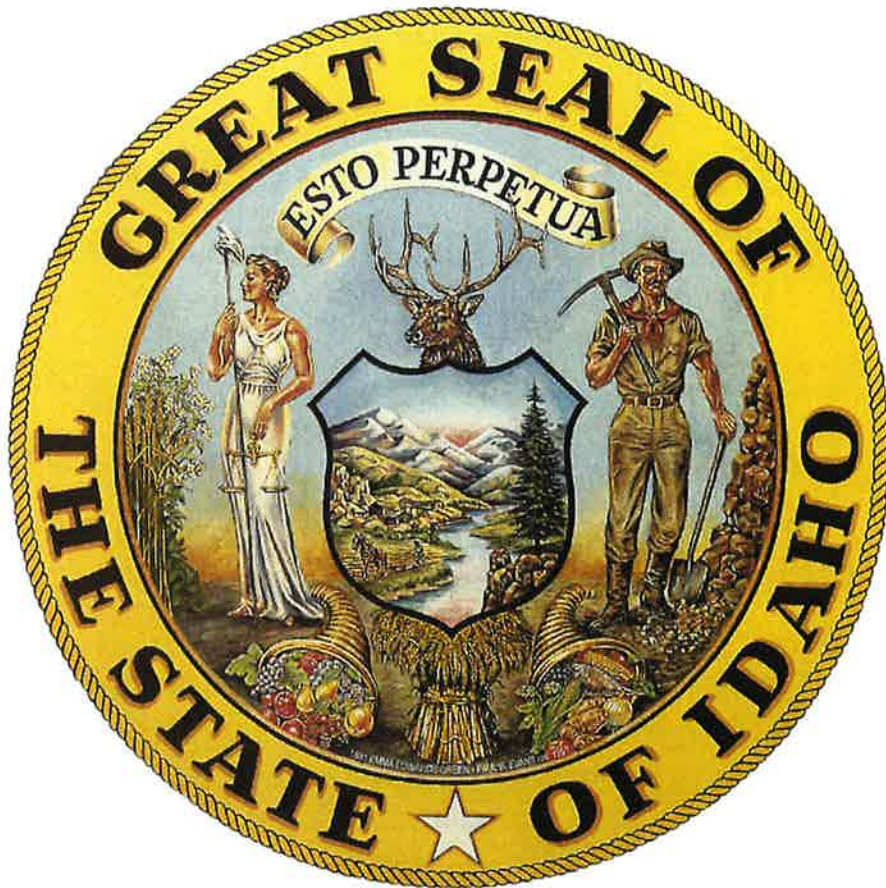


Idaho Industrial Commission

Crime Victims Compensation Program

Guidelines



June 10, 2020
V2.0

**THESE GUIDELINES ARE INTENDED TO
PROVIDE GENERAL INFORMATION TO THE
INDUSTRY ABOUT THE IDAHO CRIME VICTIMS
COMPENSATION PROGRAM PROCESS AND
ARE NOT INTENDED AS A SUBSTITUTE FOR
LEGAL ADVICE.**

**THESE GUIDELINES ARE NOT NEW LAW, BUT IS
AN AGENCY INTERPRETATION OF EXISTING
LAW.**

George Gutierrez, Crime Victims Bureau Chief
Idaho Industrial Commission – Crime Victims Compensation Program
11321 W. Chinden Blvd., (Bldg. #2)
Boise, Idaho 83714
P.O. Box 83720
Boise, Idaho 83720-0041

Phone Number: 208-334-6000
Spanish Line; 208- 334-6080
Toll-Free Number: 1-800-950-2110
Fax: 208-334-7559

<https://crimevictimcomp.idaho.gov/>

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MASTER REVISION RECORD
To 06/10/2020
Crime Victims Compensation Program
Guidelines 2.0

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1000 INTRODUCTION

1001 OVERVIEW

The purpose of this manual is to provide guidance for Crime Victims Compensation Program (Program) staff in administering and managing claims for crime victims compensation and as a training resource for program staff. The guidelines set forth in this manual were developed to promote consistency in case management, guidance for restitution recovery and to promote objective decision making for each claim.

1002 MISSION STATEMENT

To ensure eligible victims are provided appropriate financial assistance to aid in recovery from the traumatic effects of crime.

1003 PROGRAM RESPONSIBILITIES

- Investigate claims and determine claimants' eligibility for benefits
- Manage cases by determining compensable expenses, verifying, and examining the claimants' collateral resources and monitoring treatment
- Monitor the collection of fines on felonies, misdemeanors, and sex offenses
- Provide claimants, providers, law enforcement, victim assistance programs, and prosecutors an understanding of the requirements and benefits of the program
- Work with the courts to ensure restitution is ordered and collected for reimbursement to the crime victims fund

1004 VISION STATEMENT

To meet the needs of victims by progressively, compassionately, and effectively easing the impact of crime.

2000 DEFINITIONS

2000.001 Authorized person A person acting on behalf of a victim or dependent of a deceased victim. Includes the parent(s), legal guardian(s) and sibling(s) of a victim who is a minor. The Program may construe this definition broadly on a case-by-case basis. Requests may be made for documentation (e.g. durable power of attorney, probate document appointing person representative, etc.).

2000.002 Child The natural or adopted child of the victim, or the victim's spouse's child or the victim's grandchild where the child was dependent upon the victim.

2000.003 Compensation All monetary benefits of any nature paid by the Program, to or for the benefit of any claimant.

2000.004 Offender This term refers to an alleged offender as identified by a claimant, law enforcement, or a prosecutor's office, as well as to a convicted offender. In using this term, the Program makes no implication as to the guilt or innocence of a person who is identified as an "offender" in correspondence, orders or any other documentation, or oral statements made by the Commission.

2000.005 Parent Includes biological or adoptive parents and step-parents.

2000.006 Sibling Any person who has a common parent, and, both the biological and adoptive siblings as well as step-siblings of a victim.

2000.007 Spouse The victim's legal spouse.

3000 APPLICATION FOR COMPENSATION BENEFITS

3001 APPLICATIONS

All applicants for compensation benefits must complete and file an application with the Program. Applications may be obtained by contacting the Program by phone at (800) 950-2110, by mail at P.O. Box 83720, Boise, ID 83720-0041, at the Industrial Commission, 11321 W. Chinden Blvd., Bldg. #2, Boise, ID or at crimevictimcomp.idaho.gov

4000 ELIGIBILITY REQUIREMENTS

4001 TIMELY REPORTING AND FILING

4001.001 One-year filing requirement Compensation may not be awarded unless the claim is filed with the commission within one (1) year after the day the crime occurred. Failure to meet this requirement may result in a denial of benefits, unless good cause can be shown.

4001.002 72 Hour reporting requirement Compensation may not be awarded unless the crime was reported to a law enforcement officer within seventy-two (72) hours after the occurrence of the crime. Failure to meet this requirement may result in a denial of benefits, unless good cause can be shown.

4001.003 Determining Good Cause In determining whether there is good cause for failure to timely file a claim or make a report to law enforcement, the Program may take into consideration extenuating circumstances such as:

- 1) whether the victim is under age 18;
- 2) whether the victim or claimant possesses a physical condition that would render him/her unable to comply with the requirement;
- 3) whether the victim or claimant's psychological state, such as a presence of a mental condition, contributes to the inability to meet the requirement;
- 4) whether there is any circumstance where filing a claim or reporting the crime would cause the victim or claimant concern for their physical wellbeing or life;
- 5) any other extenuating circumstance where it is found that any reasonable person would have acted in a similar manner, which would justify the failure to meet the requirement;
- 6) whether the claimant is the victim of domestic violence or sexual assault.

4001.004 Reaching a finding of Good Cause Upon review of any presenting extenuating circumstances, the Program may reach a determination of good cause, and may extend the time for filing or waive the reporting requirement.

4002 COOPERATION

In order to be eligible for benefits, a victim or claimant must fully cooperate with all law enforcement agencies and prosecuting attorneys in the apprehension and prosecution of the offender causing the criminally injurious conduct.

4002.001 Determining Cooperation The Program will promote victim cooperation with the reasonable requests of law enforcement, taking into consideration extenuating circumstances such as:

- 1) whether the victim is under age 18;
- 2) whether the victim or claimant possesses a physical condition that would render him/her unable to comply with the requirement;
- 3) whether the victim/claimant's psychological state, such as a presence of a mental condition, contributes to their lack of cooperation;
- 4) whether there is any circumstance where cooperating would cause the victim or claimant concern for their physical wellbeing or life;
- 5) whether there is any other extenuating circumstance where the Program, in their discretion may reach a finding that any reasonable person would have acted in a similar manner, which would justify the failure to meet the requirement;
- 6) whether the claimant is the victim of domestic violence or sexual assault.

4002.002 Cooperation with Program If a claimant fails to cooperate with, or to comply with the reasonable requests of Program staff, the Program may not pay benefits. The Program considers a "reasonable request" to be a request for any documentation deemed necessary by the Program to assist in processing applications for eligibility, and in examining the compensability of provider claims and requests for reimbursement.

4003 CONTRIBUTION

The Program may reduce or deny compensation if it is found that the victim contributed to the infliction of death or injury with respect to which the claim is made. Furthermore, the Program shall reduce compensation by fifty percent (50%), if at the time the injury was incurred, the victim was engaged in a felony or was in violation of Idaho Code §18-8004 or 67-7034 (crimes involving Driving or Boating Under the Influence of any intoxicating substance). This reduction may be further increased if it is found that the victim contributed to the injury or death, in addition to the commission of a felony or a violation of Idaho Code §18-8004 or 67-7034.

4003.001 Determining Contribution In determining whether a victim has contributed to the criminal injurious act, the Program may take into consideration extenuating circumstances such as:

- 1) whether the victim or claimant is under age 18, and possesses the maturity necessary to understand contributory behavior;
- 2) whether the victim or claimant possesses a physical condition that would render him/her unable to prevent or control contributory behavior;
- 3) whether the victim/claimant's psychological state, such as a presence of a mental condition, results in the incapacitation of the person to prevent, control or understand contributory behavior;
- 4) whether the presence of any circumstance where noncontributory behavior would cause the victim or claimant concern for their physical wellbeing or life;
- 5) whether there are any other extenuating circumstances where any reasonable person would have acted in a similar manner, which would justify the contributory behavior.

4003.002 Reductions for Engaging in a Felony In cases where a victim is engaged in use, or possession, of a controlled substance at the time of the crime, the Program will refer to Idaho Code Title 37, Chapter 27, or information from law enforcement or prosecutor, to determine whether

the act is a felony. A victim who is under the influence of a controlled substance is committing a misdemeanor (Idaho Code §37-2732C). A victim who is in possession of a controlled substance may be committing a misdemeanor or felony, depending on the classification of the substance and/or quantity possessed.

4003.003 Further Contribution Considerations

- 1) Injury as a result of retaliation for a previous action. Where the crime was committed as retaliation for a prior physical assault or injury committed by the victim against the perpetrator, and the victim could reasonably have foreseen the likelihood of retaliation.
 - a. Consideration should be given to the amount of time between the prior conduct of the victim and the retaliatory crime, such as:
 - i. immediate response to a direct action;
 - ii. response to a direct action, after a timeline where the victim could reasonably expect retaliation;
 - iii. response to an indirect action, without documented evidence of relation to a direct action.
- 2) Mutual combat. Where the crime is considered to be an incident where the victim:
 - a. willfully engaged or accepted invitation to engage in the altercation or incident in question;
 - b. initiated a physical altercation;
 - c. made a credible threat of bodily harm against the person, took action to indicate the intent to carry out the threat and a physical altercation immediately followed;
 - d. accepted a verbal challenge to engage in a physical altercation, took action to indicate acceptance of the challenge, and a physical altercation immediately followed;
 - e. in an incident of mutual combat where a significant escalation of the fight (e.g. introduction of a deadly weapon) is made by a person other than the victim;
 - f. during mutual combat with one individual, and a third party becomes involved resulting in more serious injury than the victim could reasonably have expected.
- 3) Gang related activity. If the crime was the direct result of participation in gang activity, including gang initiation, or was inflicted as retaliation (see also guidelines on retaliation), for prior gang activity in which the victim participated, it is considered to be gang related activity, and may be reduced or denied for contribution.

4003.004 Contribution of Minor Victims The Program may consider a minor or a mentally incompetent person capable of contribution based on the nature and severity of that person's action. In making this determination, the following conditions may be considered:

- 1) the seriousness of the contributory conduct;
- 2) whether the victim's conduct was in an aggressive, violent, premeditated, or willful manner;
- 3) the maturity of the individual as determined by consideration of his/her home environment;
- 4) emotional attitude and pattern of living;

- 5) whether the minor was engaging in adult-oriented activities and/or activities which require the discretion and discipline of an adult, such as the driving of a motor vehicle or motorboat.

4004 UNJUST BENEFIT

Compensation may not be awarded to a claimant who is the offender or an accomplice, or to any claimant if the award would unjustly benefit the offender or accomplice, as outlined in Idaho Code §72-1016(2). In cases where the benefit is minimal, compensation shall not be denied. In determining whether the unjust benefit is substantial, the following may be considered:

- 1) if it is in the best interest of the victim or claimant to pay or reimburse the claimant for all eligible crime-related medical and mental health bills for which the claimant has liability;
- 2) whether the award is essential to the well-being of the victim and other innocent and dependent family members.

4005 COLLATERAL SOURCES

As defined in Idaho Code §72-1003(2), a collateral source is a source of benefits, other than welfare benefits, or advantages for economic loss otherwise compensable, which the claimant has received or is readily available from either, the offender, federal, state and county agencies, social security, Medicare, Medicaid, worker's compensation, wage continuation from an employer, or proceeds from an insurance contract providing health care or disability benefits. Compensation payable to a claimant shall be reduced or denied if those benefits are or can be recouped from a collateral source (Idaho Code §72-1016(5)).

4005.01 Collateral source determination

- Insurance If the collateral source is an insurance carrier, an explanation of benefits (EOB), identifying all collateral source payment(s) shall be provided before payments may be made by the Program. The offender's insurance carrier may be considered a collateral source.
- Automobile Insurance Automobile insurance may be considered a collateral source if those payments have been made, or settlement disbursed, prior to payment of compensation benefit payments. If insurance payments/settlements are disbursed after compensation benefit payments, those would be addressed through the Program's subrogation policy.
- Offender An offender may be considered a collateral source, if the offender is compensating the victim or claimant for expenses incurred as a result of the criminal offense or is compensating the victim's or claimant's providers for services rendered as a result of the criminal offense. This occurs most often through court ordered restitution. An offender may also be considered a collateral source if the offender is or will be compensating the victim or claimant, or their providers as a part of an adjudicated or pending civil lawsuit.
- Welfare Welfare benefits, such as food stamps and AFDC payments are not to be considered a collateral source by the Program.
- Collateral Source-County Indigency Funds County indigency funds are not considered a collateral source.
- Pension plan A pension plan may be considered a collateral source where payments received from the pension plan are considered an "advantage for economic loss" or a "source of benefits", as defined under the definition of a collateral source.

4005.002 Collateral Source Exceptions The following may be considered exceptions to the collateral source rule:

- 1) Services rendered prior to submission of Program application In cases where services have been rendered prior to the application for benefits, the Program may consider those services to be an exception to the collateral source rules.
- 2) Specific Provider-Good Cause If the victim or claimant has established the need for a specific provider, the Program may consider this to be an exception to the collateral source rules.
 - a. In making a determination of “good cause”, the Program shall consider the victim or claimant’s age, the extent of the trauma, the length of time in treatment with the non-collateral source provider, the victim’s psychological state, availability of collateral source providers and any other compelling factors;
- 3) Conflict of interest When a victim or claimant must seek treatment at a non-collateral source provider due to a conflict of interest, and there are no other collateral source providers that are reasonably accessible, the resulting treatment may be considered an exception to the collateral source rules.
- 4) Vacation pay/PTO Vacation pay and paid leave that is a combination of sick and vacation leave (PTO) shall not be considered a collateral source for wage loss benefits.
- 5) Proceeds from a life insurance policy The proceeds from a life insurance policy shall not be considered a collateral source unless, provision is expressly made in the policy to cover the costs of benefits otherwise payable by the Program, and then only to the extent that the policy proceeds cover such costs.
- 6) Unavailable collateral source Collateral sources must be readily available to the claimant. A collateral source shall not be considered readily available if there are no appropriate providers within a reasonable distance of the victim’s home. When assessing what constitutes a reasonable distance, all factors of the case shall be taken into consideration, including, the mobility of the victim.
- 7) Multiple collateral sources If a victim has more than one collateral source, the Program may allow the victim to use only one of those sources of benefits.
 - a. Multiple collateral sources/Medicaid In cases where a victim is Medicaid-eligible and insured by an insurance carrier, and the victim or claimant elects to utilize the benefits covered under the insurance policy in lieu of those benefits available through Medicaid, and subsequently his/her policy with the insurance company ceases and the service provider is not a Medicaid provider, the claimant will be able to recover eligible benefits from the Program allowing for the continuity of treatment with the same provider.
 - b. Multiple collateral sources/employee assistance programs (EAP) Where a claimant receives the benefits of an EAP provider and another collateral source for mental health treatment, the claimant will be encouraged, but not required, to utilize the services of the EAP first. This is in recognition of the fact that certain EAPs are intended to provide care for short-term conditions and to refer out all other cases.
- 8) Treatment specialists Where there is a compelling need for the victim to utilize a practitioner who is a specialist in a particular field of medicine or mental health and the collateral source does not cover such services, or contract with a provider who can offer

such services, the claimant may be eligible for benefits from the Program, subject to the financial cap for such services.

- 9) Good cause In such conditions or circumstances where the claimant can show good cause for failing to utilize the collateral source provider, including cases where services are rendered by a provider who utilizes a method of healing sanctioned by a federally-recognized sovereign nation or tribe, recognized cultural traditions, or faith-based treatment, the claimant may be eligible for benefits from the Program, subject to the financial cap for such services.

5000 WEEKLY COMPENSATION BENEFITS

In cases where compensation is to be provided for wage loss or dependent death benefits, the amount of compensation must be determined by calculating 66 2/3 % of the victim's weekly wage. The victim must have a total loss of wages for at least one (1) week and have no reasonable prospect of being regularly employed in the normal labor market. The maximum weekly wage benefit is \$175 per week.

5001 WEEKLY COMPENSATION DEFINITIONS

5001.001 One week is based on the victim's actual work week (e.g. 4-10-hour days constitutes a week; victims working part time , 3 days a week, will constitute a week). The week may be calculated on an aggregate basis.

5001.002 Total actual loss of wages is based on the victim having no wage income. If the victim is working, or is released to work, part time, he/she will not be eligible for weekly compensation benefits from the Program.

5001.003 Regularly employed in the normal labor market will generally be considered to be the ability for the victim to return to their preinjury employer or occupation. If the victim's crime related injuries do not allow return to previous occupation, the Program will refer them to the Division of Vocational Rehabilitation. Weekly compensation benefits will continue until the victim completes training with those services. If the victim is permanently disabled, weekly compensation benefits may continue, subject to benefits available from collateral sources.

5002 UNEMPLOYMENT INSURANCE BENEFITS

At no time will the victim be eligible for weekly compensation benefits from the Program if they are receiving unemployment insurance benefits through the Department of Labor during the period of disability.

5003 SELF EMPLOYMENT

Victims who are self-employed at the time of crime, and requesting weekly compensation benefits, shall be required to provide a copy of business income tax information (tax return, Schedule C, 1099, W-2), and CVCP Self Employment Affidavit verifying time period of actual loss of wages and their monetary draw from business at the time of the crime.

6000 TREATMENT COMPENSABILITY

6001 DOCUMENTATION REQUIREMENTS

All providers shall be instructed to submit documentation of services and related charges to the Program regardless of whether reimbursement is made to the provider or to the claimant. All claims submitted, shall include all information specifically requested by the Program.

6001.001 If the Program does not receive the documentation necessary to determine compensability, a minimum of three (3) written requests will be made. After that time, the claim may be denied.

6001.002 All bills for treatment and sexual assault forensic examinations must be submitted within two (2) years from the date of treatment or the date of Program eligibility, whichever is later.

6001.003 Payments made will be based on the fee schedule in place at the time of service and in accordance with the Program's Claims Procedures (Idaho Code §72-1026)

6001.004 In addition to the required documentation to determine claim compensability, the Program also requires a current completed W-9 form from the parties to be paid/reimbursed. A W-9 is considered current if the Program has made a payment to the party within the previous two years. If two parties (i.e. provider and claimant) are eligible for payment on a claim and only one of those parties have submitted a current completed W-9, the Program will make attempts to obtain the necessary W-9 before making any payment on the claim. These attempts will be in accordance with the claims department and/or case managers' desk manuals. When attempts are unsuccessful, all parties who are eligible for payment/reimbursement will be paid in accordance with the procedures established by the Program.

6002 NON-TRADITIONAL TREATMENT METHODS

The Program may pay for non-traditional treatment methods. Documentation from the victim's primary care provider may be required, along with treatment plans from the current provider. The Program may limit the time and scope of the non-traditional treatment and may require specific documentation regarding crime relatedness, therapeutic benefits, and recovery progress.

6003 PREAUTHORIZATIONS

The Program may issue preauthorization for treatment upon request from providers and receipt of documentation including patient history, treatment recommended and estimated cost.

7000 BENEFIT CAPS

7001 MAXIMUM BENEFIT CASES

In cases where the total of all claims received, or expected to be received, exceeds the statutory maximum of \$25,000, and involves multiple providers, the Program will determine a plan for making proportional reductions on bills and weekly compensation benefits. All pending bills for services provided to victims shall be put on hold until the Program has developed a payment plan for the case. If the Program has made payments to providers prior to having knowledge that the case will reach the maximum allowable benefits, those payments shall be exempted from the proportionate reduction.

7001.001 Medical Bills The Program will make efforts to identify service providers that have treated the victim. Providers will be issued a notice to submit claims by an established cut-off date, defined in 7001.004, and that payments will be pro-rated due to statutory maximum benefit amount.

7001.002 Weekly Compensation Benefits Weekly compensation benefits may also be subject to proportional reductions and subject to the cut-off date. In cases where the claimant is in dire financial need and the duration of disability will exceed six (6) months, the Program may commence regular weekly compensation benefits prior to the cut-off date. The maximum time period for consideration of weekly compensation benefits in these cases shall be six (6) months from the date the disability began. After the cut-off date, the remaining weekly compensation benefits shall be subject to the proportionate reduction and applied to the final wage loss payment(s). The Program will reserve the total reduced weekly compensation benefit and issue payments on a bi-weekly basis, until the reserve amount has been exhausted, not to exceed six (6) months from the start of the victim's disability.

7001.003 Special Considerations In cases where a proportionate reduction in payments is appropriate and there are extenuating circumstances related to the payment of treatment, the Program may make special considerations. Agreements related to these considerations are subject to approval by the Bureau Chief and/or the Commission. Such circumstances may include: the victim's need for medication to treat crime related injuries, and inability to pay for the medication or the claimant requests certain bills to be paid in full based on provider payment negotiations or write offs.

7001.004 Cut-off date The Program will make best efforts to ascertain all claims paid or payable and shall establish a cut-off date. All further claims will be disallowed after the cut-off date. Generally, the cut-off date will be thirty (30) days from the date the provider is requested to submit their bills.

7002 MENTAL HEALTH BENEFITS CAP

All claims for mental health benefits with an application date later than 03/07/1997, are subject to a benefit cap at \$2,500, regardless of the incident date.

7002.001 Extension of Mental Health Benefits Upon reaching the \$2,500 mental health benefit cap, claimants may request an extension of mental health benefits. A review of the case will then be initiated and a determination of eligibility for extension of benefits will be made. Idaho Code § 72-1019(5)(b) authorizes the Program to exceed the \$2,500 mental health benefit cap if "extenuating circumstances" are found which justify doing so. Extenuating circumstances are defined as the need for further mental health treatment due to trauma arising out of covered criminal conduct in order to perform major life functions or the activities of daily living.

7003 FAMILY ASSISTANCE BENEFITS

Benefits paid for mental health treatment, through family assistance benefits as authorized by Idaho Code § 72-1019(9), shall not be considered part of the aggregate mental health benefits compensable to the victim. Family assistance will be considered as part of the Program's overall benefit maximum. These benefits are for outpatient mental health therapy. Psychiatric medications or medication management shall not be reimbursable to those receiving family assistance benefits.

7004 LIMITATION TO PROPORTIONATE SHARE OF FUNDS

The Program may determine that the amount of appropriated funds for a fiscal year may not be an amount that will fully pay all claims, as authorized under Idaho Code § 72-1008. In such a case the Program may make proportionate reductions in benefits to all claims. Upon reaching the decision, all claimants shall be promptly notified of any proportionate benefit reduction with the first reduced bill tendered to them.

The reduction in benefit rate will apply to all services rendered and all bills pending payment during the period of time in which the funding shortage exists, regardless of the date of service or the date of receipt of bill from the provider.

The Program, in its discretion, may also extend its authority under this rule to make similar adjustments for weekly compensation benefits.

8000 PSYCHIATRIC MEDICATIONS

The Program shall consider claims for the cost of all medications, including medications for psychiatric conditions, as medical costs.

8000.001 Psychiatric Medications and Mental Health Counseling The Program will not pay for psychiatric medications unless the victim is simultaneously receiving mental health counseling. However, in the event that the claimant has expended all mental health benefits awarded to them, payment for psychiatric medications and psychiatric medical evaluations shall continue for a period not to exceed 3 months from the date that the mental health benefit cap is reached. Furthermore, if the victim continues to receive mental health treatment on a regular and therapeutically appropriate basis, at their own cost beyond the 3-month time frame, payment for psychiatric medications and psychiatric medical evaluations will continue until such treatment terminates, or the medical benefit award cap is reached. After which, no mental health, psychiatric medication or psychiatric medical evaluations will be paid for by the program.

The Program may periodically request documentation indicating that such medical treatment is related to the criminal act and/or is necessary to facilitate the victim's recovery.

9000 TRAVEL REIMBURSEMENT

The Program may authorize compensation for necessary travel incurred in connection with obtaining benefits. (Idaho Code §72-1019(10) and IDAPA 17.10.01.11.12) Mileage reimbursement will be made at the rate allowed by the state board of examiners for state employees. Mileage calculations will be made based on Rand McNally Mileage Calculator.

10000 FUNERAL BENEFITS

The Program may reimburse claimants for funeral and burial expenses, to a maximum of \$5,000, as authorized under Idaho Code § 72-1019(4). In addition to "traditional" funeral and burial expenses, including casket, plot, headstone, organist, vocalist, clergy and flowers, the following also may be reimbursed: food and beverages for a wake or reception following a funeral service, and funeral expenses which are customary to the victim's culture or religious beliefs, subject to the \$5,000 cap.

1000.001 Priority of Payment Benefits shall first be directed to the funeral and burial providers (if not yet paid.).

10000.002 Alcohol and Tobacco Alcohol and tobacco expenses are not eligible for reimbursement.

10000.003 Travel Expenses Claimant expenses that may also be covered under Idaho Code § 72-1019(10) include expenses for necessary travel incurred in connection with obtaining benefits. This may include the claimant's travel expenses, including the expenses the claimant personally incurred for members of their immediate family who were also required to travel with them. Travel expenses include automobile mileage, airfare or other commercial carrier, telephone calls required to organize the funeral, reasonable lodging expenses (excluding meal expenses). These benefits will be paid under the medical benefit of the case and shall not be considered part of the funeral benefits compensable to the victim.

11000 INDEPENDENT MEDICAL EXAMINATIONS

The Program may request an independent medical evaluation (IME) if it is determined to be necessary in order to determine the reasonableness of services or charges, substantiate that the treatment was for injuries suffered due to criminally injurious conduct or for the purpose of a second opinion to evaluate a diagnosis or treatment plan. The Program shall pay for the evaluation. A claimant who is dissatisfied with the findings of an IME initiated by the Program may obtain another IME at their own expense. The Program will consider both evaluations in making decisions relating to the case.

12000 DOMESTIC VIOLENCE-CHILD WITNESSES

A child who witnesses an act of domestic violence may be considered a victim of criminally injurious conduct if:

- 1) The alleged offender has been charged under Idaho Code § 18-918(4), Domestic Violence in the Presence of a Child, or;
- 2) The Program has been provided with sufficient written evidence from a prosecutor or law enforcement officer which allows the Program to make a finding, by a preponderance of the evidence, that a violation of Idaho Code § 18-1501, Injury to Children, or another criminal offense where the child witness is specifically listed as a potential victim, occurred during the incident.

13000 SEXUAL ASSAULT FORENSIC EXAMINATIONS

Effective July 1, 2018, under Idaho Code § 72-1019(2), an adult (age 18 or over) victim's private insurance should not be billed for a sexual assault forensic examination. The Idaho Crime Victims Compensation Program will pay for those examinations without requiring private insurance to be billed. This statutory change applies to dates of service on or after July 1, 2018.

Payments by all federal or federally-financed third parties (e.g. Medicaid, Medicare) shall continue to be required prior to Program payment.

This change applies only to adult (age 18+) examinations. Sexual assault forensic examinations for child victims will continue to require payment by both private insurance and federal programs, and any other collateral source, when applicable.

Sexual assault forensic examinations for child victims who are incarcerated shall not be paid by the Program, and should be covered by the custodial agency, as a collateral source. Examinations for adult (age 18 +) victims who are incarcerated at the time of the examination will be paid by the Program, unless covered by a federal or federally-financed third party.

Victims of sexual assault should not be billed/charged for the cost of the sexual assault forensic examination.

All claims must be submitted for reimbursement within two (2) years from the date of program eligibility or the date of service, whichever is later. (IDAPA 17.10.01.011.13). All payments will be made according to the fee schedule in place on the date of service. Providers may not attempt to collect any further payment from the victim for the same service. (Idaho Code § 72-1026)

13001 ELIGIBLE EXPENSES

The sexual assault forensic exam is an examination of a sexual assault patient by a health care professional. The examination includes gathering information from the patient for the medical forensic history; coordinating treatment of injuries caused during the commission of the assault; documentation of biological and physical findings; collection of evidence from the patient; documentation of findings; information and treatment for sexually transmitted infections, pregnancy, and referrals as appropriate for suicidal ideation, alcohol and substance abuse, and other non-acute medical concerns.

The Program shall consider the expenses reasonably incurred in the medical forensic exam, including but not limited to:

- An examiner's fee for:
 - Examination of physical trauma;
 - Determination of penetration or force;
 - Patient interview;
 - Collection and evaluation of evidence;
- An examination facility fee for the:
 - Emergency room, clinic room, office room, or advocacy center room; and
 - Pelvic tray and other medically required supplies;
- The hospital laboratory fees for collection and processing of specimens for criminal evidence, the determination of the presence of any sexually transmitted infections, and pregnancy testing.
- Medications given for prophylaxis for pregnancy prevention and treatment of sexually transmitted infections at the time of the exam
- Tetanus update and nausea medication

To determine eligibility for additional benefits, and the compensability of any other services, an Application for Compensation must be submitted to the Program for review.

13002 ELIGIBILITY REQUIREMENTS

- 1) Crime occurred in Idaho, and
- 2) Examination performed by trained personnel (Physician or Sexual Assault Nurse Examiner), and
- 3) Completed Sexual Assault Forensic Examination Reimbursement Form, signed by victim or legal guardian

14000 LIMITED ENGLISH PROFICIENCY

14001 SPANISH TRANSLATION

All publications, forms and information on the Program's website will be available in Spanish. The Program will have a Spanish speaking staff member.

14002 OTHER LANGUAGES

Program staff will utilize a language translation service such as CTS LanguageLink.

15000 RECOVERY

15001 SUBROGATION

In cases when the Application for Compensation indicates the claimant has an attorney, or that the claimant intends to file a civil suit in the case, or is it discovered at some time during the management of the case, letters will be sent to claimant and/or attorney advising of the Program's subrogation interests. Periodic status requests will be sent to the parties for updates, as described in the Recovery Procedure Manual.

The Program shall consult with the Attorney General's Office as needed to develop a course of action to protect our subrogation interest.

15001.001 Request to Compromise Lien In cases in which there is a request to compromise our statutory lien, consideration shall be given to whether the claimant has been made whole by virtue of the settlement. In determining whether the victim or claimant has been made whole, the following factors shall be considered:

- 1) whether, under the settlement, the claimant has recovered all pecuniary losses;
- 2) whether a medical and/or mental health provider has indicated in writing that the claimant and/or victim will, or probably will, suffer future crime related medical and/or mental health treatment costs and whether the settlement sufficiently provides a fair allocation for such costs.

15001.002 Subrogation Recovery When the Program recovers and/or settles its subrogated interest, a case will be closed unless the circumstances of the case or the lien settlement call for a different result. The Program may pursue full monetary reimbursement of benefits disbursed by both subrogation and restitution before closing a case.

15002 RESTITUTION

The Program shall use best efforts to facilitate and expedite the processing of applications and claims and increase the number of restitution orders and the efficacy of restitution recovery.

The Program will work with prosecuting attorneys and court personnel to afford them as much information as necessary, to assist in the restitution request and recovery processes (refer to 18003 Disclosure of Records for Restitution).

15003 RECOVERY CREDITS TO CV ACCOUNTS

Under Idaho Code § 72-1019(5)(a), compensation benefits payable to a victim may not exceed \$25,000 in the aggregate. The Program cannot pay any benefits beyond the aggregate cap, and therefore, the Program cannot credit back cases when funds are recovered through restitution or subrogation. All funds received through the Program's recovery efforts will be credited back to the Crime Victims Fund, and those funds will not reduce the balance paid on an individual case.

The restitution and subrogation payment will be logged in to a specific case for Program accounting purposes so that the Program is aware when offenders have satisfied their financial obligations.

15004 CIVIL/INSURANCE AWARDS

Civil awards include funds received from a civil court judgment, the defendant's insurance carrier, the victim's insurance carrier, or any other source. Depending on when the claimant receives the civil award, the Program may consider these funds to be a collateral source or a source of reimbursement through subrogation.

15004.001 Civil awards prior to Program payments If a victim receives funds from a civil award prior to the Program making payment, the funds are considered a collateral source as defined under Idaho Code §72-1003(2). The Program requires the victim to use all unapportioned funds to cover crime-related expenses. Crime related expenses are considered to be those that are covered under the benefits provided by the Program (i.e. medical, mental health, funeral, and weekly compensation benefits). If the civil award is apportioned to cover expenses that are not covered under the Program, the victim is not required to apply those funds towards crime related expenses.

The claimant is required to provide a copy of the settlement/award for review by the Program. If the claimant fails to provide a copy of the settlement and/or any requested information to support the request for a collateral source waiver, the total award will be considered unapportioned, and will be required to be used for allowable crime related expenses.

If the receipt of the funds is unknown (e.g. minor's compromise, confidential civil case, etc.) the Program may grant a collateral source waiver so the bills can be paid.

The following expenses may be allowed to count against a civil award:

- Medical
- Mental Health
- Wage Loss Expenses
- Reasonable vehicle replacement and/or repair, in cases involving damage to the victim's personal vehicle.

A reasonable vehicle replacement amount shall be calculated based on the blue book value of the damaged vehicle, up to a maximum of 50% of the total amount of the civil award.

The victim must submit written documentation to show that the civil award has been spent toward the payment of allowable expenses defined above. The Program shall not make any payments on behalf of the victim until documentation is provided.

15004.002 Civil awards after Program payments If a victim receives funds from a civil award after the Program has paid out benefits, the Program shall consider this a matter for subrogation, and will be evaluated under the Program's subrogation policies and procedures.

16000 RECONSIDERATIONS

A claimant may request reconsideration of a Program decision within 20 days of the date the decision was issued. The Program may reconsider the decision on its own motion within 3 years of the date the decision was issued. Reconsiderations are reviewed by either the Program's Bureau Chief or Bureau Supervisor. If reviewed by the Bureau Supervisor, a recommendation will be made to the Bureau Chief. The decisions on reconsideration are issued by the Bureau Chief.

If the claimant disagrees with the reconsideration decision, they may request a hearing with the Industrial Commission. There shall be no right of appeal from a final decision of the Commission.

16001 CASE APPEALS-PAYMENTS PENDING RECONSIDERATION

If after a case is found eligible the Program initiates a Motion for Reconsideration, the claimant and providers will be sent written notice that the case is pending reconsideration and further claims will not be paid unless/until the case eligibility is affirmed.

The Program may pay bills for dates of service that are prior to the date of the notice sent to the claimant and providers.

The Program will review bills with dates of service after the date of the notice and before the final determination of eligibility on a case-by-case basis.

16002 BILL DENIALS-RECONSIDERATIONS ON OWN MOTION

If the Program denies a bill for a reason other than "treatment not crime related" or "not covered under forensic exam" and the Program subsequently receives or identifies information that would change the denial decision, the Program may amend the denial without submitting the bill for Reconsideration on the Program's Own Motion.

17000 RECORDS MANAGEMENT

On an annual basis, (approximately July 1), the Program will close and purge cases.

17001 CASE CLOSURE

Cases with no case notes or other claimant communication or bill submitted or paid or any other activity in the file for one year shall be closed. The exceptions are cases involving pending restitution orders or pending subrogation recovery actions. These cases shall remain open until either the restitution or subrogation claim is paid in full, or the claim is dismissed by stipulation or judicial order, after which the case shall be closed.

17002 CASE PURGE

Cases that have been denied for at least one year and/or have been closed for at least one year shall be purged.

17003 REPORTS

Reports of all closure and purge activity will be generated and a copy of all of such reports will be provided to Fiscal.

17004 RIGHT TO REOPEN

The Program shall retain the right to re-open a case, where appropriate, despite the case closure or purge status.

18000 RELEASE OF INFORMATION

The information and records maintained by the Program are confidential and are exempt from public disclosure, with certain exceptions (Idaho Code §72-1007). Staff should consult a supervisor if there is uncertainty regarding disclosure of records.

18001 DISCLOSURE OF RECORDS TO CLAIMANTS

During the commission's regular office hours, the claimant or their attorney or authorized representative may examine all files maintained by the Program in connection with their application for compensation.

The claimant is also entitled to receive a copy of his/her records under the Idaho Public Records Law. However, there is an exemption for law enforcement records. Those records will not be released to the claimant and the Program shall refer the claimant to the appropriate law enforcement agency for those records.

Records requests must be made in accordance with the Industrial Commission's Public Records Request Guidelines.

18002 DISCLOSURE OF RECORDS TO OTHER GOVERNMENT AGENCIES

Records may be released to public employees and officials in the performance of their duties. The Program's policy for releasing documents to government agencies is to have the agency submit one of the following: a signed authorization from the claimant to release Program information to the agency; a letter from the agency requesting the information and records needed and state that it is needed to perform their official duties; or a Subpoena Duces Tecum for production of records.

18003 DISCLOSURE OF RECORDS FOR RESTITUTION

The Program may routinely release the following documentation to prosecuting attorneys in an effort to recover restitution (the claimant's signed Application for Compensation provides authorization):

- Itemization letter-Program letter requesting restitution and itemizing payments made by the Program on a specific case
- Claimant Summary Report-Program report itemizing all bills submitted to the Program on a specific case
- Request for Payment-Program document that initiates payment process through State Controller's Office for individual bills
- Affidavit-Notarized statement verifying the amount of restitution requested by the Program

If the above documents are not sufficient to proceed with requesting restitution, and additional documentation is requested, the Program may release requested records to the court for an in camera review (Idaho Code §72-1007(2)).

18004 DISCLOSURE OF RECORDS AT COMMISSION HEARINGS

Any documents in the Commission's file which contain information relevant to the issues in the case shall be admitted into the record and made available to the claimant. If the law enforcement report is to be admitted, it shall be redacted prior to submitting to the claimant and Industrial Commission's Adjudication Division. A copy of the report will be made and modified by redacting any information that would constitute an unwarranted invasion of personal privacy of any individual mentioned in the law enforcement report, with the exception of the victim/claimant. The information to be redacted shall include names, addresses, phone numbers, social security numbers, gender, age, or any other information that may identify an individual. Persons covered under this policy shall be the alleged offender, witnesses, confidential informants, law enforcement officers, or any other third-party person mentioned in the report.

19000 MASS VIOLENCE INCIDENTS

In the event of a mass violence crime victim related incident the Crime Victims Bureau Chief will coordinate a CVCP Ready Response Team. The team will be ready to provide necessary assistance warranted for crime victims and families. The Bureau Chief will keep the Industrial Commission Director apprised of the ongoing status regarding services provided, number of victim and families assisted, types of services requested, and other matters of interest.

19001 ASSESSMENT

- The Bureau Chief will contact FBI Victim Specialists and victim witness coordinators in the local law enforcement department in the jurisdiction where the incident occurred to determine if Program assistance is warranted. Contact may also be made with victim advocates or other agencies/organizations. Determine if local city or county planners will be setting up a Family Assistance Center.
- Offer assistance and ensure designated CVCP Ready Response Team is available when and if needed/requested.
- Coordinate and meet with the designated CVCP Ready Response Team to assess and prepare a plan of action.
- Coordinate as needed with the Office for Victims of Crime regarding funding that may be requested from Program.
- Determine best way to identify primary victims (law enforcement, FBI, funeral homes, etc.).

19002 CVCP READY RESPONSE TEAM

19002.001 Supplies If deployed to Family Assistance Center, the team will take:

- Name badges
- CVCP table runner
- CVCP Mass Casualty Applications
- Brochures
- Laptop
- Business cards

- Pens
- Note pads, post-it notes
- Paper clips
- Manila file folders

19002.002 Response Team Duties

- Meet with victims and families to explain the Crime Victims Compensation Program, benefits, and services
- Assist victims and families with filing Program applications
- Obtain as many completed applications from as many victims as possible
- Enter applications into CVIS and give claim number to victim/claimant (or send applications to Program office staff for data entry and assignment of claim numbers)
- Obtain one police report from the leading law enforcement agency and copy and use for all claims that come in. A list of victims should be obtained from law enforcement

19003 PROGRAM OFFICE STAFF

Office Staff Duties during Response Team deployment:

- Provide necessary administrative support for CVCP Ready Response Team for the Family Assistance Center, such as:
 - Research various phone numbers that may be needed by the team
 - Research resources that may be requested by the victims and families
 - Prepare additional supplies as needed by the CVCP Ready Response Team

