse did not occur;
 - (2) medical or physical evidence consistent with child sexual or physical abuse;
 - (3) a written or oral report from a law enforcement agency or a child protective services agency concluding that child sexual or physical abuse occurred;
 - (4) a credible witness corroborated the child sexual or physical abuse;
 - (5) a juvenile court order removed the child from the home because of sexual or physical abuse;
 - (6) criminal charges of child sexual or physical abuse were filed.
 - (7) a final superior court order that finds that child sexual or physical abuse occurred.

(b) Factors that may be considered evidence of a child sexual or physical abuse qualifying crime include, but are not limited to:

- (1) a mental health evaluation concluded that child sexual or physical abuse occurred;
- (2) the child victim's statement to a law enforcement or child protective services staff;
- (3) evidence of behavior consistent with child sexual or physical abuse;
- ~~(4) a final superior court order that finds that child sexual or physical abuse occurred.~~

(c) A report under subsection (a)(3) shall contain all of the following information:

- (1) name, telephone number and title of the person making the report;
- (2) specific facts that form the basis of the conclusion that a crime occurred;
- (3) citation to the relevant criminal statute for the crime that occurred.

Note: Authority cited: Sections 13920 and 13974, Government Code. Reference: Sections 13954, 13956 and 13959, Government Code.

§ 649.62. Failure to Cooperate with Board or Staff.

(a) An application or supplemental claim may be denied based on an applicant's failure to cooperate with the Board, VCP staff, or the staff of a joint powers victim witness center in the verification of all information necessary to determine eligibility.

(b) An applicant may be found to have failed to cooperate if any of the following are present:

- (1) the applicant has information available to him or her, or which the applicant may reasonably obtain, that is needed to process the application or supplemental claim; and the applicant failed to provide the information after being requested to do so;
- (2) the applicant provided or caused another to provide false information regarding the application or supplemental claim;
- (3) the applicant refused to apply for other benefits potentially available to him or her from other sources besides the VCP including, but not limited to, workers' compensation, state disability insurance, Social Security benefits, and unemployment insurance.

(c) A provider may be found to have failed to cooperate if either of the following occur:

- (1) the provider does not submit requested documentation to verify losses or injury.
- (2) the provider fails to adhere to statutes and/or regulations, set by their licensing, oversight, and governing governmental agencies.

(d) VCP may hold payment for up to four (4) months if a provider, claimant, or applicant is reasonably suspected of failing to cooperate with the Board.

Note: Authority cited: Sections 13920 and 13974, Government Code. Reference: Section 13954, 13957.2 (c), 13957 (a)(D)(ii) Government Code.