



VIRGINIA VICTIMS FUND

Helping Innocent Victims of Crime

OFFICIALLY CRIMINAL INJURIES COMPENSATION FUND

POLICIES AND PROCEDURES

of

THE VIRGINIA VICTIMS FUND

(officially Criminal Injuries Compensation Fund)

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a division of

THE VIRGINIA WORKERS' COMPENSATION COMMISSION

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INTRODUCTION

On July 1, 1977, the Virginia Compensating Victims of Crime Act was enacted to compensate victims who suffer injuries as a result of a crime (§ 19.2-368.1 *et seq.*, Code of Virginia) (hereafter “the Act”). Benefits are limited to a total of \$35,000 and are payable for medical expenses, wage loss, moving expenses, crime scene clean-up, counseling costs, and other expenses incurred by or on behalf of a victim. In homicide cases, funeral or burial expenses are payable up to \$10,000, eligible relatives may receive survivors’ counseling, and dependent survivors may receive compensation for loss of support from the victim.

This program is administered by the Virginia Workers' Compensation Commission through the Criminal Injuries Compensation Fund (*hereafter, Virginia Victims Fund*). It is funded through fines levied against individuals convicted of felonies and misdemeanors in the Courts of the Commonwealth [*See § 19.2-368.18 (B) of the Act*] and through federal grants under the Victims of Crime Act (VOCA). [*See Victims of Crime Act of 1984, Pub. L. No. 104-235, codified at 42 U.S.C. §§ 10601-10605, 18 U.S.C. § 3771.*]

As of July 2008, the Fund also administers the Sexual Assault Forensic Exam (SAFE) Payment Program for the Commonwealth. Funds are transferred from the Supreme Court for this purpose and the policies governing SAFE payments are approved by the Commission per §19.2-368.3(1)(i) of the Code in a separate manual. § 19.2-368.3 (1)(i)

As of July 2018, the Fund was mandated to collect and disburse unclaimed restitution pursuant to § 19.2-368.3 (9) of the Code of Virginia. Policies and procedures for the receipt, collection, and disbursement of unclaimed restitution to victims of crime is held in a separate manual. § 19.2-368.3 (9)(10)

The Virginia Victims Fund issues this Policies and Procedures manual under the authority, direction, and guidance of the Workers' Compensation Commission. **§19.2-368.3**

When administering the Fund and making claims determinations, this policy manual, the SAFE payment policy manual, the Unclaimed Restitution policy manual, the Act, and the grant rules of the Victims' of Crime Act [**Victims of Crime Act of 1984, Pub. L. No. 104-235, codified at 42 U.S.C. §§ 10601-10605, 18 U.S.C. § 3771**], must all be considered.

DEFINITIONS

As used throughout these guidelines, the following words and phrases shall have the following meanings:

“Act” shall mean the Compensating Victims of Crime Act, codified at § 19.2-368.1 *et seq.*, Code of Virginia;

“CA” shall refer to local Commonwealth’s Attorneys;

“Commission” shall mean the Virginia Workers’ Compensation Commission;

“DCJS” shall mean Department of Criminal Justice Services;

“Director” shall mean the Director of the Fund;

“Explanation of Benefits” shall mean the document that lists benefits paid and/or denied for claims submitted to the insurance carrier (*commonly referred to as “EOBs”*);

“Full Commission” refers to the three legislatively appointed Commissioners of the Commission;

“Fund” or **“VVF”** shall mean the Virginia Victims Fund (*officially the Criminal Injuries Compensation Fund*);

“Itemized Billing Statement” shall mean the type of bill that shows the individual charges for all procedures performed and services rendered to the patient;

“Medical Record” shall mean the written notes and reports concerning patients’ diagnoses, symptoms, course of treatment, and prognoses;

“Notice of Filing” shall mean a notification to medical and mental health providers notifying them that a claim has been filed and that collection action may not be taken against the victim/claimant until a claim decision has been made;

“VDEM” shall mean the Virginia Department of Emergency Management;

“VOCA” shall mean the Federal Victims of Crime Act;

“VWAP” or **“VW”** shall mean Victim/Witness Assistance Program or Victim/Witness;

“WebFile” shall mean the Fund’s online claim submission and management system that is available to victim advocates and medical providers.

CONTACTS AND INFORMATION

(A) THE VIRGINIA VICTIMS FUND

Claim forms and additional information may be obtained by calling or writing:

- (1) Telephone
(800) 552-4007 (toll-free)
(804) 823-6905 (fax)
- (2) Mailing Address
Virginia Victims Fund
Post Office Box 26927
Richmond, VA 23261
- (3) Website and E-mail
<http://www.virginiavictimsfund.org>
info@virginiavictimsfund.org
- (4) Fund Leadership
Kassandra Bullock, Director

(B) THE VIRGINIA WORKERS' COMPENSATION COMMISSION

The Workers' Compensation Commission oversees the Virginia Victims Fund and handles appeal requests. The Commission may be contacted as follows:

- (1) Telephone and Fax
(877) 664-2566 (toll-free)
(804) 367-6124 (fax)
- (2) Mailing Address
Virginia Workers' Compensation Commission
333 East Franklin Street
Richmond, VA 23219
- (3) Commission Leadership
R. Ferrell Newman, Commissioner
Wesley G. Marshall, Commissioner
Robert A. Rapaport, Commissioner
Evelyn McGill, Executive Director
Jason Quattropani, Clerk

(C) VICTIM/WITNESS ASSISTANCE PROGRAMS

Almost all cities and counties in the Commonwealth are served by Victim/Witness Assistance Programs. These programs generally assist victims of crimes occurring within their service areas.

Victim/Witness programs are established and operated by local governments, and they are usually associated with either the local Commonwealth's Attorney's office or the local police department or sheriff's office. The primary functions of VWAP are to explain the criminal justice process to victims and witnesses of crime, to help victims and witnesses understand their rights, and to assist victims and witnesses with matters concerning the arrest, trial, and incarceration of criminals.

Victim/Witness programs and law-enforcement officers are required by law to inform victims of financial assistance that may be available to them as victims of crime, including information about their possible right to file a claim for compensation from the Virginia Victims Fund. § 19.2-11.01(A)(2)(a) Victim/Witness professionals often assist victims with filing and perfecting their VVF claims, and they usually have VVF claim forms on hand.

In localities without a VW program, or in areas in which the VW program does not work with criminal injuries claims, claimants can often contact the local Commonwealth's Attorney or law-enforcement agency for information and claim forms for the Fund. For help locating or contacting the VWAP in any locality in Virginia, please call the Fund at (800) 552-4007 or the Victim Witness Assistance Network at (855) 4-HELP-VA. DCJS maintains a directory of VW programs and other groups that assist victims. Please visit their website at www.dcjs.virginia.gov.

Please note that because the Victim/Witness Assistance Programs are not part of the Fund or the Commission, delivering documents to a VW program is not the same as delivering them to the Fund. Victim/Witness programs can assist people with their claims with the Fund. When documents are needed to support a claim or when a claimant needs information about his claim, the Fund should be contacted directly, as indicated above. Victim/Witness programs cannot guarantee eligibility or payment of expenses. These claim and expense eligibility decisions cannot be made until completed claims are received and investigated by the Fund.

WHO MAY RECEIVE BENEFITS

(A) ELIGIBLE PERSONS

(1) Crime Victims

- (a) Any person who suffers personal physical injury or death as a direct result of a crime. §§ 19.2-368.2 and 19.2-368.4(A)(1)

A crime is defined as:

... an act committed by any person in the Commonwealth of Virginia which would constitute a crime as defined by the Code of Virginia or at common law. However, no act involving the operation of a motor vehicle which results in injury shall constitute a crime for the purpose of this chapter unless the injuries (i) were intentionally inflicted through the use of such vehicle or (ii) resulted from a violation of § 18.2-51.4 or § 18.2-266 or from a felony violation of §46.2-894.
§ 19.2-368.2

- (b) Any person who suffers personal emotional injury as a direct result of a violent felony offense as defined in subsection C of §17.1-805, or stalking as defined in §18.2-60.3, or robbery or abduction, attempted robbery or abduction. §19.2-368.2

(2) “Good Samaritans”

Any person (*except a law-enforcement officer engaged in the performance of his duties*) who suffers personal physical injury or death as a direct result of attempting to prevent a crime from occurring in his presence or trying to apprehend a person who (a) had committed a crime in his presence, or (b) had, in fact, committed a felony. §§ 19.2-368.2 and 19.2-368.4(A)(3)

(3) Specific Relatives of Deceased Victims

A surviving spouse, parent, grandparent, sibling, or child, including posthumous children, of a victim of a crime who died as a direct result of such crime.
§ 19.2-368.4(A)(2)

“The term ‘child’ shall include a stepchild, a legally adopted child, a posthumous child, and an acknowledged illegitimate child, but shall not include a married child; and the term ‘parent’ shall include stepparents and parents by adoption.”
§ 65.2-515

(4) Relatives of Deceased “Good Samaritans”

A surviving spouse, parent, grandparent, sibling or child, including posthumous children, of any person who dies as a direct result of trying to prevent a crime or attempted crime from occurring in his presence, or trying to apprehend a person who had committed a crime in his presence or who had, in fact, committed a felony. § 19.2-368.4(A)(4)

“The term ‘child’ shall include a stepchild, a legally adopted child, a posthumous child, and an acknowledged illegitimate child, but shall not include a married child; and the term ‘parent’ shall include stepparents and parents by adoption.” § 65.2-515

(5) Legal Dependents

Any other person legally dependent for his principal support upon a victim of crime who dies as a result of such crime or who dies as a direct result of trying to prevent a crime or attempted crime from occurring in his presence, or trying to apprehend a person who had committed a crime in his presence or had, in fact, committed a felony. § 19.2-368.4(A)(5)

“The term ‘child’ shall include a stepchild, a legally adopted child, a posthumous child, and an acknowledged illegitimate child, but shall not include a married child; and the term ‘parent’ shall include stepparents and parents by adoption.” § 65.2-515

(6) Individual taking responsibility for Funeral Expenses

Any person who pays expenses directly related to funeral or burial is eligible for reimbursement. §19.2-368.11:1 (E)

(B) INELIGIBLE PERSONS

(1) Law Enforcement Personnel

Law-enforcement officers engaged in performance of their duties are not eligible for awards from the Fund. § 19.2-368.4(A)(3) Officers who are injured (or family members of officers who are killed) in the line of duty should contact the Workers’ Compensation Commission regarding possible eligibility for workers’ compensation benefits.

(2) Criminally Responsible Persons

A person who is criminally responsible for the crime upon which a claim is based, or an accomplice or accessory of such person, shall not be eligible to receive an award with respect to such claim. § 19.2-368.4(B)

(3) Unjust Benefit

A person is not eligible if he is a criminally responsible person who would unjustly benefit from an award. § 19.2-368.4(A)

WHO MAY FILE A CLAIM

(§ 19.2-368.5)

(A) ELIGIBLE PERSONS

Any person eligible to receive benefits under § 19.2-368.4 and § 19.2-368.11(E) may file a claim. For specifics concerning eligibility, see **Who May Receive Benefits** (pages 8-10).

(B) MINORS

When the eligible person is a minor, a parent or guardian must file on their behalf. § 19.2-368.5(A)

On occasion, a non-parent who has legal custody but not legal guardianship of a minor files a claim for benefits on the minor's behalf. In such a case, the Fund will accept the claim but will only make payments up to \$35,000 directly to service providers such as doctors and counselors. The Fund cannot make payments directly to a legal custodian who is neither the child's natural parent nor his legal guardian. (*Policy of the Commission, April 7, 1999*)

Custodians may wish to seek legal guardianship through the courts. If the custodian is unable to afford an attorney, he should contact local legal services organizations to see if he qualifies for low-cost or free legal aid. Only the legal aid organizations can determine whether claimants qualify for representation, whether the organizations handle legal guardian appointment cases, and whether it is advisable or possible for any particular person to seek appointment as a child's legal guardian.

(C) INCAPACITATED PERSONS

A guardian, conservator, or other individual authorized to administer the estate of an incapacitated person who is eligible for benefits may file a claim on behalf of the incapacitated person. § 19.2-368.5

(D) MULTIPLE CLAIMANTS

If a deceased victim has several relatives or dependents, each eligible person may file a claim. However, all claims that arise from the death of the same individual will be considered together. *See Subsection A of § 19.2-368.6* The Court of Appeals has held that this means if several relatives of one homicide victim file claims, the award will be apportioned among the claimants.

WHEN A CLAIM MUST BE FILED (§ 19.2-368.5)

(A) GENERAL RULE

In general, claims must be filed no later than **one (1) year** after the date of the crime, unless good cause can be shown for late filing for all crimes occurring after July 1, 2001. *(The one-year filing limit became effective July 1, 1998. Before July 1, 1998, claimants were required to file within 180 days after the occurrence of the crime.)* For crimes occurring between July 1, 1998, and July 1, 2001, victims could not file more than two years past the date of the crime. Any claims for crimes occurring prior to July 1, 2001, will be returned to the claimant with an explanation for the return.

In cases where the crime was committed on or after July 1, 1977, and before July 1, 2001, the Commission may, for good cause shown, extend the time for filing a claim if the attorney for the Commonwealth submits written notice that the crime is being investigated as a result of newly discovered evidence. The Commission will consider only expenses that the claimant accrues after the date of newly discovered evidence as stipulated in the written notification by the attorney for the Commonwealth.

(B) WHEN THE VICTIM DIES

If the crime victim dies, a claim must be filed no later than **one (1) year** after the date of death.

(C) MINORS

If the claimant is a minor, the time for filing a claim is tolled as provided in subsection A of § 8.01-229. In general, the section provides that a minor must file his claim within **one (1) year after he is legally emancipated (see § 16.1-331) or reaches the age of majority, whichever occurs first.** Victims of child sexual assault may file up to ten years past the date of their eighteenth birthday. *See §19.2-368.5 (B)(iii)*

(D) INCAPACITATED PERSONS

If the victim is incapacitated, the time for filing a claim is tolled as provided in subsection A of § 8.01-229. Generally, an incapacitated person must file his claim within **one (1) year after the incapacity is removed.** However, **if a legal guardian or committee has been appointed, the claim must be filed within one (1) year after the date of the crime or within one (1) year after the appointment,** whichever occurs later.

(E) FORFEITURES

In a case involving claims made by a victim against profits of crime forfeited and held in escrow pursuant to Chapter 21.1 of Title 19.2 (§ 19.2-368.1 *et seq.*), the claim shall be filed within five years of the date of the order of forfeiture.

Any proceeds or profits received or to be received directly or indirectly, except property that may be forfeited to the Commonwealth pursuant to §§ 19.2-386.15 through 19.2-386.31, by a defendant or a transferee of that defendant from any source, as a direct or indirect result of his crime or sentence, or the notoriety which such crime or sentence has conferred upon him, shall be subject to a special order of escrow.

(F) GOOD CAUSE FOR DELAY

In cases other than those involving minors, incapacitated persons, or claims against forfeited property, upon good cause shown, the Commission in its discretion may extend the time for filing. Written explanation as to why the claimant waited longer than one year to file is required. This only applies to crimes occurring after July 1, 2001.

WHERE A CLAIM MUST BE FILED

(§19.2-368.5)

An application may be submitted via mail, fax, or in person. Victim advocates that have been through specialized training may file via WebFile, the Fund's online claims submission system.

Virginia Victims Fund
Post Office Box 26927
Richmond, VA 23261
Fax: (804) 823-6905

The application constitutes an affidavit and is made under oath under penalties of perjury. § 19.2-368.16 For this reason, the Fund must receive the signed, notarized claim form to begin processing the claim. An unsigned and un-notarized claim will be returned to the address from which it originated.

Applications are available from Victim/Witness offices throughout the Commonwealth and online at <http://www.virginiavictimsfund.org>.

All other documents in support of a claim can be accepted via fax at (804) 823-6905 or e-mail at info@virginiavictimsfund.org.

CRITERIA FOR AN AWARD

In order to make an award, the Commission must find that **(A)** a crime was committed; **(B)** the crime resulted in personal physical or emotional injury to, or death of, the victim; **(C)** the crime was promptly reported to law enforcement; **(D)** the claim was timely filed with the Fund; **(E)** the victim's loss is compensable under the Act; **(F)** the claim has a minimum value of \$100; **(G)** the claimant is eligible under the Act; and **(H)** if the crime did not occur in Virginia, the victim is a resident of Virginia who was (i) injured in another state, country, or territory that does not compensate nonresident crime victims, or (ii) injured or killed as a result of foreign terrorism. Each of these criteria is discussed below. Payment of a forensic exam under the SAFE program is not a guarantee of eligibility for the Fund.

(A) A CRIME OCCURRED

(1) Definition of Crime

In § 19.2-368.2, “crime” is defined as follows:

... an act committed by any person in the Commonwealth of Virginia which would constitute a crime as defined by the Code of Virginia or at common law. However, no act involving the operation of a motor vehicle which results in injury shall constitute a crime for the purpose of this chapter unless the injuries (i) were intentionally inflicted through the use of such vehicle or (ii) resulted from a violation of § 18.2-51.4 or 18.2-266 or from a felony violation of § 46.2-894.

(2) Lack of Arrest or Conviction

It is not necessary that the alleged criminal be apprehended, prosecuted for, or convicted of any crime based upon the incident. Claims shall be investigated and determined regardless of whether a defendant has been arrested, tried, convicted, acquitted, or found not guilty of a crime. § 19.2-368.6(C) However, the victim or award recipient is required to fully cooperate with all law-enforcement agencies per § 19.2-368.10(3). If a case is dropped, nolle prosequi, or the offender is found not guilty, the Fund must be advised of the reason for this action to ensure that the victim cooperated with all prosecution efforts.

(3) Motor Vehicle Injuries

The definition of “crime” provides that no act involving the operation of a motor vehicle that results in injury shall constitute a crime for the purposes of the Act unless the injuries resulted from a violation of § 18.2-51.4.

This means that, ordinarily, injuries caused by motor vehicles cannot be compensated. There are three exceptions. First, if a driver intentionally injures

someone with an automobile, the Fund can consider an award. Second, if the injuries resulted from a violation of DUI laws (*driving under the influence*), the Fund will consider this a crime within the meaning of the Act. § 19.2-368.2 (Coverage of DUI crimes is mandated by VOCA. See subsection (b)(1) of 34 U.S.C. § 20101.) Third, § 46.2-894, commonly referred to as Felony Hit and Run, became an eligible compensable crime on July 1, 2012. Applications for this type of crime based on incidents occurring prior to July 1, 2012, cannot be considered as the law is not retroactive.

(a) Intoxication or DUI Offenses

If the victim was injured as a result of a violation of DUI laws, the injury may be compensable if intoxication on the part of the offender caused the victim's injuries.

A victim of a DUI accident will ordinarily be eligible under the Act if the offender (1) is convicted under § 18.2-266 or § 18.2-51.4; (2) refuses a blood alcohol test but is convicted; (3) has a blood alcohol level of .08 regardless of conviction; or (4) there is a preponderance of evidence of driver intoxication in information obtained through law-enforcement agencies or court records.

(b) Intentional Injury by Motor Vehicle

Under this exception to the general rule that an injury caused by a motor vehicle is not compensable, the Act requires that the driver actually intended to harm the victim.

(c) Duty of Driver to Stop in Event of Accident Involving Injury or Death

Commonly referred to as Felony Hit and Run, § 46.2-894, became an eligible compensable crime on July 1, 2012. Applications for this type of crime based on incidents occurring prior to July 1, 2012, cannot be considered as the law is not retroactive.

(4) Attempted Crimes

An attempted crime is an unfinished crime and is composed of two elements – the intent to commit the crime, and the doing of some act toward its consummation but falling short of the accomplishment of the ultimate design. Attempted crimes are crimes, and a defendant may be charged with and tried for an attempt, or a judge may reduce a criminal charge to an attempt. §§ 18.2-25 - 18.2-29 The Fund treats attempted crimes as crimes for the purposes of the Act. § 19.2-368.2

(B) THE CRIME RESULTED IN PERSONAL PHYSICAL/EMOTIONAL INJURY OR DEATH

The Act provides that no award shall be made unless the Commission finds that a crime directly resulted in personal physical or emotional injury to or death of the victim. §§ 19.2-368.2 and 19.2-368.10

Property damage cannot be compensated under the Act. Thus, if a car is stolen while the owner is away from the vehicle, the owner is certainly the victim of a crime, but he has suffered no personal injury and will be unable to recover the value of his car from the Fund. Consistent with federal law, the exception to this policy is replacement of windows and locks of the victim's residence damaged as a result of a crime as defined in §19.2-368.2.

VOCA allows the Fund to reimburse crime victims for clothing or bedding taken as evidence. In order to reimburse this expense, the Fund must have copy of the evidence receipt provided to the victim by a law-enforcement agency. The Fund must also have a receipt for the purchase of a like item that matches the description of the items on the evidence receipt.

Although the Fund has no authority to compensate victims for property loss, damage to property that is inseparable from a personal injury can qualify as a medical expense and may be compensable. For instance, if a person has a prosthetic leg and the artificial limb is damaged during an assault, the Fund will treat the loss as a personal injury and pay for a replacement prosthesis. The Fund will reimburse victims for prosthetic devices that are lost or damaged in the course of being subject to a crime as defined in §19.2-368.2. Prosthetic devices are defined as items needed by the victim to perform daily activities such as walking, eating, or dressing. Some examples of prosthetic devices are eyeglasses, contact lenses, dentures, and artificial limbs. In order to determine if the device is a true prosthetic, the Fund will consider the span of time between the incident and the purchase of the item.

(C) THE CRIME WAS PROMPTLY REPORTED TO POLICE

The crime must be reported to proper law-enforcement officials within 120 hours after it occurs. If a claimant or his survivors fail to report within 120 hours of the crime, the Commission may excuse the delay if, for good cause shown, it finds the delay to have been justified. § 19.2-368.10 A written explanation by the claimant documenting reason for the delayed filing of the claim is required. Victims of child sexual assault are exempt from this requirement.

(D) THE CLAIM WAS TIMELY FILED

For specifics concerning filing period, see **When A Claim Must Be Filed** (page 12). If the claim is filed over a year following the date of the crime, written explanation by the claimant documenting good cause for the delay is required.

(E) THE CLAIMANT'S LOSS IS COMPENSABLE UNDER THE ACT

For specifics concerning what benefits are available, see **Available Benefits** (page 44).

Expenses that are generally compensable include wage loss, loss of support from a deceased victim, unreimbursed medical expenses, funeral or burial expenses, counseling, expenses attributable to pregnancy resulting from forcible rape, moving expenses, and other reasonable, necessary, and appropriate expenses. Generally, the Fund does not pay for property loss. The Commission lacks authority to award attorneys' fees. § 19.2-368.11:1

(F) THE CLAIM HAS A MINIMUM VALUE OF \$100

The Act provides that to qualify for an award, a claim must have a minimum value of \$100 after being reduced as provided in subsection G. § 19.2-368.11:1(H) If the value of the claim exceeds \$100, and the individual is an eligible claimant, but there are no expenses that can be paid by the Fund, the claim will receive an award for “*record purposes only*.” This means that the claim was valued at \$100, but there were no eligible expenses for which the Fund could pay. The claimant is allowed two years from the date of filing to submit additional items for payment.

(G) THE CLAIMANT IS ELIGIBLE UNDER THE ACT

For specifics concerning eligibility, see **Who May Receive Benefits** (pages 8-10).

(H) CRIME LOCATION AND VICTIM'S RESIDENCY

As long as the crime was committed in Virginia, there is no requirement that the victim be a Virginia resident or United States citizen to be eligible for an award under the Act. However, crimes that occur outside Virginia are generally not compensable. There are two exceptions.

First, the Fund may compensate Virginia residents who are injured or killed in foreign countries or as a result of foreign terrorism. § 19.2-368.2 The Office for Victims of Crime (OVC) of the US Department of Justice operates the International Terrorism Victims' Expense Reimbursement Program (ITVERP). If a Virginia resident is injured during foreign terrorism occurring abroad, they may recover under the Virginia program after applying to ITVERP.

Second, the Fund may compensate Virginia residents who are victims of compensable crimes in foreign countries or territories that do not have funding mechanisms for crime victims [for crimes occurring after July 1, 2002, enactment date of § 19.2-368.4(C)(ii)]. The Office for Victims of Crime maintains a list of foreign countries that have crime victim compensation programs. Please visit their website at www.ovc.gov.

In summary, if a Virginia resident is injured during a crime occurring outside of the Commonwealth, they should apply for benefits with the crime victims' compensation program in the state, country, or territory where the crime occurred.

A list of state compensation programs can be found at www.nacvcb.org or by calling the National Association of Crime Victim's Compensation Boards at (703) 780-3200. [*See, e.g. U.S. Justice Department, Office for Victims of Crime, [NEW DIRECTIONS FROM THE FIELD: VICTIMS' RIGHTS AND SERVICES FOR THE 21ST CENTURY](#), pp. 325, 353 (1997).*]

GROUNDS FOR DENIAL OR REDUCTION OF BENEFITS

(A) CONDUCT BY A VICTIM OR CLAIMANT THAT MAY REDUCE OR BAR AN AWARD

There are five circumstances in which conduct by a claimant or victim may reduce or bar an award under the Act: (1) the claimant is criminally responsible for the crime; (2) a person who is criminally responsible for the crime will unjustly benefit from an award; (3) the victim failed to promptly report the crime; (4) the victim or claimant failed to cooperate with law enforcement; and/or (5) the victim contributed to his injuries. Each of these bases for reducing or denying benefits is discussed below.

(1) Criminal Responsibility for Crime

Subsection B of § 19.2-368.4 provides:

A person who is criminally responsible for the crime upon which a claim is based, or an accomplice or accessory of such person, shall not be eligible to receive an award with respect to such claim.

Note that the statute completely bars any recovery by a principal, accomplice, or accessory to the crime underlying a claim. The statute explicitly states that such persons are ineligible for an award.

Illustrations

Y robs a bank. Y's brother, Z, does not participate in the actual robbery, but Z helps plan the robbery and supplies weapons to Y. During the robbery, Y is shot by X, one of Y's accomplices. Y flees the bank and later dies at Z's home, where he was hiding from the police. Z files a claim for Y's funeral expenses. Z is ineligible for an award as he is an accessory to the crime that led to Y's shooting.

(2) Unjust Benefit to a Criminally Responsible Person

The Fund cannot make an award that would directly and unjustly benefit a person who is criminally responsible. § 19.2-368.4(A)

The Fund will not deny an award on the grounds of unjust benefit based solely on the presence of the offender in the claimant or victim's household at the time of the award. Subsection (b)(7) of 42 U.S.C. § 10602 provides that in order to be eligible for federal funding, state crime victims' compensation programs must offer compensation to domestic violence victims and must not deny compensation to any victim because of that victim's familial relationship to the offender or because of the sharing of a residence by the victim and the offender, except pursuant to rules issued by the program to prevent unjust enrichment of the offender. The presence of the offender in the household is only one factor to be considered in determining unjust

enrichment. The Fund will consider the facts of each situation and make a case-by-case determination when deciding whether the offender will be unjustly enriched.

When the victim and the offender are members of the same family, the Fund will evaluate whether or not the victim (i) has reported the crime, (ii) is cooperating with all law-enforcement agencies in the investigation and prosecution of the crime, and (iii) will do what is possible to prevent access by the offender to compensation paid to the victim. If the victim is cooperating fully, and if the offender will not benefit from or have access to any cash award made by the program to the victim, then the award shall not be denied on the basis that the offender would be unjustly enriched. When the victim is a minor, the Fund will examine the same factors with respect to the individual who makes the claim on behalf of the minor.

In determining whether enrichment is substantial or inconsequential, factors to be considered include the amount of the award and whether a portion of the compensation award will be used directly by or on behalf of the offender. If the offender has direct access to a cash award or if a substantial portion of it will be used to pay for his living expenses, that portion of the award that will substantially benefit the offender may be reduced or denied. When enrichment is inconsequential or minimal, the award shall not be reduced or denied.

When unjust benefit is at issue, the Fund will make payments directly to third-party providers whenever possible to prevent cash intended to pay for the victim's expenses from being used by or on behalf of the offender. In other words, the Fund may prevent an offender from using a cash award for himself by paying a doctor or counselor directly, ensuring that the offender has no opportunity to divert the award.

With regard to claims from or on behalf of abused children, the Fund will not penalize child victims by denying or delaying payment when offender or collateral resources are not forthcoming. Third-party payments will be made whenever possible to prevent or minimize unjust enrichment of offenders living with abused children. The Fund may also consider establishment of a trust arrangement to guarantee that the award is used for the purposes it is intended, such as payment of mental health counseling.

(3) Failure to Promptly Report the Crime

No award shall be made unless the Commission finds that police records show that the crime was promptly reported to the proper authorities, and in no case may an award be made where the police records show that such report was made more than 120 hours after the occurrence of the crime, unless the Commission, for good cause shown, finds the delay to have been justified. Victims of child sexual assault are exempt from this rule. §19.2-368.10(3)

(4) Failure to Fully Cooperate With Law Enforcement

Upon finding that any claimant or award recipient has not fully cooperated with all law-enforcement agencies, the Fund may deny, reduce, or withdraw any award. § 19.2-368.10 Law-enforcement agencies include sheriff’s departments, police departments, and Commonwealth’s Attorney’s offices. Types of non-cooperation may include refusal to talk with police officers or sheriff’s deputies, refusal to cooperate in prosecution of the crime incident, and providing misinformation to law-enforcement agencies.

(5) Victim’s Contribution to Injuries

(a) Statutory Standards

When determining the amount of an award, the Commission must determine whether, because of his conduct, the victim of a crime contributed to the infliction of his injury. The Commission shall reduce the award or reject the claim altogether, in accordance with such determination. § 19.2-368.12(C)

In 1998, the General Assembly amended § 19.2-368.6 by adding subsection D, which provides that *“there shall be a rebuttable presumption that the claimant did not contribute to and was not responsible for the infliction of his injuries.”*

In addition, the Commission may disregard a victim’s responsibility for his own injury altogether, if the records show the victim was trying to prevent a crime from occurring in his presence or trying to apprehend a person who committed a crime in his presence. § 19.2-368.12(C)

(b) Application of Standards

When a claim is made by the survivors of a homicide victim, the victim’s contribution to his injuries can bar or reduce the award for the survivors. In other words, survivors stand in the shoes of the victim with respect to contribution. If the victim contributed to his injury, his survivors may receive a reduced award or no award at all. This is true even if the survivors did nothing, personally, that might cause the award to be denied or reduced.

Deciding whether a victim was responsible for his own injury requires a factual determination by the person to whom the claim is assigned.

Illustration

Y pulls a knife on X and robs him. X defends himself by shooting Y. Y dies, and X is charged with involuntary manslaughter. Y's grandmother files for funeral expenses. The grandmother's claim will be denied, because Y was committing the crime upon which the claim was based.

(B) FAILURE TO PERFECT CLAIM

(1) General

Section 19.2-368.5:1 of the Act provides:

“If, following the initial filing of a claim, a claimant fails to take such further steps to support or perfect the claim as may be required by the Commission within 180 days after written notice of such requirement is sent by the Commission to the claimant, the claimant shall be deemed in default. If the claimant is in default, the Commission shall notify the claimant that the claim is denied and the claimant shall be forever barred from reasserting it; however, the Commission may reopen the proceeding upon a showing by the claimant that the failure to do the acts required by the Commission was beyond the control of the claimant.”

(2) When Information Is Not Received

The assigned claims examiner reviews the claim at set-up, when new mail is received, and at regular intervals. When adequate information has been received, the Fund will make the appropriate decision to award or deny benefits.

The Fund will mail three (3) written notices to the claimant in an attempt to obtain required documentation. These notices will specify the information that has not been received and the identity of the person or organization believed to have the information. The first written notice, commonly called the “acknowledgement letter,” is the “*written notice*” referred to in the above-quoted statute. The claimant has 180 days from the date of this letter to obtain the requested information and forward it to the Fund. § 19.2-368.5:1

Claimants bear ultimate responsibility for ensuring that the Fund receives the documentation required to make a determination on their claim. Failure to provide the information requested by the Fund, provide change of address information, or assist the Fund with obtaining documents may result in the denial of the claim. Any claimant who needs assistance with perfecting their claim should contact the Fund.

(C) REIMBURSEMENT FROM COLLATERAL RESOURCES

(1) General

After determining the amount of an award, the Fund will reduce the award by what is informally called “collateral resources.” Virginia Code directs that awards “*shall be reduced by the amount of any payments received or to be received as a result of the injury from or on behalf of the person who committed the crime or from any other public or private source*” (emphasis added). § 19.2-368.11:1(G)

The Fund’s definition of *public funds* is a program funded in whole or in part with monies received from a state or federal government, including but not limited to (a) Medicare and Medicaid, (b) Social Security, and (c) healthcare provider financial assistance/charity care. *Private funds* are defined as (d) health insurance, (e) life insurance, (f) funeral/burial insurance, (g) income from a deceased victim’s estate, (h) disability insurance, (i) workers’ compensation, (j) sick leave or short-term disability leave, (k) court-ordered restitution, (l) homeowners’ and renters’ insurance, (m) automobile insurance, and (n) civil suits.

A victim may meet the requirements for an award, but the victim's benefits may be reduced to zero when the collateral resources exceed the Fund’s \$35,000 maximum award. *In re: Claim of Quillen, CICF File No. 88-0678, Opinion by Tarr, Chief Deputy Commissioner (December 12, 1988)* For instance, if a claimant has health insurance, the Fund will pay only the amount that is considered the insured’s responsibility (*e.g., co-pay, coinsurance, deductible*) as demonstrated by the insurance carrier’s explanation of benefits. For this reason, claimants must submit records that demonstrate how much has been paid by others on their behalf.

When the victim and the perpetrator are members of the same family, collateral resources available to the victim from the offender shall be examined. Collateral resources may include court-ordered restitution, an offending spouse's medical insurance, or other resources of the offender available to cover the victim's expenses. In evaluating the availability of collateral resources, a determination shall be made (i) as to whether the offender has a legal responsibility to pay, (ii), whether the offender has resources to pay, and, (iii) whether payment is likely. The victim should not be penalized for the failure of an offender to meet legal obligations to pay for the costs of the victim's recovery.

This policy was updated March 27, 2019.

(2) Payments That Are Counted as Collateral Resources

(a) Medicare and Medicaid

Medicare issues a statement similar to those of private insurance companies. Copies of statements are sent to the insured person informing them of what has been paid and what they are responsible for paying.

Claimants should submit copies of the Medicare and/or Medicaid explanation of benefits (EOBs). It is important for claimants to keep copies of their EOBs otherwise it may cause delays in processing their claim. The Fund may request this information from the victim's medical provider in order to expedite claims processing.

Payments by Medicare and Medicaid are deducted from criminal injuries awards as collateral resources. For information about eligibility and application requirements, contact any local Department of Social Services (DSS) office or the Department of Medical Assistance Services (DMAS).

(b) Social Security Benefits

Social Security Disability and Supplemental Security Income (SSI) benefits are paid as a result of injury or death and, therefore, are deducted from awards for wage loss and loss of support.

In the case of injury, if the victim's disability is expected to extend past twelve months, he or she may be eligible for Social Security or Social Security Disability benefits. The Fund may reimburse loss of income incurred during the mandatory five (5)-month waiting period; however, the Fund will seek redress of award payment from the victim in the event he or she receives retroactive benefits.

In the case of death, if monthly payments are lower than the victim's normal wages, the Fund will utilize wage loss calculations in § 19.2-368:11.1 (A)(B) to determine if the victim's dependents are eligible for payment from the Fund.

(c) Healthcare Provider Financial Assistance/Charity Care

The Commonwealth of Virginia requires certain licensed medical facilities to provide a certain amount of charity care annually as a condition of their certificates of need granted by the Virginia Department of Health. Each medical facility determines its own rules for the approval and distribution of charity care. Claimants who are uninsured or have catastrophic injuries may be eligible for charity care benefits from the facility where they received care. This financial assistance may also extend to providers who treated the victim at that facility (*e.g., radiologists, anesthesiologists, emergency room physicians*). All claimants who may be eligible are strongly urged to apply for financial assistance to ensure they receive the most benefit from all the benefits available to them and to help preserve available VVF monies for expenses that may arise in the future.

(d) Health Insurance Benefits

Claimants should submit copies of their insurance provider's explanation of benefits (EOBs). It is important for claimants to keep copies of their EOBs as it can be difficult for the Fund to obtain copies from insurance companies. The Fund also requests this information from the victim's medical provider in order to expedite claims processing.

The Fund will only pay medical expenses that are not reimbursed through insurance or other sources. When the claimant or victim has insurance, the Fund will pay deductibles, co-payments, coinsurance, and charges that are not covered as long as the expenses are appropriate and reasonably incurred. § 19.2-368.11:1 Should the claimant have medical insurance, the Fund will not require the use of in-network providers.

If the service provider does not file claims directly to the insurance carrier, the claimant is required to do so and to submit EOBs as described above.

(e) Life Insurance

Life insurance is generally designed to compensate for loss of companionship and financial support; therefore, it is considered a collateral resource and is deducted from awards for loss of support. **Jennings v. Division of Crime Victims' Comp., 5 Va. App. 536, 365 S.E.2d 241 (1988)**

Life insurance is deducted from awards for funeral expenses. *Policy of the Commission, May 29, 2003*

Life insurance is not deducted from awards for survivor counseling. *In re: Claim of Albrecht, CICF File No. 98-1236, Opinion by Diamond, Chairman (April 2, 1999)*

(f) Funeral/Burial Insurance

Payments from funeral or burial insurance, automobile insurance, and life insurance are deducted from an award for funeral or burial expenses. (*Policy of the Commission, May 29, 2003*) If the individual taking responsibility for the funeral contract is not the beneficiary of the life insurance policy, the Fund cannot consider it a collateral resource for funeral expense. The Fund will not deduct Social Security death benefits or the value of a victim's estate from an award for funeral expenses. (*Policy of the Commission, April 7, 1999*)

(g) Income from a Deceased Victim's Estate in Excess of \$25,000

The Fund will not deduct the value of a victim's estate from an award for funeral expenses. (*Policy of the Commission, April 7, 1999*)

When a victim dies and leaves an estate, the amount of the estate that exceeds \$25,000 is a collateral resource to their claim. The criminal injuries award to a surviving claimant will be reduced by the amount the claimant actually received from the victim's estate in excess of \$25,000. (*Policy of the Commission, June 5, 2012*)

Illustration

X dies and leaves \$6,000 to his sister. The sister's criminal injuries award will not be reduced at all, as the sister received less than \$25,000 from X's estate.

(h) Disability Insurance

Payments made by employers or others as a result of injuries, including benefits under short- and long-term disability policies, will be deducted from criminal injuries awards.

(i) Workers' Compensation

Sometimes, the same facts that give rise to a criminal injuries claim may make a claimant eligible for workers' compensation benefits. For instance, if a cashier at a convenience store is shot during a hold-up, he may be eligible to receive workers' compensation. If this is the case, a victim is required to apply for workers' compensation. The Fund may defer ruling on the criminal injuries claim until it is known what amount, if any, the claimant will receive from workers' compensation. If no award is received from workers' compensation, the criminal injuries claim will be processed. If a workers' compensation award is received, the criminal injuries claim will not be paid. The exception to this rule is that the Fund can consider those expenses disallowed by workers' compensation (*e.g., first week of wage loss, moving expenses*). However, it should be clear that the Fund does not make up any difference between the victim's expenses and the amount workers' compensation pays. If the victim does not agree with the workers' compensation decision, he may utilize VWC's available appeal process.

(j) Sick Leave or Short-Term Disability Leave

In wage loss claims, the Fund will not compensate a victim for time away from work that was covered by sick leave, short-term disability, long-term disability, or other donated leave. These benefits are provided by employers to employees for illness or injury and, accordingly, are deducted from wage loss awards.

Victims are not required to take vacation leave for disability caused by a crime; however, if they have already done so when the VVF claim is filed, it cannot be reimbursed.

(k) Court-Ordered Restitution

When a court orders an offender to pay restitution to a victim, either as part of a plea agreement or as part of a sentence, amounts paid or to be paid by the perpetrator may be deducted from criminal injuries awards. Subsection G of §19.2-368.11:1 specifically provides that the Fund is to reduce any award by the amount of any payments received or to be received as a result of the injury from or on behalf of the person who committed the crime. If restitution payments are redirected to the Fund by the restitution monitor, the amount will not be deducted from an award.

In family violence cases, if the offender fails to meet legal responsibilities to pay restitution or provide for the medical and support needs of a spouse or child, or if the offender impedes payment of insurance that may be available to cover a spouse's or child's expenses, the Fund should attempt to meet the victim's needs to the extent allowed. However, the Fund will exercise its subrogation rights under § 19.2-368.15 and seek to recover any award under the Act from offenders who have been ordered to make restitution. In such cases, the Fund will notify a victim of its intent to pursue its subrogation rights against the offender, so that the victim can make informed decisions about their safety.

In order for the Fund to collect against a perpetrator, information is required on the disposition of the court case. The Fund will not issue an initial award or supplemental awards without the current status of the court case. In all cases where an individual is tried for a crime on which a claim is based, the Fund will request a copy of the sentencing order.

The Fund employs a Fund Development Coordinator. Questions regarding deduction or collection of restitution should be directed to same at (804) 552-4007. *(Policy of the Commission, June 5, 2012)*

(l) Homeowners' and Renters' Insurance

When a covered crime occurs in the victim's residence, the claimant should file a claim with his homeowner's or renter's insurance and report all payments received to the Fund.

(m) Automobile Insurance

Any victim injured by or while in a motor vehicle must file a claim under any motor vehicle insurance policy available to him. This may include, but is not limited to, the medical coverage or uninsured/underinsured motorist provisions with his personal automobile insurance carrier or the insurance policy for the vehicle causing the injury. This coverage will usually pay benefits up to a fixed amount without regard to whether the victim's vehicle was involved in the incident. For example, payment may be made to a

victim who is injured while a pedestrian or a passenger in the vehicle of another.

Some specific examples in which the Fund would expect to see an automobile insurance claim include victims who are (i) intentionally struck by a vehicle, (ii) involved in a DUI accident, or (iii) victims of felony Hit and Run.

(n) Civil Suits

If the claimant recovers damages through civil litigation related to the crime, he must repay any awards received by the Fund. The Fund may make the award in advance to settlement upon the claimant's attorney's agreement to repay the Fund.

(3) Payments That Are Not Counted as Collateral Resources

- (a) Homes, cars, bank accounts, or other assets
- (b) Credit available through banks or other financial institutions
- (c) Income from parent or guardian when victim is a minor
- (d) Financial assistance from family
- (e) Donations/contributions made for the victim or their family members (*e.g., GoFundMe, church donations, fundraisers, etc.*)
 - Exception: Reimbursement will be offset by donations that have been paid directly to a service provider for crime-related expenses when record of payment received by the Fund verifies the expense was covered by donated monies.
- (f) Temporary Aid to Needy Families (TANF)
- (g) Food stamps

(4) Allocating Collateral Resources

When several claimants file for an award based on the death of an individual, collateral resources will only be deducted from the award of the person or persons actually receiving those benefits. The Fund does not combine the collateral resources of multiple claimants and deduct the combined total from the maximum award.

(5) Continuing Payments from Collateral Resources

Sometimes benefits received as collateral resources are paid in installments over a protracted period of time. Such benefits may be subject to reduction or termination. Workers' compensation benefits and Social Security payments are the best examples of such benefits. If the Fund reduces an award by periodic payments and the payments are later reduced or terminated, the Fund will review its decision.

(D) ELIGIBLE CRIME TYPES AND EXPENSES TIED TO DATE OF ENACTMENT

Through the history of the Fund, eligible crime types have been added or expanded. For example, stalking was added as a compensable crime in 2008. Benefit amounts and types have also changed over time. When items have been changed by law or policy, the changes are not retroactive. The claim and relevant benefits can only be considered in the context of what was allowable as a matter of law and/or agency policy on the date of the crime incident.

FUND PROCEDURES

This section describes how the Fund handles and processes claims.

(A) INTRODUCTION

All expenses paid by the Fund must be incurred as a result of a crime that meets the legal definition of the Virginia Compensating Victims of Crime Act. Awards are based on actual expenses incurred and may not exceed \$35,000 in the aggregate for crimes occurring after July 1, 2007. *(Benefit levels are tied to the benefits that were available on the date of the crime incident.)*

All expenses and losses must be documented. It is the claimant's responsibility to provide documentation and to assist the Fund with its efforts to gather documents that demonstrate and fix the amount of the expenses and losses. VVF staff and other crime victim advocates are available to assist claimants in perfecting claims. § 19.2-368.5:1

(B) ASSISTANCE WITH CLAIMS

Any claimant who needs help understanding what documents to send to the Fund, who is having trouble obtaining documents, or who has any questions concerning a claim should contact the Crime Victims' Ombudsman. The Ombudsman assists claimants free of charge.

The Ombudsman assists claimants with understanding what forms to file, what paperwork to submit, and their rights under the Act. They also assist claimants with obtaining documents from law-enforcement officials, healthcare providers, employers, and others who have information that affects their claims.

When service providers, including physicians, employers, hospitals, or the police fail to provide information to which the Fund is entitled, the Crime Victims' Ombudsman can issue subpoenas to compel testimony or production of documents. VVF staff can also assist in issuing subpoenas. § 19.2-368.3:1

(C) WHERE TO SEND DOCUMENTS

Documents in support of a claim, including the initial application, should be sent to the Virginia Victims Fund at:

Virginia Victims Fund
Post Office Box 26927
Richmond, VA 23261
Fax: (804) 823-6905
Email: info@virginiavictimsfund.org

Claimants often work with Victim/Witness programs in their localities. VW programs are not part of VVF or the Commission, so delivering documents to a VW office is not the same as delivering them to the Fund. VW programs can assist claimants with their VVF claims; however, when documents are needed to support a claim, the claimant should submit them directly to the Fund at the address above.

(D) DOCUMENTS IN SUPPORT OF A CLAIM

Claimants should submit their application promptly and submit supporting documentation as it becomes available. For specifics concerning filing period, see **When A Claim Must Be Filed** (page 12).

The documents required by the Fund in support of a claim will depend on the type of compensation the claimant is seeking. This section outlines what benefits are available and what documentation is needed to make a determination. It also explains which documents the claimant must provide, which documents the Fund will try to gather, and what help is available when claimants cannot obtain necessary paperwork.

Some claims are more complex than others and, in complex claims, the Fund may require additional or different information. The following describes the documentation required to support a straightforward claim. In all claims, the Fund will notify the claimant of the information it needs. Completion of a claim depends on the cooperation of all entities involved.

(1) Documents Required In All Claims

(a) Application

Claimants must complete the Fund's application form and send it to the Fund. All claims must be made under oath. *This means that the claimant's signature on the authorization page must be witnessed by a Notary Public.* § 19.2-368.16

If a claim is filed by an advocate via WebFile, the claim will not be processed until the authorization page is received. If this page is not received within thirty (30) days of the advocate's submission of the claim, the claim will be returned as incomplete.

Claimants should complete the application as fully as possible. Claimants should list all known healthcare providers, employers, insurers, and other service providers along with complete mailing addresses, including zip codes. Failure to fully complete the application may cause the investigation to be delayed or prolonged and may, in certain cases, cause the Fund to reject the application. If the Fund refuses to accept the application, the claim will not be investigated until a proper application is submitted.

All VVF staff can assist claimants with completing the application form.

(b) Police Records

Subsection A of § 19.2-368.6 directs the Fund to investigate all claims accepted for filing. Subsection B requires that such investigation shall include the examination of police, court and official records and reports concerning the crime.

The Commission is authorized by § 19.2-368.3(2) of the Code of Virginia to acquire from Commonwealth's Attorneys, State Police, local police departments, sheriffs' departments, and the Chief Medical Examiner such investigative results, information and data necessary to determine if a crime was attempted or committed and whether the victim contributed to his injuries. Prior arrest records of the offender including juvenile court records may also be obtained.

In order to make a decision, it is imperative that the Fund receives sufficient information to determine **(i)** whether a crime occurred, **(ii)** whether the victim contributed to his injuries, and **(iii)** that the victim was cooperative with law enforcement. The Fund ordinarily requests the Offense/Incident Report and supplemental investigative reports, including witness statements and continuation sheets. However, a summary of the investigative reports may be acceptable if it allows the Fund to make the determinations required by statute. For the purposes of the Fund, a report to Child Protective Services may meet the requirements for law-enforcement records.

If the Fund does not receive this information in a timely fashion, claims can be delayed. Claimants can rarely obtain this information from law-enforcement officials. If the claimant's file becomes inactive because the Fund has not received information from law-enforcement officials, the claimant has several options.

First, the claimant should contact the Fund at (800) 552-4007. Second, the claimant may contact the police directly or through the local Victim/Witness program or Commonwealth's Attorney's office. Finally, if these methods do not work, the Fund or the Commission may request a hearing under § 19.2-368.6(E), and the investigating officer or officers may be subpoenaed.

(E) NOTICE TO COMMONWEALTH'S ATTORNEY

Upon receipt of a claim, the Fund promptly notifies the Commonwealth's Attorney (CA) in the locality where the crime occurred. The CA then has ten (10) days to advise the Fund whether or not criminal prosecution is pending. If the CA so advises, the Fund must defer all proceedings until the criminal prosecution has been concluded. If the case is deferred, investigation of the claim is suspended, and no award can be made, except in emergency situations, until the criminal case is concluded. The Fund will notify the claimant in writing

when his claim has been deferred for this reason. If, however, no objection is made by the CA, the Fund will process the claim without delay. § 19.2-368.5(D)

(F) OTHER RECORDS

The Fund will send written requests for documentation to service providers, including healthcare providers, social services agencies, and employers to validate crime-related expenses based on the benefits for which the claimant is applying. It is very important for the claimant to provide complete mailing addresses for each service provider, employer, etc.

(G) INFORMATION FROM CLAIMANTS

The Fund will request information from a claimant as his claim is investigated. This is particularly true when a claimant has submitted an incomplete application. Claimants should be aware that failure to provide information might impair the Fund's ability to investigate or resolve claims. For instance, if a claimant is requesting an award for lost wages but does not supply his employment history and addresses of his employers, the Fund will be unable to contact the employer to verify employment or the amount of wages. For this reason, it is important that claimants respond to the Fund's requests for information. Failure to provide information that is necessary to support the claim can cause the claim to be denied. § 19.2-368.5:1

(H) EMERGENCY AWARDS

Notwithstanding any other provisions of this chapter, if it appears to the Commission, that (1) such claim is one with respect to which an award probably will be made, and (2) undue hardship will result to the claimant if immediate payment is not made, the Commission may make an emergency award to the claimant, pending a final decision in the case, provided that (i) the amount of such emergency award shall not exceed \$3,000, (ii) the amount of such emergency award shall be deducted from any final award made to the claimant, and (iii) the excess of the amount of such emergency award over the final award, or the full amount of the emergency award if no final award is made, shall be repaid by the claimant to the Commission. § 19.2-368.9

(1) Amount

Emergency awards cannot exceed \$3,000. Since the Fund only pays for out-of-pocket loss, this award is based on the claimant's actual out-of-pocket expense per §19.2-368.11:1. Consequently, the award may be less than the \$3,000 maximum allowable amount.

(2) Standard for Eligibility

Emergency awards may be made when it appears that **(i)** the victim will be eligible for an award and **(ii)** undue hardship will result if payment is not promptly made.

(3) Repayment of Emergency Award

In some circumstances, a claimant may have to repay the Fund for an emergency award he has received. Because emergency awards are based on the likelihood that a claim will be compensable, they are granted before a final determination is made on the claim. After full investigation, some claims prove to be non-compensable. If the Fund determines that the claim is invalid or non-compensable, the statute requires that the claimant repay the emergency award to the Fund. § 19.2-368.9(2)(iii) If the claimant is unable to repay the Fund in the foreseeable future, they will be entered into the Commonwealth's Tax Debt Set-Off System. They will also be subject to collection action by VVF's Fund Development Section.

(4) Deduction from Final Award

In cases in which the claim is determined to be compensable, the Fund will deduct from the award the amount of any emergency award previously received by the claimant. § 19.2-368.9(2)(ii)

(I) PRE-AUTHORIZATIONS

In some circumstances, the Fund will be asked to preauthorize certain expenses. The Fund is not authorized to guarantee in advance or prepay services to be rendered, and it is not equipped or intended to approve specific procedures in advance. However, where it is clear to the Fund that a claimant is eligible for an award, the Fund may issue a pre-authorization if the provider will not otherwise render services.

In order to pre-authorize services, the Fund must have **(i)** a completed claim for benefits form, **(ii)** a police report, **(iii)** a completed Police/Sheriff Report Form (PSRF), **(iv)** the name and address of the provider, and **(v)** a treatment plan and cost estimate (*for medical/dental expenses*) or a signed funeral contract (*for funeral expenses*).

Pre-authorization letters inform the provider that the claimant has been deemed eligible to receive an award, that the Fund has determined that the expense for which pre-authorization is sought was caused by the crime, and that the Fund is authorized to pay the maximum allowable amount available for that expense.

(J) ELIGIBLE EXPENSES (THIS LIST IS NON-INCLUSIVE)

- Medical and Dental (*page 44*)
- Mental Health Counseling (*page 44*)
- Alternative Therapies (*page 46*)
- Prescriptions (*page 46*)
- Mileage/Transportation (*page 46*)
- Funeral (*page 47*)
- Crime Scene Clean-Up (*page 48*)
- Wage Loss (*page 49*)

Loss of Support (page 52)
Moving (page 55)
Temporary Lodging (page 55)
Home Security (page 56)
Services Formerly Performed by Victim (Replacement Services) (page 56)
Miscellaneous (page 57)

(K) INELIGIBLE EXPENSES (THIS LIST IS NON-INCLUSIVE)

Interest, service charges, or attorneys' fees
Pain and suffering
Compensation for property loss or damage (see exceptions on page 17)
Treatment rendered at a Veteran's hospital unless a co-pay is required
Cost of medical treatment for family members (excluding survivor counseling)
Medical Forensic Exams as they are paid by other sources
(Victim exams for sexual assault and rape are paid by the SAFE Payment Program. All other forensic exams are paid by the Supreme Court of Virginia.)

(L) CLAIM EXAMINATION

The assigned claims examiner reviews the claim at set-up, when new mail is received, and at regular intervals. When adequate information has been received, the Fund will make the appropriate decision to award or deny benefits.

The Fund will mail three (3) written notices to the claimant in an attempt to obtain required documentation. These notices will specify the information that has not been received and the identity of the person or organization believed to have the information. The first written notice, commonly called the "acknowledgement letter," is the "written notice" referred to in the above-quoted statute. The claimant has 180 days from the date of this letter to obtain the requested information and forward it to the Fund. § 19.2-368.5:1

Claimants bear ultimate responsibility for ensuring that the Fund receives the documentation required to make a determination on their claim. Failure to provide the information requested by the Fund, provide change of address information, or assist the Fund with obtaining documents may result in the denial of the claim. Any claimant who needs assistance with perfecting their claim should contact the Fund.

(M) HEARINGS

There are two situations in which the Commission or the Fund may order a hearing. The first is when the claimant has appealed a decision of the Fund and the Commission needs further evidence before resolving the appeal. The second is when the Fund requests a hearing before rendering a decision. This section applies only to the latter situation – when the Fund orders a hearing prior to making a determination in the claim.

The person to whom a claim is assigned may decide the claim in favor of a claimant on the basis of the papers filed in support of the claim and the report of the investigation of the

claim. If he is unable to decide the claim, the Fund will order a hearing. The purpose of the hearing is to make sure that the Fund has adequate information before making a determination. Generally, the hearing has been ordered because there is conflicting information in the record. §19.2-368.6(E)

A Deputy Commissioner will schedule and conduct the hearing in a locale near where the crime occurred. Upon receiving notice of the hearing, the victim may elect to have witnesses subpoenaed to appear at the hearing. If the victim desires to have subpoenas issued, he should promptly provide the Commission with the names and addresses of any witnesses whose testimony might assist in resolving a conflict. The cost of having a subpoena delivered is \$12 per person payable by check to the sheriff of the city or county where the witness lives. Requests for subpoenas should be sent to:

Clerk of the Commission
Virginia Workers' Compensation Commission
333 East Franklin Street
Richmond, VA 23219

The Commission will then issue a subpoena to compel the witness to attend the hearing. Witnesses, including the claimant, testify under oath. Any relevant evidence that is not legally privileged is admissible. The victim, at his expense, may have an attorney during a hearing or review. However, legal representation is not required.

After hearing the evidence, the Deputy Commissioner will render a written opinion. If the claimant is dissatisfied with the opinion entered by the Deputy Commissioner, he may file an appeal to the Full Commission.

Hearings in claims involving a claimant or victim who is a juvenile shall be closed, and all records, papers, and reports involving such claim shall be confidential except as to the amount of the award and non-identifying information concerning the claimant or victim.

(N) WRITTEN DECISION

If a hearing is not requested by the Fund, after reviewing and considering all the information, the Director of the Fund will issue a written decision. The decision will include the reasons for awarding or denying benefits and for the amount of any award. § 19.2-368.6(G) & (H)

In order to render a decision, the Virginia Compensating Victims of Crime Act, the Victims of Crime Act (VOCA) grant guidelines, and the VVF Policies and Procedures manual must be considered.

The written decision will be sent to the claimant and copied to the advocate. If the claimant wishes any person or organization to see the decision letter, he may provide a copy to them or he may have the Fund send the letter by providing written authorization to the Fund. The written authorization should specify the persons to whom the Fund should send a copy of the decision and provide addresses to which the decision should be mailed. Some VW programs keep authorization forms on hand for this purpose.

While the Fund will obtain law enforcement and juvenile records when investigating a claim, and it may rely on them in making a determination, the Fund may not reveal the contents of those records, even when writing a decision under the Act. Section 19.2-368.3(10) specifically directs that the Fund shall not disseminate such records and must keep them confidential.

(O) CONFIDENTIALITY OF RECORDS

The Fund will not disclose information concerning a claim to any person other than the claimant. Often, relatives of claimants call requesting information or assistance. The Fund cannot discuss the claim without the prior written consent of the claimant.

In the process of investigating and reviewing each claim, the Fund builds a case file. Many of the records in the claim file are available to the claimant, but some material is expressly protected by statute. Records held by the Fund or Commission relating to crimes, injuries, or criminal injuries claims are not subject to the Freedom of Information Act (FOIA).

(1) Records That Will Not Be Released

The Fund cannot and will not release the following records to the public, to claimants, or to attorneys or other representatives of claimants.

(a) Law Enforcement Records

Subsection 2 of § 19.2-368.3(2) allows the Fund to receive investigative results and information from Commonwealth's Attorneys, State Police, police departments, sheriffs' departments, the Chief Medical Examiner, and the juvenile and domestic relations district courts. However, the statute expressly provides that the Fund shall only use the information to carry out its duties under the statute, and the information shall be confidential and **shall not be disseminated further**. Claimants and their representatives are not entitled to receive, examine, or copy these records or the information contained in them. If these records are sent to the Commission for hearing purposes, they will be placed under seal.

(b) Juvenile Court Records

The Fund also has access to claimants' or victims' juvenile court records for the purpose of carrying out its duties under the Act. It may also receive orders of dispositions from the juvenile and domestic relations courts. Legal confidentiality requirements that ordinarily prevent state agencies or the general public from obtaining those records do not apply to the Commission when investigating or processing a criminal injuries claim. Although the Commission may obtain the records, it cannot disseminate them further. The Commission will not release these records to the claimant, the victim, or the general public. §§ 19.2-368.3(2) and 19.2-368.6(F)

(c) Juvenile Mental Health Records

(d) Medical Records

Virginia Code Section 2.2-3705.2(1) prohibits releasing “*confidential information, including victim identity, provided to or obtained by staff in a rape crisis center or a program for battered spouses.*”

It is the Fund’s policy not to release medical records, if the medical provider has requested that records not be further disseminated.

(e) Virginia Code Sections that Impact Sharing of Information in a VVF Claim

There are additional provisions of the Code that will be followed by the Fund relative to the release of victim/crime information including, but not limited to the following:

CRIME VICTIM AND WITNESS RIGHTS ACT

§19.2-11.01 (A) (5) (a): Victims and witnesses shall be informed that their addresses, any telephone numbers, and email addresses may not be disclosed except when necessary for the conduct of a criminal proceeding.

§19.2-11.01 (C): Officials and employees of the judiciary shall make reasonable efforts to become informed about these responsibilities and to ensure that victims and witnesses receive such information and services to which they may be entitled under applicable law.

§19.2-11.2: Upon request of any witness or any crime victim, neither a law-enforcement agency, the attorney for the Commonwealth, the counsel for a defendant, a court nor the Department of Corrections, nor any employee of any of them, may disclose, except among themselves, the residential address, any telephone number, email address, or place of employment of the witness or victim or a member the witness’ or victim’s family, except to the extent that disclosure is . . . (ii) required by law or Rules of the Supreme Court, (iii) necessary for law-enforcement purposes or preparation for court proceedings, or (iv) permitted by the court for good cause.

§63.2-104.1 (A): In order to ensure the safety of adult and child victims of domestic violence, sexual assault, or stalking, programs and individuals providing services to such victims shall protect the confidentiality and privacy of persons receiving services.

FOIA

§2.2-3705.5: Exclusions to the application of chapter; health and social service records.

§2.2-3705.5 (1): Health records, except that such records may be personally reviewed by the individual who is the subject of such records.

§2.2-3705.7(1): State income, business, and estate tax returns . . .

§2.2-3706: Disclosure of law-enforcement and criminal record.

VVF

§19.2-368.3(2): The use of any information received by the Commission pursuant to this subdivision shall be limited to carry out the purposes set forth in this section, and this information shall be confidential and shall not be disseminated further.

§19.2-368.6(E): The hearing of any claim involving a claimant or victim who is a juvenile shall be closed. All records, papers, and reports involving such claim shall be confidential except as to the amount of the award and non-identifying information concerning the claimant or victim.

(2) Records Available to the Claimant

(a) Employers' Reports

(b) Medical Reports

(3) Records Available to Others

Generally, if any person or organization other than the claimant requests information relating to his claim, the Fund will be unable to release the information without the prior written authorization from the claimant. Copies of records may be provided to authorized individuals upon payment of the copying fees set by the Commission.

(a) Attorneys

A claimant's attorney must provide a letter on the firm or attorney's letterhead certifying representation.

(b) Relatives of the Claimant

When the claimant is an adult, the Fund will not discuss the claimant's case with or release claim information to the claimant's family members without prior written consent, stating the names and addresses of all persons whom the claimant authorizes to have such information.

APPEALS

When a claimant disagrees with an adverse decision from the Fund, he can request a Reconsideration or Review under § 19.2-368.8 or § 19.2-368.7 of the Act. In accordance with their authority under § 19.2-368.3, the Commission sets forth the following procedures for Reconsideration/Appeal/Review, commonly referred to as an “Appeal.” Any such request must be made by the victim or the claimant. Individuals that are not a party to the claim may not make these requests, though they may provide information to assist in this process.

(A) APPEALABLE DECISIONS

Any decision granting or denying relief or reducing an award under the Compensating Victims of Crime Act is appealable, including: **(i)** decisions granting or denying a claim as a whole; **(ii)** decisions denying or failing to grant supplemental awards; **(iii)** decisions that a claimant is ineligible to file or to receive an award under the Act; **(iv)** decisions rejecting a claim for any reason; and **(v)** denials based on failure to perfect.

Denial or grant of an emergency award cannot be appealed. Determinations on SAFE payments are final and may not be appealed.

(B) WHEN THERE IS NO REQUIREMENT TO REQUEST RECONSIDERATION OR REVIEW

If a claim has been determined eligible and no payments have been made, a victim/claimant only has to turn in the documents that were outlined in the written determination. The Fund will re-open the claim on its own motion and consider the expenses. This same procedure applies if a certain expense has not been paid or a supplemental payment is requested on an eligible claim. Simply send in the requested documents as outlined in the determination letter so they can be reviewed by the claims examiner.

(C) REPRESENTATION

The claimant, at his expense, may have an attorney represent him at any stage of the process, including appeals; however, legal representation is not required.

(D) HOW TO FILE

Requests for Reconsideration, Appeal, and Review are not accepted by e-mail.

Written requests from the victim/claimant must be sent to:

Virginia Victims Fund
Post Office Box 26927
Richmond, VA 23261
Fax: (804) 823-6905

(E) REQUEST FOR RECONSIDERATION

The request should include a statement of the reasons the claimant disagrees with the decision or is requesting reconsideration. The request should be accompanied by copies of any new evidence or information the claimant wishes the Fund to consider. Inclusion of documents that demonstrate that the original decision was incorrect will help the process move more quickly and may result in a better outcome for the claimant.

The request for reconsideration must specifically state why the claimant believes the Director's decision is incorrect, and must be received within forty-five (45 days) from the date of the Fund's original determination. The request must come from the claimant or his legal counsel. The request will preserve any appeal rights afforded to the claimant. The request should include any new information that will assist in making a new determination. Once in receipt of the reconsideration request, the Director will reinvestigate the claim.

Once the claim has been reinvestigated, the Director will either (1) reverse the original determination based on new facts or (2) uphold the original determination. The Director will notify the claimant/victim of her findings in writing. The claimant will again have forty-five (45) days from the date of that letter to appeal the results of the Reconsideration.

(F) HEARINGS

Should the claimant appeal the findings of the Reconsideration, the claim will be forwarded to the Clerk of the Commission to be docketed for an Evidentiary Hearing before a Deputy Commissioner. The claimant will receive notice of the date and time of the hearing. If the claimant does not attend the hearing, the original determination will stand and the case will be dismissed. Hearings are held all over the Commonwealth by administrative law judges (Deputy Commissioners) appointed by the Virginia Workers' Compensation Commission. Cases are generally heard six months to one year after being forwarded to the Commission. The victim or claimant must be present at the hearing. The law enforcement officer that investigated the crime is generally called to the hearing to provide information about the facts of the case. The claimant will receive written information about the outcome of these processes.

(G) REVIEW BY THE FULL COMMISSION

If the claimant is unhappy with the outcome of the Evidentiary Hearing, it may be appealed to the Full Commission within thirty (30) days of the date of the Opinion. Generally, Commission Reviews are "on the record," meaning there is not an in-person hearing and claims are reviewed and decided based on the file documentation. The Full Commission will examine the Fund's decision letter and the claim file. If the claimant wishes to file a brief statement stating why he believes the Fund's decision was in error, he may do so. The review is performed at no cost to the claimant.

Appealed cases that have no evidentiary issues may be referred directly to the Review Docket by the VVF Director. An example of a case that might be referred would be those where the appeal is based on a matter of policy or law.

If the Commission examines the file and decides it needs more information before making a decision, it may order another hearing. However, in most cases the claim will be reviewed without a hearing. After the Commission reaches a decision, it issues a written Opinion affirming, reversing, or modifying the Fund's decision. Copies of this opinion will be sent to the claimant, the Fund, all attorneys involved in the case, and to the local Victim/Witness Assistance Program, if the claimant has authorized the Fund and the Commission to communicate with the Victim/Witness program about the claim.

(H) APPEAL TO THE VIRGINIA COURT OF APPEALS

If the claimant has appealed to the Full Commission and is dissatisfied with the Commission's decision, he may appeal to the Virginia Court of Appeals by filing a written notice of appeal within thirty (30) days of the Commission's Opinion. The Notice of Appeal must be filed with the Clerk of the Commission accompanied by a \$500 appeal bond and with the Clerk of the Court of Appeals within thirty (30) days of the Opinion. The Notice of Appeal must state the names and addresses of all appellants and appellees, the names, addresses, and telephone numbers of counsel for each party or if any party is unrepresented the address and telephone number of the party. The notice must also state whether the appellant challenges the sufficiency of the evidence to support the findings of the Commission.

Upon motion, the Court of Appeals may waive the appeal bond. Unless there is evidence of indigence, a fee of \$35 for the cost of preparation of the record will be billed by the Virginia Workers' Compensation Commission to the party appealing the decision when the record is transferred to the Court of Appeals.

(I) TIMELINESS OF APPEALS

A written request for review stating the reasons a review is sought must be received if sent by regular mail or delivered in person at the Virginia Workers' Compensation Commission in Richmond, Virginia, or the Virginia Victims Fund, within forty-five (45) days of the date on the Director's decision. If sent by certified or registered mail, the request must be mailed and postmarked within forty-five (45) days of the decision. The request should be addressed to:

Virginia Victims Fund
Post Office Box 26927
Richmond, VA 23261

Either the Fund or the Full Commission may deny a request for an appeal of any type (request for review or request for reconsideration) on the grounds that the request was made after two (2) years from the date of the application. §19.2-368.8 If the Fund issues such a decision, it shall forward a copy of the letter to the Clerk and the claimant. If the Clerk issues such a decision, it shall forward a copy to the Fund and the claimant.

AVAILABLE BENEFITS

(§ 19.2-368.11:1)

The Fund may make awards for expenses and indebtedness incurred that the Commission determines to be appropriate and that are a direct result of the injury or death upon which the claim is based. § 19.2-368.11:1(E)(vii) Unless otherwise stated, the maximum allowable award per claim is \$35,000. The Commission has already determined that the following types of expenses are awardable. These expenses must be documented by a third party and the documentation required to pay these expenses is included below.

(A) MEDICAL AND DENTAL

Appropriate and reasonably incurred medical expenses that are not covered by private health insurance, Medicare, Medicaid, or other sources will be paid up to the maximum award of \$35,000. Payment will be made directly to the healthcare provider unless documentation is provided to establish that payment was made by the claimant.

In order to verify the extent of a victim's injuries and to substantiate medical expenses as required by §19.2-368.6(B) of the Act, the Fund corresponds directly with all medical care providers listed on the VVF application. Providers for which documentation is requested include, but are not limited to, hospitals, physicians, dentists, sexual assault nurse examiners, rehabilitative services, physical therapists, ambulance services, psychologists, clinical social workers, ophthalmologists, optometrists, laboratories, clinics, and prosthesis/orthotic providers.

A “Notice of Filing” letter is sent to pathologists, radiologists, and anesthesiologists as these providers do not usually prepare medical records. The Notice of Filing informs providers that a VVF claim has been filed and explains that collections activities must not occur as long as the VVF claim is pending.

Required documentation includes (1) **medical records** (*including office notes*), (2) **itemized billing statements**, (3) **verification of collateral resources**, and (4) a signed **Memorandum of Agreement (MOA)** from the healthcare provider as required by §19.2-368.3(1)(ii).

The Fund will request medical records and itemized statements, but a victim’s injury may require that he receive continuing treatment. If this is the case, the claimant must inform the Fund that treatment is ongoing and submit all bills for which he wants to be reimbursed. Documentation as described above will also be required.

The Fund does not pay for missed or cancelled appointments.

(B) MENTAL HEALTH COUNSELING

Mental health counseling is available to crime victims and to survivors of homicide victims with the goal of returning the victim to baseline functioning.

Counseling must be provided by a medical doctor, clinical psychologist, clinical social worker, or professional counselor licensed pursuant to Title 54.1, Chapters 35 through 37, Code of Virginia, or by a clinical nurse specialist who renders mental health services, pursuant to Title 54.1, Chapter 30, Code of Virginia. Individuals receiving treatment outside of the Commonwealth must be served by a provider licensed in the state or country where services are rendered.

1) Grief Counseling

Mental health counseling is available for a surviving spouse, parent, grandparent, sibling, or child, including posthumous children, of a victim of a crime who died as a direct result of such crime. § 19.2-368.4 (A)(2)(4)

Benefits are capped at \$3,500 per eligible survivor, and shall not exceed \$35,000 in the aggregate. §§ 19.2-368.11:1 (E)(v) and 19.2-368.11:1 (H)

2) Mental Health Counseling

In order to consider counseling expenses reasonable and appropriate, the Fund expects treatment rendered to be crime-centered and time-specific. The Fund considers reimbursement for those disorders as specified in the Diagnostic and Statistical Manual of Mental Disorders V as Trauma- and Stressor-Related Disorders. The Fund will only consider payment for treatment that has been empirically proven to be effective for trauma victims.

Outpatient mental health counseling shall be limited to forty (40) sessions per claim, beginning on the date of the first counseling session. Sessions exclusively for the purposes of medication management will be counted in the 40-session limit and will be considered in conjunction with mental health treatment.

Consideration will be given upon the practitioner's completion of the Mental Health Treatment Report.

In cases of exigent circumstances; however, there shall be a contingency to allow for the approval of more than forty (40) sessions per claim. Approval in these circumstances must be granted by the Fund's Director.

Mental health counseling for parents/family of minor child victims is allowable as long as the counseling is focused on the victim and the crime incident. Court-ordered counseling for parents or family members will not be considered.

For counseling purposes, a minor child who is a witness of violence involving a caretaker is considered as a primary victim. Their presence at the scene must be confirmed by a law-enforcement agency.

Inpatient mental health counseling shall be considered upon receipt of the practitioner's notes.

(C) ALTERNATIVE THERAPIES

Upon recommendation, explanation, and commitment of monitoring by the licensed healthcare provider, the Fund will consider up to 20 sessions of alternative therapies. This must be in conjunction with treatment provided by a licensed mental health provider.

Therapies should have independent empirical evidence supporting their safety and use and practitioners should be licensed to perform the services. This may include, but is not limited to acupuncture, art therapy, biofeedback, self-defense classes, and therapeutic riding camp.

The victim's licensed healthcare provider must provide, in writing, the reason for the alternative therapy, the expected duration, empirical evidence of success for crime victims, and the anticipated benefit of the therapy. The provider must provide data showing the victim attended treatment and information about the outcome of their participation.

(D) PRESCRIPTIONS

Prescriptions for treatment of injuries or conditions caused by the crime may be reimbursed. The claimant must provide copies of receipts for prescriptions. Prescription receipts should include the name of the medication, the name of the prescribing doctor, the date filled, and the amount charged (*i.e.*, "bag tags"). The claimant should also present evidence of any payments made. Explanations of Benefits (EOBs) from the insurance carrier may be required.

The Fund may also consider medical supplies including, but not limited to, gauze, tape, bandages, antiseptics, antibacterial ointment, and mouth rinses as well as meal replacement products such as Ensure and Boost.

Prescriptions and medical supplies must be substantiated by medical records.

The Fund does not pay for over-the-counter (OTC) medications.

(E) MILEAGE/TRANSPORTATION

Claimants may receive reimbursement for transportation costs that are solely and directly related to the crime. This includes parking, tolls, cab fares, bus tickets, or roundtrip mileage to/from the appointment location. Mileage is reimbursed at the personal vehicle mileage rate prescribed annually in the travel regulations of the Commonwealth of Virginia. (*Policy of the Commission, November 2002*) For all transportation claims, the Fund needs the date of

travel and the physical address of the starting and ending location. Undocumented travel will not be reimbursed.

1) Medical/Mental Health Appointments

The Fund may award transportation costs for medical and mental health appointments for adults and children. Travel must be documented with receipts and will be compared to the provider's records.

Transportation costs can also be paid for victims to attend free group or individual counseling at certified domestic violence or sexual assault programs. These agencies should provide the dates of attendance and certification that crime-related topics were discussed.

2) Law Enforcement/Court Appearances

Travel to law-enforcement appointments and court appearances are eligible for compensation for *minor victims only*. Law-enforcement/court-related travel must be verified by the local Victim/Witness program or Commonwealth's Attorneys' office.

The Fund will not pay adult victims or claimants for travel to investigative, prosecutorial, or court-related appointments as they are required to participate in these activities. §19.2-368.10

(F) FUNERAL

Subsection E of § 19.2-368.11:1 authorizes the Fund to pay expenses in any way related to funeral or burial up to \$10,000, for crimes occurring after July 1, 2019. (*Benefit levels are tied to the benefits that were available on the date of the crime incident.*) The Fund is unable to pay expenses for family and friends of the deceased to travel to or attend the funeral, but may consider travel expenses for a family member (*see page 8 for the definition of family member*) to travel to identify the deceased victim.

Claimants requesting reimbursement for funeral or burial expenses should provide the following documents:

(a) Evidence of Expenses

A copy of the signed funeral contract and receipt for payment of funeral or burial expenses;

(b) Evidence of Death

A copy of the death certificate, coroner's report, medical examiner's report, or police investigative reports;

(c) Evidence of Reimbursement

If the funeral or burial expenses have been paid in whole or in part through burial or life insurance, the claimant must submit documentation of the amount paid.

The Fund can only pay eligible claimants who have actually paid for or signed a contract for funeral or burial expenses. If the claimant did not pay for the funeral expenses, the Fund will be unable to pay the claimant without written permission from the person who actually paid the expenses or signed the funeral contract.

(G) CRIME SCENE CLEAN-UP

Subsection E of § 19.2-368.11:1 authorizes the Fund to pay certain expenses related to crime scene clean-up as a reasonable and necessary expense. Although the Code does not speak directly on the matter, the nature of these expenses is defined by VOCA guidelines as well as Commission policy.

The Commission adopted a policy on November 4, 1998, that allows the Fund to pay up to \$1,000 for crime scene clean-up when a crime resulting in physical injury occurs in a residence. Requests for awards for crime scene clean-up involving automobiles will be decided by the Commission judicially on a case-by-case basis.

Generally, the replacement of property is prohibited by the Federal Victims' of Crime Act; however, there are these exceptions:

(a) Replacement and clean-up of items damaged by the police use of graphite at the crime scene (*this does not extend to payment for items taken by the police as evidence except as mentioned below*) **In Re: Claim of Montgomery, CICF File No. 99-759, Opinion by Diamond, Chairman (December 7, 1999)**

(b) Replacement of locks and windows damaged as a result of a qualifying crime as well as the replacement of bedding and clothing held by the police as evidence. **Federal Register, Vol. 66, No. 95, Wednesday, May 16, 2001, Department of Justice, Office for Victims of Crime**

In order to reimburse these expenses, the Fund must have (i) a copy of the evidence receipt provided to the victim by a law-enforcement agency and (ii) a receipt for the purchase of a like item that matches the description of the item on the evidence receipt.

Additionally, the Fund can consider other reasonable and necessary costs incurred for crime scene clean-up. Receipts/bills from purchases of cleaning supplies or from professional cleaning companies are required in order to pay this expense.

Homeowners' or rental insurance is considered a collateral resource for this expense. The victim or claimant must be responsible for this bill in order for the Fund to consider payment. Individuals or organizations that cannot be VVF claimants should not request this service without the expressed permission of the responsible victim or claimant.

Automobile insurance is also considered a collateral resource when crime scene clean-up is requested for an automobile. The Fund may also pay for the clean-up of automobile interiors. Receipts/bills from purchases of cleaning supplies or from professional cleaning companies are required.

(H) WAGE LOSS

Subsections A and B of § 19.2-368.11:1 authorize the Fund to pay total or partial loss of earnings which results directly from incapacity incurred as a result of a crime. The wage loss may be the result of either physical or psychological disability as long as it is directly related to the crime for which the claim is filed and adequately documented in medical records.

If psychological trauma is listed as the reason for a disability from work, the Fund expects that the victim/claimant is regularly receiving and complying with cognitive-behavioral therapy. Medication management alone will not suffice. The claimant/victim must demonstrate a commitment to proven treatment that will assist them in returning to work. Disorders formally referred to as Axis I, as specified in the Diagnostic and Statistical Manual of Mental Disorders, have not been scientifically demonstrated to be directly caused by trauma and will not suffice as the sole reason for the inability to return to work. Examples of disorders formally referred to as Axis I disorders are: Bi-Polar Disorder, Major Depression, and Schizophrenia.

(1) Benefits for total loss of earnings

Wage loss directly resulting from a crime-related incapacity is payable at the rate of two-thirds of the victim's average weekly wage up to \$35,000 in the aggregate. § 19.2-368.11:1(A) [For crimes occurring prior to July 1, 2019, wage loss is subject to the previous \$600 per week statutory cap.]

Benefits are only available for the period that the victim was actually unable to work due to documented crime-related injury. The Fund will seek certification of the fact and length of disability from the victim's treating physician including dates of service. Requests for long-term wage loss claims are closely examined.

If the victim's disability is expected to extend past twelve months, he or she may be eligible for Social Security or Social Security Disability benefits. The Fund may reimburse loss of income incurred during the mandatory five (5)-month waiting period; however, it will seek redress of award payment from the victim in the event he or she receives retroactive benefits. Additionally, the Fund needs evidence that the victim is compliant with recommended medical treatments and is cooperating with all providers in an effort to return to work.

(2) Benefits for partial loss of earnings

Partial wage loss is payable at the rate of two-thirds of the difference between the average weekly wage before the injury and the average weekly wage after the injury. Actual earnings during the period of partial disability combined with the award under this section cannot exceed \$35,000 in the aggregate. § 19.2-368.11:1(B) Refer to section (a), above for information about the expectations of the Fund in relation to long-term wage loss benefits.

Illustrations

X suffers an injury that prevents him from doing heavy lifting that he was performing prior to the crime. His employer moves him to light duty, but the new job pays less. X may receive an award for the difference between what he was making before the injury and what he actually makes after the injury. If he made \$200 per week before the injury and \$125 after the injury, he may receive an award of \$75 per week from the Fund. Overall, X will receive \$125 from his job and \$75 from the Fund.

(3) Calculation of average weekly wages

Awards are based on the victim's average weekly wages, which shall be determined as provided in § 65.2-101. The victim's average weekly wage is based on his earnings for the fifty-two (52)-week period immediately preceding the date of crime and is determined by dividing his total earnings for this period by 52 weeks.

(4) Compensation for Loss of Earnings of Parent/Guardian of Minor Victim

A parent or guardian of a minor child victim can be reimbursed for wages lost for time spent obtaining medical treatment for the child, and for accompanying the child to, attending or participating in required investigative, prosecutorial, judicial, adjudicatory and post-conviction proceedings. Lost wages will be calculated using the methods described above. Parents/guardians will not be compensated for vacation, personal, donated, or sick leave.

In general, the Fund will only compensate one parent/guardian for attendance at medical or legal appointments. The individual most often completing these tasks on behalf of the child should be the VVF claimant. In order to provide compensation, the Fund must receive a completed Employer Report Form. *(This is a form the Fund provides to the victim's employer.)* Information on the form will then be compared with medical information or information on law enforcement/ judicially related appointments provided by the VW advocate or the Commonwealth's Attorney. If the parent/guardian must remain out of work for an extended period

due to the nature of the victim's injury, the Fund will request a statement of medical necessity from the treating physician. § 19.2 368.11:1 (C)

(5) Documentation Needed for Wage Loss

When a claimant is seeking reimbursement for wage loss caused by a criminal injury, the Fund will need the following documents:

(a) If the victim was employed at the time of the crime

The claimant must provide the complete name and mailing address for each of the victim's employers. The Fund will send the Employer Report form to each employer provided. The employer will be asked to complete the form to verify the number of days of work missed due to the injury, the victim's rate of pay, and other questions about sick leave, vacation, etc. If the employer does not respond, the Fund will notify the claimant, and the claimant should contact the employer and ensure that the Fund receives the form. A notarized Employer Report form may be requested if there is a question about the employer information. The Virginia Employment Commission database may be used to verify wages.

(b) If the victim was self-employed at the time of the crime

The claimant must send:

- (i)** a copy of the victim's most recent Federal Income Tax Return together with all attachments (such as W2s, 1099s, Schedule C, etc.); and
- (ii)** the victim's employment history for the 52 weeks prior to the crime.

(c) For all wage loss claims

The Fund requires a disability statement from the victim's treating physician. The Fund may also consider disability statements provided by a nurse practitioner or a physician's assistant. Forensic Nurse Examiners may write victims of sexual assault out of work for up to five days. (*Policy of the Commission, November 7, 2002*)

To request this on the claimant's behalf the Fund requires a complete mailing address for the treating physician. The Fund will send a work release form to the treating physician, asking the physician to verify the reason for and the length of the disability. If the physician does not respond, the Fund will notify the claimant and they should contact the physician and ensure that the Fund receives the form, verifying the reasons and length of time of the work disability.

The Fund will examine the medical records to insure that they support the work release form. If the statement is not supported by medical records, the Fund reserves the right to order an independent medical evaluation of the claimant per §19.2-368.3(4). If a claimant does not follow through with their treatment plan, wage loss and reimbursement for medical expenses may be suspended by the Fund.

(I) LOSS OF SUPPORT

The Fund will need the employment information of the victim as requested in **(a) and (b)** above. If the victim is deceased, the Fund also needs a copy of the death certificate and information on all relevant insurance coverage (*i.e., life insurance, automobile insurance, social security, etc.*).

For Domestic Violence Loss of Support, the Fund also needs verification that the offender has been removed from the home (*i.e., a copy of the Protective Order, no contact bond, or notification of the offender's incarceration*) and verification of the offender's average weekly wage at the time of the crime.

The Fund expects that this expense is based on an immediate need for safety; therefore, the request for domestic loss of support should be made within sixty (60) days of submitting a claim. Any request that does not fall within this time period may require additional justification. Claims beyond 180 days will not be considered. **Further, Domestic Violence Loss of Support is a one-time expense per crime incident.**

(1) Who May Receive an Award

(a) Dependents of Deceased Victims

In order to be eligible for an award for loss of support from a deceased homicide victim, the claimant must be eligible for an award under § 19.2-368.4. In addition, the Fund will apply the criteria in subsection C of § 19.2-368.11:1. Eligible persons may receive benefits equal to two-thirds of the victim's average weekly wage not to exceed \$35,000 in the aggregate. *See § 19.2-368.11:1(D), § 19.2-368.4(A)(2), and §§ 65.2-512 and 65.2-515*. Documentation needed to support a claim for loss for support may include, but is not limited to:

- completed Employer Report Form (*this is a form the Fund provides to the victim's employer*)
- most recent Federal Income Tax Return with all attachments (*W2s, 1099s, Schedule C*)
- paystubs for 52 weeks prior to crime

(b) Victims of Family Violence

If an offender is ordered from the household due to the victimization of a family or household member, the victim may be eligible for time-limited loss of support payments not to exceed thirteen (13) weeks. In order to be eligible for this payment, the offender must either be in jail or evicted from the residence via protective order. The victim must be an eligible claimant under the rules of the Fund (*i.e., suffered a compensable crime, cooperated with law enforcement*). The victim must be an individual who the offender has a legal obligation to support (*i.e., spouse/minor child*). The victim must be able to produce recent evidence of the offender's employment and wages. This includes, but is not limited to:

- defendant's most recent Federal Income Tax Return with all attachments (*W2s, 1099s, Schedule C*)
- bank records showing regular, automatic deposits from defendant's employer
- defendant's paystubs

Domestic Loss of support will be calculated as provided for in §19.2-368.11:1(A&B). (*Policy of the Commission, August 29, 2002*)

(c) Persons Presumed to Be Wholly Dependent on Victim

Section 65.2-515 (subsection C of § 19.2-368.11:1 of the Act incorporates §§ 65.2-512 and 65.2-515 by reference) provides that the following persons shall be conclusively presumed to be wholly dependent for support upon a deceased victim of crime:

(i) Spouses

A wife is presumed dependent upon a husband whom she had not voluntarily deserted or abandoned at the time of the crime or with whom she lived at the time of the crime.
§ 65.2-515(A)(1)

A husband is presumed dependent upon a wife whom he had not voluntarily deserted or abandoned at the time of the crime or with whom he lived at the time of the crime.
§ 65.2-515(A)(2)

If a contributing spouse or parent within a household is jailed for family violence or sexual assault, or removed from the household via protective order, the Fund may consider paying limited loss of support payments to the remaining spouse. In order to pay this benefit the following conditions must exist:

- (a) a crime fitting the Fund’s definition must have been committed and result in the incarceration of the offender or his removal via protective order or condition of bond;
- (b) the victim (spouse and/or child) must be cooperative with law-enforcement agencies;
- (c) the Fund must be provided with verification of incarceration, protective order, or no contact bond;
- (d) the Fund must be provided with proof of the offender’s employment and wages at the time of the crime.

(ii) Children

“Children” includes stepchildren, legally adopted children, posthumous children, and acknowledged biological children, but does not include married children.

A child under the age of 18 (or under 23 years old if enrolled as a full-time student in an accredited educational institution) is presumed to be dependent upon a parent.

A child over the age of 18 is presumed to be wholly dependent upon a parent if he is mentally or physically incapacitated from earning a livelihood. § 65.2-515(A)(3)

(iii) Parents

Parents in destitute circumstances are presumed to be wholly dependent for support upon a deceased victim, provided there are no other total dependents (such as spouses or children) under § 65.2-515. The term “parent” shall include stepparents and parents by adoption. § 65.2-515(A)(4)

(d) Other Dependents

Subsection (A)(5) of § 19.2-368.4 provides that “any other person legally dependent for his principal support upon a victim of a crime who dies as a result of such crime” is eligible for an award. In addition, a person legally dependent for his principal support upon a person who dies as a direct result of trying to prevent a crime or attempted crime from occurring in his presence, or trying to apprehend a person who had committed a crime is eligible for an award.

Persons other than those specifically enumerated in § 65.2-515 will be allowed to offer proof of dependency. In evaluating such claims and

determining who is a legal dependent under subsection A(5) of § 19.2-368.4, the Commission will look for some legal authority, duty, obligation, or compulsion for the victim to support the claimant. (*Policy of the Commission, April 7, 1999*)

(2) Apportionment

Each eligible person may file a claim for loss of support; however, all claims that arise from the death of the same individual will be considered together. **Subsection A of § 19.2-368.6.** The Court of Appeals has held that this means that if several relatives of one homicide victim file claims, the award will be apportioned among the claimants.

(3) Cessation of Benefits

Payments to dependent survivors will terminate when any of the following occurs: **(i)** total payments under the Act including all expenses reach \$35,000; **(ii)** a dependent spouse of a homicide victim remarries; or **(iii)** a dependent child of a homicide victim reaches 18 years of age (or ceases full-time school enrollment).

(J) MOVING

The Fund may pay reasonable and necessary moving expenses, not to exceed \$2000 (*\$500 for crimes occurring before July 1, 2002, and \$1000 for crimes occurring prior to July 1, 2014*), for **(a)** crime victims or **(b)** surviving spouses, parents, grandparents, siblings or children of victims who were killed as a result of a crime. This includes charges for professional movers, rental of moving equipment, temporary storage costs, rent, and loss of security deposits. **§ 19.2-368.11:1(E)(vi)**

The Fund expects that this expense is based on an immediate need for safety; therefore, the move should take place shortly after the crime or after the offender is released from incarceration. Further, moving is a one-time expense per crime incident. The Fund will not consider multiple moves.

For the Fund to consider this expense, the claimant must provide copies of signed and dated lease agreements, storage contracts, receipts, and/or cancelled checks for professional movers, truck rentals, lost security deposits, rent, and other types of reasonable and necessary moving expenses. The reason for moving must be directly related to the circumstances of the crime event. A letter explaining these circumstances may be necessary in some cases.

(K) TEMPORARY LODGING

Reimbursement for temporary lodging may be awarded in certain situations. Generally reimbursement is made when there is a crime-related reason that the victim must leave his or her current residence. Lodging fees are generally not paid in advance though there may be situations where this is necessary for the health and safety of the victim. The Fund does not

make arrangements for lodging; however, payments may be made directly to the hotel/motel.

The Fund expects that this expense is based on an immediate need for safety or displacement from one's home due to the criminal incident; therefore, it is expected that temporary lodging should occur immediately after the crime. Further, temporary housing is a one-time expense per crime incident.

Temporary lodging reimbursement cannot exceed thirty (30) days. Payment will be considered only for the cost of the room. Extra charges incurred for phone, cable, room service, tips, etc. will not be considered.

(L) HOME SECURITY

Home security is typically considered in domestic violence cases where the victim and the offender know each other or in robbery cases where the offender has acquired the victim's address and/or keys. If a victim has legitimate reason to believe the perpetrator may attempt to re-victimize him and the perpetrator has opportunity to do so, the Fund will consider the purchase and installation of home security measures up to \$1,000. The Fund will not pay for monthly fees.

The Fund expects that this expense is based on an immediate need for safety; therefore, systems should be installed within thirty (30) days after the crime. The Fund requires justification of the need for a home security system.

The Fund will not consider payment of this expense for a location that houses a business or for vacant property. (*Policy of the Commission, June 5, 2012*)

(M) SERVICES FORMERLY PERFORMED BY VICTIM (*REPLACEMENT SERVICES*)

The Fund may award expenses reasonably incurred in obtaining ordinary and necessary services in lieu of those the victim would have performed, for the benefit of himself and his family, had he not been a victim of crime. § 19.2-368.11:1(E)(ii)

Documentation should include the amount of each payment, the name of the person or organization who was paid, the method of payment, and the date of each payment (along with the period covered by the payment).

Illustrations

If a victim is hospitalized and other alternatives are not available, the Fund may pay for reasonable, necessary and appropriate childcare costs.

The Fund may also pay for services that can no longer be provided by the victim due to the crime. This could include cleaning, working in a family business, or childcare.

Should a victim have to flee to a location that is unable to accept pets or sustain other pet-related costs reasonably incurred as a result of the crime, the Fund may, at its discretion, pay up to \$1,000 for such expenses. (This applies to pets owned at the time of the crime only.)

(N) MISCELLANEOUS

Section 19.2-368.11:1(E)(vii) allows the Fund to pay other reasonable and necessary expenses and indebtedness incurred as a direct result of criminal injury or death that do not fall into the categories enumerated above.

Claimants who would like the Fund to consider expenses that are not specifically listed above should send a letter to the Fund listing the expenses and explaining how they are causally connected by the crime.

ADDITIONAL FUND RESPONSIBILITIES

The Fund's main purpose is to pay claims for eligible victims. However, the Code also specifies some additional roles.

Public Awareness:

§ 19.2-368.17 Directs that the Fund engage in a public awareness program. This shall include brochures, posters and public service advertisements for television, radio and print media for dissemination to the public of information regarding the right to compensation for innocent victims of crime, including information on the right to file a claim, the scope of coverage, and the procedures to be utilized incident thereto. Law-enforcement agencies are also to make reasonable efforts, where practicable, to notify the victim or other potential claimant in writing on forms prepared by the Fund of his or her possible right to file a claim.

Emergency Response:

§§ 22.1-279.8, 23-9.2:9, 32.1-111.3, 32.1-111.11, 44-146.18, and 44-146.19 Requires the Fund to be a lead coordinating agency for victims arising out of emergency situations. In order for the Fund to have adequate ability to respond, staff must receive National Organization of Victim Assistance (NOVA) crisis response team (CRT) training. In case of an emergency that strains the Fund's resources, best practice dictates that the Fund should attempt to maintain a volunteer cadre of trained crisis responders. This model has worked well in response to 9/11 attacks on the Pentagon, the Virginia Tech shootings, and other mass casualty crime events. Due to the Code requirements above, the Fund is referenced in Virginia Department of Emergency Management (VDEM) guidance documents such as the Family Assistance Center Plan. The Fund should make every effort to maintain preparedness to meet the requirements of these plans in order to meet its obligations under the Code.

Benefit Victims:

§ 19.1-368.1 Directs that "*aid, care and support be provided by the Commonwealth as a matter of moral responsibility for such victims of crime.*" When funds have been available, the Commission has allowed monies to be used in ways that strengthen the victims' services field across the Commonwealth. This has been achieved through votes of the Commission on individual matters as well as the budgeting process. These activities generally have demonstrated benefit to crime victims throughout the Commonwealth.

MISCELLANEOUS TOPICS

(A) THE FUND'S RIGHTS TO SUBROGATION

(1) In General

The Commonwealth of Virginia has subrogation rights with respect to rights and rights of action accruing to a claimant or victim to recover payments on account of criminal losses. Section 19.2-368.15 provides:

Acceptance of an award made pursuant to this chapter shall subrogate the Commonwealth, to the extent of such award, to any right or right of action accruing to the claimant or the victim to recover payments on account of losses resulting from the crime with respect to which the award is made.

If, for instance, a claimant sues his assailant and receives a judgment for \$35,000, and the Fund has paid \$5,000 to or on behalf of the claimant, the Commonwealth has a right to receive \$5,000 from the person against whom the judgment was rendered.

Once an individual is convicted of a crime upon which an award of a claim is based, the offender will be entered into the Virginia Tax Debt Set-Off system. Tax refunds, lottery winnings, etc. paid to the offender through the Virginia Treasury will be intercepted by the Fund until the debt is paid in full. Additionally, the Fund will ask the Commonwealth's Attorney to request restitution in the amount paid by the Fund § 19.2-368.5(D)

Offenders have the right to appeal when the Fund intercepts tax refunds, lottery winnings, etc. They will receive a letter that advises them of the Fund's subrogation interest and how to appeal the collection action.

If a victim has received benefits from the Fund, and then is paid by the offender, it is anticipated that the victim will repay the Fund per the agreement signed at the time of application. If the victim refuses to repay the Fund, it will utilize all collection methods available to collect the overpayment. If the victim is paid via restitution for non-compensable items (property loss, etc.), the Fund will not seek re-payment.

(2) Limitation on Rights

The statute further provides that the Commonwealth shall not exercise its subrogation rights within one year of the date of the commission of the crime, unless any claimant's or victim's right of action shall have been previously terminated.

(3) Disposition of Funds Recovered Through Subrogation

The Act requires that all funds collected by the Commonwealth under its subrogation rights shall be paid to the Comptroller for deposit into the Virginia Victims Fund.

(B) ATTACHMENTS, EXECUTIONS, AND CREDITOR'S RIGHTS

(1) In General

Subsection A of 19.2-368.12 affords claimants some protection from creditors with respect to awards from the Fund, providing:

No award made pursuant to this chapter shall be subject to execution or attachment other than for expenses resulting from the injury, which is the basis for the claim.

The Fund will not honor legal execution or attachment against crime victims' awards unless the person or organization asserting the execution or attachment demonstrates that the right being asserted is based upon expenses incurred as a result of the injury underlying the claim.

Illustration

If a civil suit is brought against a claimant for failure to pay electric bills, and the electric company receives a judgment, the Fund will not honor the electric company's attempt to attach the claimant's award for a criminal injury. However, if a physician renders treatment to a claimant after an assault, the claimant fails to pay the physician's bill, and the physician receives judgment, the physician may garnish or attach an award made by the Fund to the claimant.

(C) IMPORTANT INFORMATION FOR HEALTHCARE PROVIDERS

(1) Memorandum of Agreement (MOA)

The Fund does not receive taxpayer dollars, instead relying on offender fees and restitution payments for funding. For this reason, controlling costs is critical to ensure that the needs of both current and future victims will be met. The 2010 General Assembly session included legislation that requires health care providers to establish standing negotiation agreements with the Fund for payment of crime victim compensation claims. § 19.2-368.3(1)(ii) Further, this law requires that health care providers accept payment from the Fund as payment in full without billing the patient for any remaining balances. This law went into effect **July 1, 2010**. As of this date, the Fund **only** issues payments to providers with whom memoranda of agreement have been signed designating established rate reductions. Providers should contact the Fund's Medical Provider Liaison at status@virginiavictimsfund.org to establish a payment agreement.

(2) Collections

Section 19.2-368.5:2(A) of the Code of Virginia prohibits health care providers from pursuing debt collection activities against VVF claimants until an award decision has been made.

For the purpose of this section, "debt collection activities" means repeatedly calling or writing to the claimant and threatening either to turn the matter over to a debt collection agency or to an attorney for collection, enforcement or filing of other process. The term shall not include routine billing or inquiries about the status of the claim. § 19.2-368.5(B)

If a claimant has been placed in collections by a medical provider, the account should be removed from collections immediately upon notification that a VVF claim is pending.

If a provider refuses to sign an MOA, they are **(i)** still bound by the no collections status detailed above and **(ii)** not entitled to claim status updates from the Fund. Furthermore, the Fund will make any outstanding payments directly to the claimant/victim once the claim's compensability is determined.

(3) Miscellaneous

Health care providers are required to send copies of reports and office notes free of charge to the Fund and/or the claimant pursuant to Section § 65.2-604 and § 19.2-368.6(B) of the Code of Virginia. Payment for services cannot be considered unless the reports are submitted. According to § 65.2-714 of the Code of Virginia, a medical provider cannot hold the Fund, an insurance carrier, or the claimant responsible for payment of their bill until they have submitted medical records.

The Fund may subpoena medical providers for records and billing information.

The Fund is not considered a "third party" source of payment. Per § 19.2-368.11:1(E), the Fund will only pay for the claimant's actual expenses. For example, if a victim has a counseling bill for \$150, but the insurance carrier indicates that the patient responsibility is only \$20, the Fund will pay only \$20.

CHECKLISTS

When Benefits Will Be Denied

- (A) No crime, as defined by Virginia statutes or common law, occurred.
- (B) The incident involved the use of a motor vehicle and the injuries were not intentionally inflicted, a result of Felony Hit and Run, or caused by a violation of DUI statutes.
- (C) The crime did not result in physical or emotional injury (due to felony) or death to the victim.
- (D) The victim committed the crime that gave rise to his injuries or was an accomplice or accessory to the crime.
- (E) An award would directly and unjustly benefit a criminally responsible person.
- (F) The victim was a resident of Virginia but was injured in another state.
- (G) The victim, by his actions, contributed to his injuries to such an extent that he should receive no award at all.
- (H) The crime was not reported to law enforcement within 120 hours after it occurred and the delay was not justified.
- (I) The claim was not filed with the Virginia Victims Fund within one (1) year of the date of crime (and the victim is neither incapacitated nor a minor) and good cause for late filing has not been shown.
- (J) The victim failed to fully cooperate with law-enforcement personnel to such an extent that the claim should be denied.
- (K) The victim failed to provide requested information to the Fund.
- (L) The victim failed to file for other available benefits such as automobile insurance, charity care, health insurance, homeowners'/renters' insurance, life insurance, public assistance, or workers' compensation.
- (M) The value of the claim after collateral resources is less than \$100.
- (N) The victim's losses or expenses were for non-compensable items such as property loss, attorney's fees, pain and suffering, or wage loss of family members.

When Benefits May Be Reduced

- (A) The victim received reimbursement from collateral resources such as insurance, public assistance, or restitution.
- (B) The victim contributed to his injuries, but not to such an extent that the claim should be denied.
- (C) The victim failed to fully cooperate with law-enforcement personnel, but not to such an extent that the claim should be denied.

Claimants' Responsibilities

- (A) Report the crime to law enforcement within 120 hours after the crime or as soon as possible after the crime is discovered.
- (B) File a claim form with the Virginia Victims Fund generally within one (1) year of the crime or death. For specifics concerning filing period, see **When A Claim Must Be Filed** (page 12).
- (C) File for medical benefits with private health insurance, Medicare, Medicaid, Emergency Medicaid, hospital charity care, or other sources from which the victim may be eligible.
- (D) Submit to the Fund information to substantiate wage loss including documentation of pre-injury and post-injury wages.
- (E) Respond and assist in obtaining information requested by the Fund within one hundred eighty (180) days of request.
- (F) In cases where a hearing before a Deputy Commissioner is required, the victim may elect to have witnesses subpoenaed to appear at the hearing. If the victim desires to have subpoena(s) issued, he should promptly provide the Commission with the names and addresses of any witnesses whose testimony might assist in resolving a conflict. The cost of having a subpoena delivered is \$12 per person payable by check made to the Sheriff of the City/County where the witness lives. The victim may also appear and be prepared to testify. The victim, at his expense, may have an attorney represent them during a hearing or review; however, legal representation is not required. A contracted attorney will be present to represent the Fund.
- (G) Follow procedures for an Appeal or Request for Reconsideration if one disagrees with the Director's decision awarding benefits, denying benefits, or reducing the award.

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