

**California Victim Compensation and Government Claims Board  
Proposal to Consider Modifications to Covered Benefits, Rates and Fees Under the  
California Victim Compensation Program**

**February 17, 2011**

**Action Requested**

The Victim Compensation and Government Claims Board (VCGCB) will consider and determine whether to modify the covered benefits, rates and fees paid by the California Victim Compensation Program (CalVCP) for chiropractic treatment and physical and occupational therapy; income or support loss; vehicle purchase, renovating and retrofitting; attorneys' fees and verification of service; funeral and burial expenses; the maximum benefit amount; and reimbursement for medical services and mental health treatment. Government Code section 13957 provides that the Board may grant reimbursements for pecuniary loss, and establishes certain maximum benefits. Government Code section 13957.2 provides that the VCGCB may establish maximum rates and service limitations for reimbursement of medical and medical-related services and for mental health and counseling services. Government Code section 13957.7 provides for payment of attorney's fees.

**Previous Action by the Board**

At the December 16, 2010 Board meeting, the Board approved a reduction in the rate of payment to interns for mental health treatment, reducing the rate paid by 25% to \$75 per session. In addition, the Board directed staff to make the approval of Additional Treatment Plans for mental health treatment more restrictive by modifying how the approval criteria are applied in the Mental Health Guidelines. The Board deferred action on rate reductions for medical reimbursements and mental health services reimbursements.

In order to ensure that the CalVCP can continue to provide assistance to the victims of violent crime, the Board must consider all options to align CalVCP expenditures with Restitution Fund (Fund) revenues. As requested by the Board, staff has provided a number of additional cost savings options for consideration below, which are discussed in Part I of this item. The proposed medical and mental health services rate reductions are included in Part II of this item. Part III presents staff recommendations and the total projected cost savings.

**Recommendations**

Staff recommends the Board take action as follows:

- 1. Chiropractic Treatment and Physical and Occupational Therapy:** Combine chiropractic treatment and physical and occupational therapy under the Complementary and Alternative Medicines (CAM) category; limit to a combined total of five sessions; and require a physician's recommendation for additional sessions, up to a maximum of 20 sessions.
- 2. Income/Support Loss:** Require income and tax records from the Franchise Tax Board as a demonstration of income for the purpose of qualifying for income/support loss benefits; limit payment of this benefit to victims who are actually employed at the time of the crime; and establish a maximum monthly benefit of \$1,000 and a maximum benefit per qualifying crime of \$35,000 per applicant.
- 3. Vehicle Purchase, Renovating and Retrofitting:** Establish a maximum benefit of \$30,000 for vehicle purchase, renovation and retrofitting per qualifying crime.
- 4. Attorneys' Fees and Verification of Services:** Direct staff to determine the appropriateness of the limit of payment for attorneys' fees in statute; and to prepare a regulation to require verification of the reasonable value of legal services provided to the applicant.

5. **Funeral and Burial Expenses:** Establish a maximum benefit for funeral and burial expenses of \$5,000; and amend the regulations to ensure that expenses paid are appropriate, including, but not limited to, eliminating food and beverage expenses as reimbursable expenses.
6. **Maximum Benefit Amount:** Establish a maximum benefit amount of \$63,000.
7. **Medical Reimbursement:** Reduce the CalVCP Medical Reimbursement Rate to the flat Medicare rate; and adopt a reimbursement rate reduction of 20 percent for Restorative Cosmetic Surgery, Prosthetics, Hearing Aids and Eyeglasses, and Foreign Providers.
8. **Mental Health Services:** Reduce the CalVCP Mental Health Reimbursement Rate by 10 percent.
9. **Mental Health Intern Services:** Continue the reduction of the reimbursement rate for mental health services provided by interns adopted by the Board on December 16, 2010 and implemented by staff in January 2011.

## **Background**

### **The Restitution Fund**

The CalVCP is funded by the Restitution Fund (Fund) which derives its revenue primarily from fines and penalties at the state level, and federal matching funds based on claims payments made in a prior year. Over the years, CalVCP has periodically faced funding problems because the amount of revenue that flows into the Fund is independent of the level of demand for assistance, i.e. the number of applicants and the benefits paid to them. This is the third time in recent years that the Restitution Fund has been severely impacted. In 1993, the Fund experienced a significant shortfall in revenue that resulted in payment delays to victims and providers. In response to the shortfall, a \$44 million augmentation to the Fund was made from the General Fund through urgency legislation. In addition, the Board's percentage of funding received from penalty assessment revenue was increased for two years by redirecting funds allocated to the State Driver Training Penalty Assessment Fund. Funding problems continued through 1996.

In 2001, a surge in claims began that resulted in a funding shortfall over the next two years. In response, the Board held payments to medical and mental health providers for five months in 2003, and reduced reimbursement rates. The Board lowered the rate of payment for medical expenses to the federal Medicare rate minus 20 percent, and lowered the rate of payment for dental expenses to the California Denti-Cal rate. The Board also imposed a \$5,000 soft cap on funeral burial benefits and only paid the full statutory limit of \$7,500 with executive approval. These delays and rate reductions caused some providers to refuse service to victims.

In 2004 the Fund balance improved and the Board increased most medical reimbursement rates to the Medicare rate plus 20 percent and 75 percent of the reasonable and customary amount billed for dental. Applications have increased by 19 percent over the last 4 fiscal years, and total payments have increased by 32 percent over the same period; however, revenue began to decline in FY 2008/09 (4%), and declined nearly four percent again in FY 2009/10. Revenue growth is not keeping up with expenditures and the revenue figures for FY 2009/11 are showing that the downward trend is continuing.

The Governor's FY 2011/12 Budget projects Program expenditures of \$134.7 million in FY 2011/12, with projected revenues into the Revenue Fund of \$112.2 million, plus the carryover balance of \$27.4 million from FY 2010/11, resulting in total revenues for FY 2011/12 of \$139.6 million. Assuming the continuing revenue decline, if no action is taken, the projected Fund balance at the end of FY 2011/12 will be a negative \$1.5 million. With no action taken, the Fund will be in the negative in FY 2012/13 by \$29.6 million. Even with implementation of the actions discussed below that are directed in the Governor's Budget, the Fund balance at the end of FY 2011/12 will be only \$4.8 million, and at the

end of FY 2012/13 the Fund will be in the negative by \$20.3 million. Clearly, there will be insufficient funds to support current levels of CalVCP payments and services to victims beginning in FY 2012/13.

To address this anticipated shortfall, the Board reduced its administrative costs over the last two fiscal years (FY 2009/10 and FY 2010/11) by approximately \$12 million by managing its programs more effectively and efficiently through the use of technology and through process improvements, as well as by reducing training, outreach, and travel expenditures, and holding positions vacant. As reflected in the Governor's Budget, the Board is achieving an estimated savings of \$2.2 million in its FY 2011/12 operating budget. These reductions are short-term solutions and cannot be sustained in the long term without severely impacting the Board's ability to process claims timely and meet statutory mandates. Moreover, these savings are not enough to close the funding gap between revenue collections and program expenditures. The Board must consider other options to address the long-term solvency of the Restitution Fund.

In addition to the \$2.2 million reduction in operating expenses, the Governor's Budget also reflects a reduction in Joint Power (JP) and Criminal Restitution Compact (CRC) local assistance program contracts by 5 percent for an estimated savings of \$707,000 in 2011/12; and a cap on the growth rate not to exceed 2.5 percent in expenditures for claims from 2010/11 to 2011/12. The total cost savings in the Governor's Budget for the VCGCB for FY 2011/12 is \$6.5 million. Because these reductions comprise a one year solution only, the Board has been directed to work with stakeholders to identify long-term strategies to address Fund solvency.

In order to contribute to Fund solvency, additional cost savings options that bring California's benefits more in line with other states' programs and industry standards are identified in this agenda item.

## **PART I – Chiropractic Treatment; Income and Support Loss; Vehicle Purchase and Renovation; Attorneys' Fees; Funeral and Burial; Maximum Benefit**

### **1. Chiropractic Treatment, and Physical and Occupational Therapy**

The current CalVCP policy for chiropractic treatment allows staff to consider payment for up to six months of treatment, starting from the first date of treatment after the date of the crime. There is no specific limit on the number of chiropractic sessions during this six-month period, but they must be medically necessary. For physical and occupational therapies there is no restriction; however, the treatment must be ordered by a physician. In FY 2009/10 CalVCP payments for chiropractic treatment (\$226,368) and physical/occupational therapy (\$644,522) totaled \$870,890.

A review of benefits from six other states' victim compensation programs showed that chiropractic treatment is not separately listed as a benefit. A survey of 14 major insurance companies showed an average of 20 sessions was allowed per calendar year.

#### **Staff Recommendation**

- 1) Combine the chiropractic treatment and the physical and occupational therapy modalities with other Complementary and Alternative Medicines (CAM), which include acupuncture, biofeedback, holistic medicine, massage therapy and other natural healing methods. These alternative treatment modalities are limited to a combined total of five sessions.
- 2) For sessions in excess of the initial five combined sessions, a physician's recommendation should be required for up to a maximum of 20 sessions for any combination of the non-medical/medical treatment modalities. These limitations are in line with standards in the medical community.

In FY 2009/10 a total of 616 applicants received chiropractic treatment. A sampling of 21 applications shows that the average cost per session is \$66.47 and 14 (66 percent) of the sampled applications exceeded 20 sessions by an average of 12 sessions. Based on an estimate that 66 percent of 616 applications exceeded 20 sessions by an average of 12 sessions, multiplied by the average cost per session of \$66.47, a potential savings of \$324,289 could be realized per fiscal year.

**Implementation:** If approved by the Board, staff will implement this change by revising the Board's Rates and Limitations and filing them with the Secretary of State as required, for an effective date of April 1, 2011.

## 2. Income and Support Loss Benefits

Income and support loss expenses represent approximately 17 percent (\$16.3 M) of the total expenditures made by the CalVCP for FY 2009/10.

| CalVCP Income Support Loss Reimbursements |  |  |
|---|--|--|
| Fiscal Year                               | Income Support Loss Reimbursements (in Millions) | Percentage of Increase or Decrease from Previous Fiscal Year |
| 05/06                                     | \$12.0   | 1%   |
| 06/07                                     | \$13.3   | 9%   |
| 07/08                                     | \$16.5   | 19%  |
| 08/09                                     | \$16.8   | 1%   |
| 09/10                                     | \$16.4   | -1%  |

Since FY 2005/06 there has been an overall upward trend and a 27% percent increase in expenditures for income and support loss benefits.

### Verification of Income or Support Loss

Verification of income and support loss benefits requires that the loss requested shall be necessary as a direct result of a crime and includes time lost from work for medical or mental health appointments. Generally, pursuant to Government Code section 13957.5, income and support loss can be paid for a maximum of five years or in the case of a minor receiving support loss, until the claimant turns 18 years old. In most cases a claimant's \$70,000 benefit is exhausted well before the maximum time limit has been reached.

Pursuant to Regulation 649.32, subdivision (c), evidence of income loss may include "documentation of earnings immediately preceding the date of the qualifying crime such as copies of all wage check stubs for periods immediately preceding the date of the qualifying crime, or copies of all state and federal income tax returns filed by the victim or applicant for the tax year immediately preceding the date of the crime or during the year of the crime...or a Statement of Wages or Income as used to file with federal or state taxing authorities, or a statement signed by the employer attesting to the payment of wages or income to the victim which statement shall include the name, telephone number and address of the employer or person who paid or would have paid the wages or income along with the employer's Federal Identification Number, or wage abstract from the Employment Development Department, or a profit/loss statement for self-employed victim or application generated and signed by a certified public accountant..."

Additionally, subdivision (d) states: "Evidence of income loss may also include payment based upon a bona fide job offer, including but not limited to a job offer on the employer's letterhead with the employer's signature and federal tax identification number stating the terms of employment, work order or contracts for jobs in progress."

Current verification requirements are not stringent enough to avoid fraud entirely and also require a considerable amount of staff time to complete, causing delays in processing other applications. In reviewing other state benefit verification rules, Texas requires a tax return along with an employer verification form. Washington does not allow speculative job offers but only benefits to victims who are "gainfully employed" at the time of the crime.

**Staff Recommendation**

- 1) In order to limit fraud and to better serve the victim community as a whole, amend Regulation 649.32 so that a demonstration of income for the purpose or qualifying for income/support loss benefits will be based upon income and tax records received from the Franchise Tax Board along with the statement of disability required currently in Regulation 649.32, subdivision (e).
- 2) Amend the Regulation to limit payment of this benefit to victims who are actually employed at the time of the crime.

**Implementation:** If approved by the Board, regulations will be amended, with a projected effective date of 4 to 6 months.

Limitation on Income and Support Benefit Amount

Currently, the only limitation upon the amount of benefits paid for income or support loss is the five- year period described above and the maximum Program benefit, which is currently \$70,000. Many other states have financial limits on the income and support loss benefit. Illinois limits this benefit to no more than \$1,000 a month. New York caps the benefit at \$30,000. Texas limits the benefit to \$500 a week. Washington has a sliding scale based on a percentage of income proved. For instance, a single person with no children can receive 25% of their verified income while a married person with four or more children receives 47% of their verified income.

**Staff Recommendation**

- 1) Amend Regulation 649.32 to include some limitations to this benefit. A monthly maximum of \$1,000 and a lifetime maximum of \$35,000 per applicant would be consistent with other states.

Based on past payments by the Board, it is projected that these changes would reduce Program expenditures by an annual amount ranging from \$1,000,000 to \$1,500,000.

**Implementation:** If approved by the Board, regulations will be prepared with a projected effective date of 4 to 6 months.

**3. Vehicle Purchase, Renovating and Retrofitting Expenses**

Government Code section 13957(a) (7) allows reimbursement of the expense of renovating or retrofitting a victim's residence or a vehicle, or both, to make the residence, the vehicle, or both, accessible or the vehicle operational by a victim upon verification that the expense is medically necessary for a victim who is permanently disabled as a direct result of the crime, whether the disability is partial or total.

In FY 2009/10 CalVCP payments for vehicle purchase, renovating and retrofitting totaled \$494,578. This payment reflects assistance to 13 victims of crime. Of the 13 applications for vehicle renovation/retrofitting or vehicle purchase processed in FY 2009/10, CalVCP purchased 11 vehicles at an average cost of \$23,659 and renovated or retrofitted the vehicle to meet the unique needs of the claimant for an additional average cost of \$19,280 (\$42,939 average cost per vehicle). The two remaining applications were well below the average as one victim bought a fully converted van for \$16,200 and CalVCP paid to retrofit one victim's vehicle for \$2,361.

| <b>Vehicle Purchase and Conversions FY 2009/10</b> |                        |                     |
|--|------------------------|---------------------|
| <b>Vehicle Cost</b>                                | <b>Conversion Cost</b> | <b>Total Cost</b>   |
| <b>\$309,921.64</b>                                | <b>\$269,866.32</b>    | <b>\$582,755.17</b> |

A comparison of CalVCP's policy on vehicle purchase, renovating and retrofitting of vehicles to six other states' victim compensation programs shows only one state, Texas, allows for the retrofitting of a vehicle owned by the victim. None of the six other states' victim compensation programs purchase vehicles.

### Staff Recommendation

- 1) Establish a maximum benefit of \$30,000 on vehicle purchase, renovation and retrofitting, per qualifying crime.

Program staff projects a cost savings annually of approximately \$142,000.

**Implementation:** If approved by the Board, staff will implement this change immediately by revising the Online Manual, notifying staff of the change, and posting the information on our website.

### 4. Attorneys' Fees and Verification of Services

#### Verification of Attorneys' Fees

Government Code section 13957.7, subdivision (g) states the Board will "pay attorney's fees representing the reasonable value of legal services rendered to the applicant, in an amount equal to 10 percent of the amount of the award, or five hundred dollars (\$500), whichever is less, for each victim and each derivative victim."

Payment of attorneys' fees is common in most states, limited to a certain amount and often requiring submission of a receipt for services rendered. For example, Texas allows attorney fees of 25% of the amount of the award or a total of \$300, whichever is less; however, Texas requires the attorney to submit an itemized bill or receipt of services rendered before payment will be made.

Currently, in California, there is no regulation requiring verification of the reasonable value of legal services rendered. This is the only payment made by the Board that does not require documentation by the requester.

The Program fund paid out \$338,322 in attorney fees in FY 2009/10 and \$290,253 in FY 2008/09. If the statute were changed to limit attorney fees to the Texas limit of \$300, it is projected that Program costs could be reduced by approximately \$40,000 to \$60,000 annually. Requiring verification of services may further reduce costs.

The chart below shows the payments made to attorneys for each fiscal year from FY 2003/04 to FY 2010/11.

| <b>CalVCP Attorney Reimbursements</b> |                       |                          |                      |
|---------------------------------------|-----------------------|--------------------------|----------------------|
| <b>Fiscal Year</b>                    | <b>Total Payments</b> | <b>Attorney Payments</b> | <b>% of Payments</b> |
| <b>2010/11<br/>(6 mo)</b>             | \$48,516,584          | \$212,664                | 0.4%                 |
| <b>2009/10</b>                        | \$96,574,099          | \$338,322                | 0.4%                 |
| <b>2008/09</b>                        | \$94,027,080          | \$290,253                | 0.3%                 |
| <b>2007/08</b>                        | \$81,209,610          | \$250,009                | 0.3%                 |
| <b>2006/07</b>                        | \$74,979,715          | \$159,073                | 0.2%                 |
| <b>2005/06</b>                        | \$65,431,371          | \$182,802                | 0.3%                 |
| <b>2004/05</b>                        | \$58,716,734          | \$177,001                | 0.3%                 |
| <b>2003/04</b>                        | \$67,158,000          | \$221,758                | 0.3%                 |

### Staff Recommendation

- 1) Direct staff to determine the appropriateness of the limit of payment for attorneys' fees in statute; and to prepare a regulation to require verification of "the reasonable value of legal services rendered to the applicant" as stated in Government Code section 13957.7, subdivision (g). This will assure that Program funds are paid when victims are actually receiving services from their legal representative.

Although reimbursement costs could decrease with changes in areas discussed above, staff has not included projected savings in this area at this time.

**Implementation:** If approved by the Board, regulations will be prepared with a projected effective date of 4 to 6 months.

## **5. Funeral and Burial Expenses**

Funeral and burial expenses represent nearly 13 percent (\$12 M) of the total expenditures made by the CalVCP for FY 2009/10.

### Limitation on Amount

Funeral and burial expenses incurred as a direct result of a crime are covered by the Program not to exceed \$7,500 pursuant to Government Code section 13957, subdivision (a)(9)(B). Additionally, Regulation 649.18 allows the Program to reimburse for the cost of food and beverages (no alcohol) up to \$500 of the statutory maximum.

From April 2003 until January of 2006, the Board directed the Program to apply a “soft cap” of \$5,000 for most funeral and burial expenses. During that time, extraordinary or unusual expenses in excess of \$5,000 up to \$7,500 could be paid on the approval of the Program Deputy Executive Officer.

Illinois limits funeral burial expense reimbursement to \$5,000. New York limits funeral burial expense reimbursement to \$6,000. Averages listed by the Funeral Consumer Guardian Society and the Omega Society show that the average cost of a “good” funeral, including the burial, is \$5,500; while Workers’ Compensation pays a maximum of \$5,000.

### **Staff Recommendation**

- 1) Establish a maximum benefit for funeral and burial expenses of \$5,000 in line with past practices and other states.
- 2) Amend Regulation 649.18 to ensure that expenses paid are appropriate, including but not limited to eliminating food and beverage expenses as reimbursable expenses.

If the Board establishes a cap of \$5,000 for funeral and burial expenses, Program projects costs would be reduced by approximately \$3,500,000 to \$4,000,000 annually.

**Implementation:** If approved by the Board, staff will implement the cap within 60 days by revising the claims management system and the Online Manual, notifying staff of the change, and posting the information on the Board’s website. If the exclusion of food and beverage is approved by the Board, regulations will be prepared with a projected effective date of 4 to 6 months.

## **6. Limiting the Maximum Benefit Amount**

The total award to or on behalf of each victim or derivative victim may not exceed \$70,000 pursuant to Government Code section 13957, subdivision (b). The maximum benefit amount varies among states. California’s maximum was increased from \$46,000 to the current level in 2001. The average payment on an approved claim is approximately \$2,500, so most claimants do not use the maximum benefit amount. Over the past five years, there have been approximately 308 claims that surpassed payment of \$63,000, for a total of \$1.7 million. Based on the actual payments, staff calculated a potential annual savings of about \$350,000.

### **Staff Recommendation**

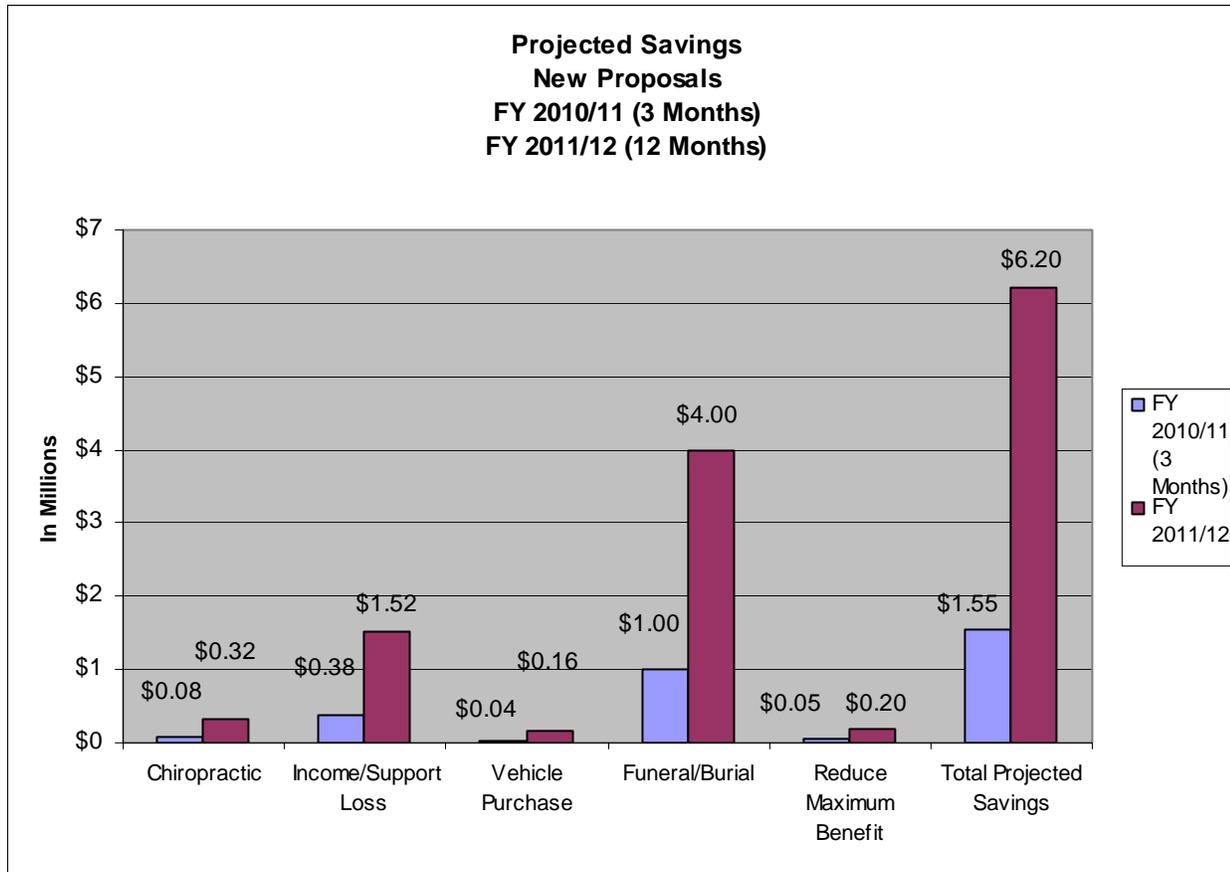
- 1) Establish a maximum benefit amount of \$63,000.

If the Board were to lower the maximum benefit amount by 10% to \$63,000, it is projected that the total cost savings would be \$350,000 a year.

**Implementation:** If approved by the Board, staff will implement this change within 60 days by revising the claims management system, the Online Manual, notifying staff of the change, and posting the information on our website.

**Projected Savings – New Proposals**

The projected savings for the proposed reductions to chiropractic, income/support loss, vehicle purchase, funeral/burial and the reduction to the maximum benefit are shown in the chart below. The FY 2010/11 projection is based on implementing these changes effective April 1, 2011, where regulations are not required.



| New Proposals Projected Savings Chart (in Millions) |                       |               |
|---|-----------------------|---------------|
| Projected Savings                                   | FY 2010/11 (3 Months) | FY 2011/12    |
| Chiropractic  | \$0.08                | \$0.32        |
| Income/Support Loss                                 | \$0.38                | \$1.52        |
| Vehicle Purchase                                    | \$0.04                | \$0.16        |
| Attorneys' Fees                                     | TBD                   | TBD           |
| Funeral/Burial                                      | \$1.00                | \$4.00        |
| Reduce Maximum Benefit                              | \$0.05                | \$0.20        |
| <b>Total Projected Savings</b>                      | <b>\$1.55</b>         | <b>\$6.20</b> |

Note: The savings that might be accrued from changes in the level of attorneys' fees is not projected as a statutory change would be required.

## **PART II – Medical and Mental Health Services**

### **Discussion of Issues**

#### **Medical Reimbursements**

Medical expenses represent approximately 37 percent (\$36 M) of the total expenditures made by the CalVCP for FY 2009/10. CalVCP benefits are based upon federal Medicare rates, which are the basis for fee schedules used by insurance carriers and in the medical and mental health community. Using Medicare rates brings uniformity and fairness to the CalVCP's rate structure and aligns the program with industry standards. Expenses eligible for CalVCP benefits include hospital, physician, surgeon, anesthesiologist, ambulance, x-rays, laboratory, alternative treatment, chiropractic, physical therapy, professional in-home aid services, residential board and care, convalescent/nursing home care and psychiatric hospitalization.

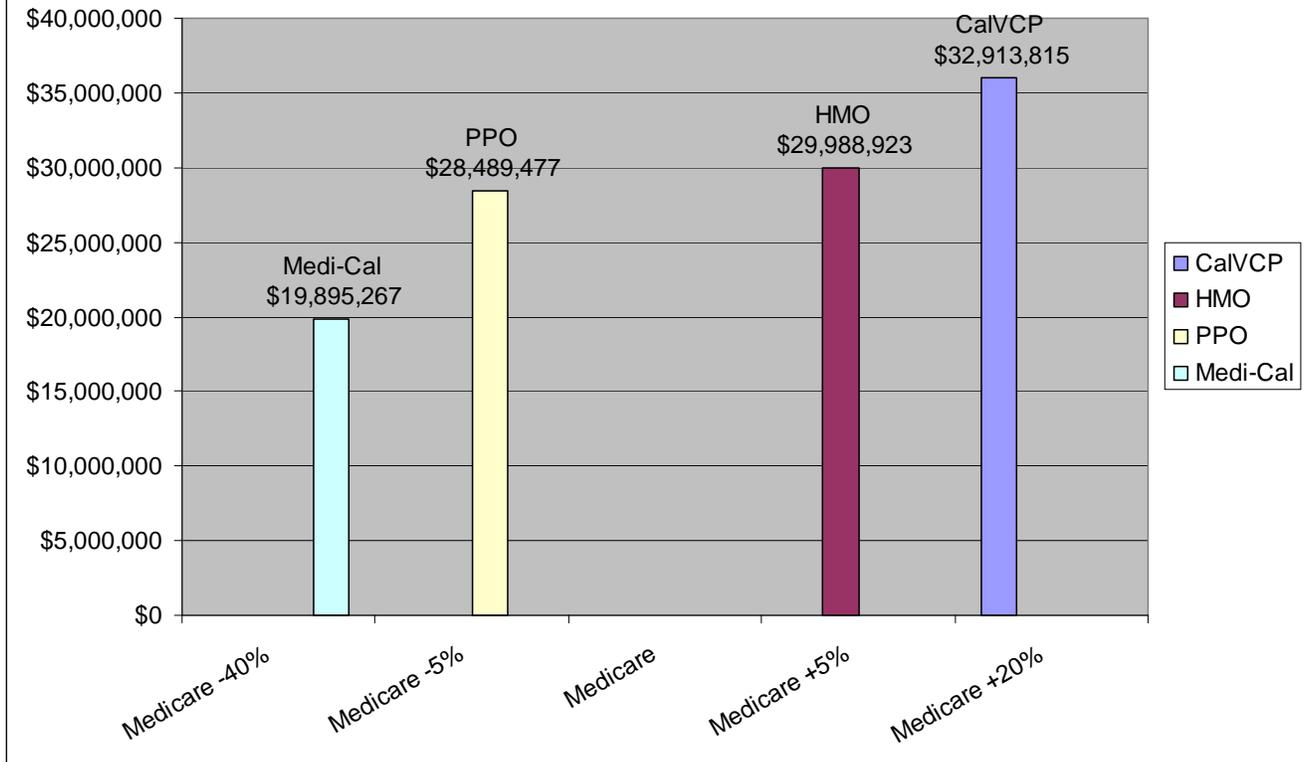
Fee schedules used by insurance carriers, including Medi-Cal and Medicare, are not available to the public because they contain technical, diagnostic and performance specifications and formulas that have an economic value. The fee schedules represent what is considered the "usual, customary and reasonable" (UCR) rate for any given medical or mental health procedure/service based on the average fee for the service charged in a given geographic area, minus a percentage determined by the insurer. Insurers adopt their own methods of calculating the UCR. Some insurers purchase fee schedules from other companies; however, all insurers consider their fee schedules to be "proprietary" (confidential information belonging to the insurer, not shared with the public).

#### **Treatment Not Subject to Medicare Rates**

Dental expenses are currently paid at 75 percent of the amount billed, subject to utilization review, and miscellaneous medical, which includes restorative surgery, prosthetics, eyeglasses, hearing aids and foreign providers, are currently paid at 100 percent of the amount billed. The miscellaneous medical categories involve a very small number of claims (approximately 3 percent of the total expenditure, which equates to \$3.2 M for FY 2009/10), and cover treatment and equipment that can seriously affect the ability of a crime victim to perform the normal activities of daily life. It should be noted that in the past, some victims have experienced problems finding physicians who will accept the CalVCP's rate of payment for these categories; however staff recommends that CalVCP reimbursement rates for Restorative Cosmetic Surgery, Prosthetics, Hearing Aids and Eyeglasses and Foreign Providers be reduced by 20 percent as well. This reduction would provide a savings to the Restitution Fund of approximately \$640,000 annually, based upon FY 2009/10 expenditures.

The following chart compares actual FY 2009/10 CalVCP medical payments based upon Medicare plus 20 percent to what those same payments would have been had the Board's claims been paid at Medicare plus five percent (typical Health Maintenance Organizations (HMO) rate), Medicare minus five percent (typical Preferred Provider Organizations (PPO) rate) or the Medi-Cal rate, which is equal to Medicare minus 40 percent.

## FY 2009/10 Comparative Analysis CalVCP Vs Medical Industry



### 7. Staff Recommendation

- 1) Reduce payment for medical expenses from the Medicare plus 20 percent rate to a flat Medicare rate for services covered by Medicare.

This reduction in reimbursement is necessary to help achieve the long-term stability of the Restitution Fund and will bring CalVCP medical payments more in line with payments made by major insurance companies in the medical community.

**Implementation:** If approved by the Board, staff will implement this change by revising the Board's Rates and Limitations and filing them with the Secretary of State as required, for an effective date of April 1, 2011.

### Mental Health Reimbursements

#### Mental Health Rates

Mental health expenses represent approximately 28 percent of the total expenditures made by the Program (\$27.5 M for FY 2009/10). Government Code section 13957 generally establishes maximum amounts for reimbursement of mental health expenses in the amount of \$10,000 for direct victims and \$5,000 for derivative victims.

Attempts to survey a number of different sources were made in order to obtain the average reimbursement rates for mental health providers providing psychotherapeutic treatment. Those sources included insurance companies; the State Employee Assistance Program, Medicare, and the Department of Mental Health (DMH). The surveys yielded mixed results. Most insurance companies did not respond, or indicated that the information requested was proprietary and could not be released. The California Psychological Association indicated that they are unable to gather such information from their members, as it constitutes a violation of anti-trust laws.

A published member survey from the California Association of Marriage and Family Therapists' (CAMFT) publication, "The California Therapist," shows the average amount charged and the actual amount reimbursed from a variety of insurance carriers:

| <b>Average CAMFT Therapist Rates</b> |             |             |             |
|--------------------------------------|-------------|-------------|-------------|
| <b>MFT</b>                           | <b>2000</b> | <b>2002</b> | <b>2004</b> |
| Charge                               | 78.16       | 86.79       | 93.95       |
| Reimbursed                           | 66.00       | 73.31       | 76.87       |

Data available for Medicare rates show the standard rate of payment is \$79.06 for an individual mental health session. However, this generic rate does not take into consideration the licensure of the therapist or the geographic location where the service is provided. In addition, staff reviewed several explanations of benefits (EOBs) submitted with mental health bills from a variety of insurers, which showed that the average contracted rate allowed for the MFT/LCSW was \$80 and the rate for Psychologists was \$97.

A comparison of CalVCP's benefits to other states' victim compensation programs shows that the CalVCP's statutory cap exceeds the other states' programs; the other states' program payment rates are similar or relatively lower; and the other states' programs do not pay for treatment provided by interns. In addition, the other states' programs require the victim to go to a therapist within their insurance network to receive treatment. The CalVCP allows the victim to select a therapist without regard to whether the provider is within the insurance network so the victim can receive the most appropriate treatment.

| <b>Mental Health Benefit Comparisons</b> |   |  |   |                            |
|--|---|--|---|----------------------------|
| <b>VCP</b>                               | <b>MH Payment Rates</b>   | <b>Monetary Cap</b>  | <b>Reimbursement</b>                      | <b>Payment for interns</b> |
| New York                                 | LCSW/MFT: \$100.00 per hour<br>Psychologist: \$125.00 per hour<br>Psychiatrist: \$150.00 per hour | There are no Mental Health limits  | Claimant required to use health insurance | No                         |
| Florida                                  | Pays at 50% billed amount fees vary   | Adults: \$2500.00<br>Minors: \$7500.00<br>Child witness: \$7,500.00          | Claimant required to use health insurance | No                         |
| Texas                                    | Medicare fee scheduled used   | \$3,000.00<br>All victims  | Claimant required to use health insurance | No                         |
| Minnesota                                | 70% of billed amount fees vary  | \$7,500.00   | Claimant required to use health insurance | No                         |
| Ohio                                     | 100% of billed amount<br>Fees vary  | Primary Victim: \$2,500.00<br>Family members: \$7,500.00<br>(combined total) | Claimant required to use health insurance | No                         |

### **8. Staff Recommendation**

1) Reduce reimbursements for mental health services by 10 percent for each license type. This would reduce payment rates to \$81 per hour for a marriage family therapist (MFT) and licensed clinical social worker (LCSW); \$99 per hour for a psychologist; and \$117 per hour for a psychiatrist

This reduction would result in an estimated \$2.9 million savings for the first full year of implementation. It would also bring payments for mental health services in line with the average payments made in the mental health community. (See Attachment A for a listing of rates from 2006 and the proposed rates.)

**Implementation:** : If approved by the Board, staff will implement this change by revising the Board's Rates and Limitations and filing them with the Secretary of State as required, for an effective date of April 1, 2011.

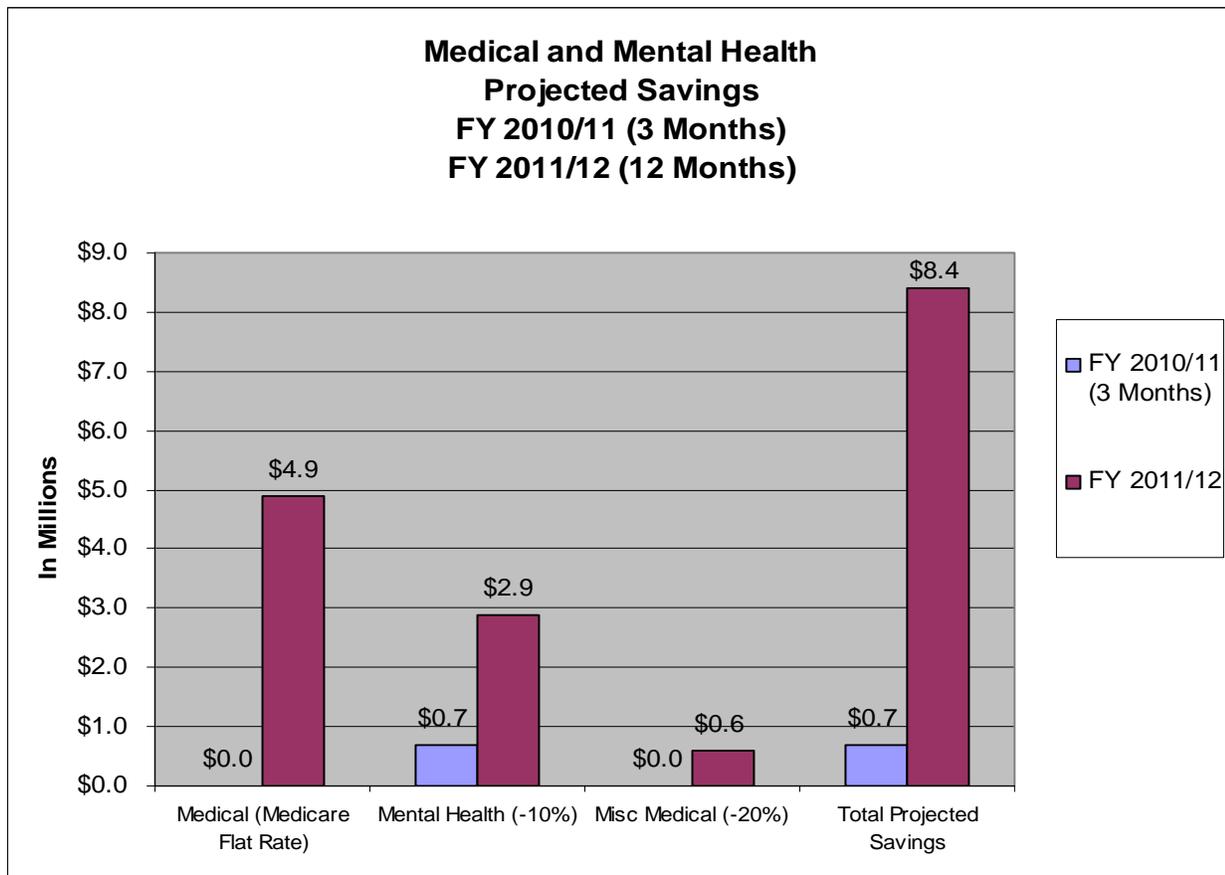
**Projected Savings for Medical and Mental Health Expenses**

**Medical and Mental Health Reimbursement Rates**

Staff has projected savings through FY 2011/12 for the following proposed changes, which are shown in the chart below:

- Applying the flat Medicare reimbursement rate.
- The 20 percent decrease in reimbursement rates for Restorative Cosmetic Surgery, Prosthetics, Hearing Aids and Eyeglasses, and Foreign Providers.
- The 10 percent mental health provider rate reduction.

Projected savings from the reduction in medical reimbursement rates will not be realized until FY 2011/12 because of normal medical community billing practices, which can result in delays of six to nine months in billing. Savings resulting from the 10 percent reduction in the mental health provider rate should be realized in the last quarter of FY 2010/2011.



| <b>Medical and Mental Health Rate Projected Savings Chart (in Millions)</b>                         |                              |                   |
|---|------------------------------|-------------------|
| <b>Projected Savings</b>  | <b>FY 2010/11 (3 Months)</b> | <b>FY 2011/12</b> |
| Medical (Medicare Flat Rate)  | \$0.0                        | \$4.9             |
| Mental Health (-10%)  | \$0.7                        | \$2.9             |
| Misc Medical (-20%)   | \$0.0                        | \$0.6             |
| <b>Total Projected Savings</b>  | <b>\$0.7</b>                 | <b>\$8.4</b>      |
| Note: Savings for medical will not be realized until FY 11/12                                       |                              |                   |
| Misc Medical includes Cosmetic surgery, Prosthetics, Hearing Aids, Eyeglasses and Foreign Providers |                              |                   |

### **Reimbursement of Interns and ATP Approval Process**

At the December 16, 2010 Board meeting, the Board approved the staff recommendation to adopt a 25 percent reduction in the rate of payment of interns per session. Staff discussion and analysis from the December agenda item is included as Attachment C.

This action was implemented by staff in January 2011, as follows:

- Revisions to the Board's Rates and Limitations were filed as required with the Secretary of State.
- New computer codes were established in the claims management system to reflect the new rates.
- The Board's bill review service was notified to apply the new rate/codes based on the date of service and when the application was received by CalVCP.
- CalVCP staff was notified of the reduction and changes in processing procedures.
- The reduction has been applied to all bills associated with applications received after January 1, 2011 and for bills for service rendered after January 1, 2011.

### **9. Staff Recommendation**

- 1) Continue this reduction as implemented. In addition, staff has drafted new guidelines for the approval of ATPs as directed by the Board. These guidelines are projected to be finalized and implemented by the end of the first quarter of 2011.

The following table displays the savings projected for the Board for both items approved as part of the December 2010 agenda item.

| <b>Mental Health Intern Rate and ATP Projected Savings Chart (in Millions)</b> |                   |                   |
|--|-------------------|-------------------|
| <b>Projected Savings</b>   | <b>FY 2010/11</b> | <b>FY 2011/12</b> |
| Intern Rates (-25%)  | \$0.6             | \$1.3             |
| ATPs   | \$0.0             | \$1.3             |
| <b>Total Projected Savings</b>   | <b>\$0.6</b>      | <b>\$2.6</b>      |
| Note: Savings for ATPs will not be realized until FY 11/12                     |                   |                   |

## **PART III – PROJECTED SAVINGS AND RECOMMENDATIONS**

### **Total Projected Savings**

| <b>Combined Projected Savings Proposals (in Millions)</b> |                              |                  |
|---|------------------------------|------------------|
| <b>New Proposals</b>                                      | <b>FY 2010/11 (3 Months)</b> | <b>FY2011/12</b> |
| Chiropractic  | \$0.08                       | \$0.32           |
| Income/Support Loss                                       | \$0.38                       | \$1.52           |
| Vehicle Purchase  | \$0.04                       | \$0.16           |
| Attorney  | N/A                          | N/A              |
| Funeral/Burial  | \$1.00                       | \$4.00           |
| Reduce Maximum Benefit                                    | \$0.05                       | \$0.20           |
| <b>Subtotal</b>   | <b>\$1.55</b>                | <b>\$6.20</b>    |
| <b>Medical and Mental Health</b>                          |                              |                  |
| Medical (Medicare Flat Rate)                              | \$0.0                        | \$4.9            |
| Mental Health (-10%)                                      | \$0.7                        | \$2.9            |
| Misc Medical (-20%)                                       | \$0.0                        | \$0.6            |
| <b>Subtotal</b>   | <b>\$0.70</b>                | <b>\$8.4</b>     |
| <b>MH Intern and ATP</b>                                  |                              |                  |
| Intern Rates (-25%)                                       | \$0.6                        | \$1.3            |
| ATP   | \$0.0                        | \$1.3            |
| <b>Subtotal</b>   | <b>\$0.6</b>                 | <b>\$2.6</b>     |
| <b>Grand Total Projected Savings</b>                      | <b>\$2.85</b>                | <b>\$17.20</b>   |

### **Recommendations**

Staff recommends that the Board take action as follows:

- 1. Chiropractic Treatment and Physical and Occupational Therapy:** Combine chiropractic treatment and physical and occupational therapy under the Complementary and Alternative Medicines (CAM) category; limit to a combined total of five sessions; and require a physician's recommendation for additional sessions, up to a maximum of 20 sessions.
- 2. Income/Support Loss:** Require income and tax records from the Franchise Tax Board as a demonstration of income for the purpose of qualifying for income/support loss benefits; limit payment of this benefit to victims who are actually employed at the time of the crime; and establish a maximum monthly benefit of \$1,000 and a maximum benefit per qualifying crime of \$35,000 per applicant.
- 3. Vehicle Purchase, Renovating and Retrofitting:** Establish a maximum benefit of \$30,000 on vehicle purchase, renovation and retrofitting per qualifying crime.
- 4. Attorneys' Fees and Verification of Services:** Direct staff to determine the appropriateness of the limit of payment for attorneys' fees in statute; and to prepare a regulation to require verification of the reasonable value of legal services provided to the applicant.
- 5. Funeral and Burial Expenses:** Establish a maximum benefit for funeral and burial expenses of \$5,000; and amend the regulations to ensure that expenses paid are appropriate, including but not limited to eliminating food and beverage expenses as reimbursable expenses.
- 6. Maximum Benefit Amount:** Establish a maximum benefit amount of \$63,000.

7. **Medical Reimbursement:** Reduce the CalVCP Medical Reimbursement Rate to the flat Medicare rate; and adopt a reimbursement rate reduction of 20 percent for Restorative Cosmetic Surgery, Prosthetics, Hearing Aids and Eyeglasses, and Foreign Providers.
8. **Mental Health Services:** Reduce the CalVCP Mental Health Reimbursement Rate by 10 percent.
9. **Mental Health Intern Services:** Continue the reduction of the reimbursement rate for mental health services provided by interns adopted by the Board on December 16, 2010 and implemented by staff in January 2011.

## Attachment A

### Proposed Mental Health Service Rates (10 Percent Reduction)

| Provider Type  | License or Certificate          | Services  | Current Rates Effective 3/1/06                             | Recommended Rate Option Effective 1/1/11 |
|--|---------------------------------|---|--|--|
| Licensed Psychiatrist (MD)   | A, C, or G                      | Individual/family therapy   | \$130/hour   | <b>\$117/hour</b>                        |
|  |                                 | Medication management   | \$130/hour   | <b>\$117/hour</b>                        |
|  |                                 | Group therapy   | \$52/hour  | <b>\$46.80/hour</b>                      |
| PhD Psychologist or Registered Psychologist                        | PSY                             | Individual/family therapy   | \$110/hour   | <b>\$99/hour</b>                         |
|  |                                 | Group therapy   | \$44/hour  | <b>\$39.60/hour</b>                      |
| Psychology Assistant (must be supervised by a psychiatrist or PhD) | PSB                             | Individual/family therapy   | Paid at rates allowed for supervising therapist            | <b>*\$75/hour</b>                        |
|  |                                 | Group therapy   |  | <b>*\$30/hour</b>                        |
| LCSW   | LCS                             | Individual/family therapy   | \$90/hour  | <b>\$81/hour</b>                         |
|  |                                 | Group therapy   | \$36/hour  | <b>\$32.40/hour</b>                      |
| MFT  | MFT                             | Individual/family therapy   | \$90/hour  | <b>\$81/hour</b>                         |
|  |                                 | Group therapy   | \$36/hour  | <b>\$32.40/hour</b>                      |
| ASW (must be supervised by a licensed therapist)                   | ASW                             | Individual/family therapy   | Paid at rates allowed for supervising therapist            | <b>*\$75/hour</b>                        |
|  |                                 | Group therapy   |  | <b>*\$30/hour</b>                        |
| MFT Intern (must be supervised by a licensed therapist)            | IMF                             | Individual/family therapy   | Paid at rates allowed for supervising therapist            | <b>*\$75/hour</b>                        |
|  |                                 | Group therapy   |  | <b>*\$30/hour</b>                        |
| Clinical Nurse Specialist  | CNS                             | Individual/family therapy   | \$90/hour  | <b>\$81/hour</b>                         |
|  |                                 | Group therapy   | \$36/hour  | <b>\$32.40/hour</b>                      |
| Psychiatric Mental Health Nurse                                    | PMH                             | Individual/family therapy   | \$90/hour  | <b>\$81/hour</b>                         |
|  |                                 | Group therapy   | \$36/hour  | <b>\$32.40/hour</b>                      |
| Nurse Practitioner/Physician Assistant                             | NP, PA                          | Medication management   | BRS Rate   | <b>Medicare rate</b>                     |
| Licensed Physician   | A, C, or G                      | Medication management   | BRS Rate   | <b>Medicare rate</b>                     |
| Peer Counselor   | Certified by Rape Crisis Center | Individual therapy, no more than 10 weeks, plus one series of group sessions. | <b>\$15/hour</b>   | <b>\$15/hour</b>                         |
| Out-of-State Provider  | Varies per state                | May provide services appropriate to licensure. Subject to MHS review.         | <b>Paid at rate for comparable licensure in California</b> |  |
| Out-of-Country Provider  | Varies                          | Subject to MHS review.  | <b>Paid at rate for comparable licensure in California</b> |  |

**\*Board approval December 16, 2010, implemented effective January 1, 2011.**

**Attachment B  
Medical and Medical Related Services**

| <b>Services</b>  | <b>Rates Effective 7-1-04</b>   | <b>Recommended Rate Option Effective 01/01/11</b> |
|--|---|---|
| Medical Treatment covered by Medicare Rates (Except as noted below)  | Medicare rate plus 20   | <b>Medicare rate</b>                              |
| Medical Treatment Not Covered by Medicare Rates (Except as noted below) (Includes items such as electric wheelchairs and motorized FES ergometers) | 75 percent of amount billed   | <b>75 percent of amount billed</b>                |
| Dental Treatment   | 75 percent of amount billed   | <b>75 percent of amount billed</b>                |
| Durable Medical Equipment (DME) Except for prosthetics, eyeglasses and foreign bills as noted below  | Medicare rate for DME   | <b>Medicare rate for DME</b>                      |
| Restorative Cosmetic Surgery   | 100 percent of amount billed  | <b>80 percent of amount billed</b>                |
| Prosthetics  | 100 percent of amount billed  | <b>80 percent of amount billed</b>                |
| Hearing aids and eyeglasses  | 100 percent of amount billed  | <b>80 percent of amount billed</b>                |
| Foreign providers without regard to the date of service, and accept bills in formats other than the standardized forms required of U.S. providers  | 100 percent of amount billed  | <b>80 percent of amount billed</b>                |
| Home/vehicle modification, vehicle purchase  | 100 percent of amount billed  | <b>100 percent of amount billed</b>               |
| In-Home Supportive Services – Attendant Care   | Effective 11-17-08, \$10.40 per hour  | <b>\$10.40</b>                                    |
| Residential security and crime scene clean-up  | Limited to \$1000   | <b>Limited to \$1,000</b>                         |
| Mileage Rate   | Effective 4-20-09, Department of Personnel Administration mileage reimbursement rate for non-represented employees - \$.55 cents per mile | <b>Adjustable DPA rate</b>                        |

## Attachment C

### Reimbursement of Interns

The CalVCP policy prior to January 1, 2011 was to reimburse interns at the supervisor's rate. In order to obtain a permanent provider license, an intern must provide documentation demonstrating completion of 3000-3200 hours of supervised training within a specific time period to the governing licensure Board, i.e., Board of Psychology, Board of Behavioral Sciences; and then pass one or two written or oral exams. Most interns complete their training with non-profit agencies. The CalVCP, by statute, has Non-Profit Agreements (NPA) with 17 facilities that have a large proportion of interns providing treatment for CalVCP claimants.

Although it is not common practice for other states' victim compensation programs or health insurance carriers to reimburse interns, the CalVCP reimburses interns due to the large number of victims who receive treatment in non-profit facilities where interns are utilized extensively. Staff believes terminating payments for treatment provided by interns would be a disservice to both victims and providers by reducing the capacity of service providers to meet the demand for services.

A 25 percent rate reduction for mental health services provided by interns would provide a significant savings to the CalVCP. While the number of mental health sessions provided by interns versus licensed mental health professionals is not tracked, information from the CalVCP's top two providers of mental health services can be used to estimate the savings that may be realized from reducing the intern rate of payment. By using a list of the licensed therapists and interns who provide treatment, it was determined that each of the individuals providing treatment works an average of 19 hours a week.

These two providers received a total of \$4 million in reimbursements during FY 2009/10, which is 15 percent of the \$27.5 paid out for mental health services that fiscal year. To estimate the savings from just these two providers, the total \$4 million in reimbursements was divided by two, as it was determined from a review of billing that approximately half of the sessions are provided by interns. The \$2 million that is assumed to be provided by interns was divided by the average reimbursement rate of \$107.00. This shows that approximately 18,690 hours are provided by interns. If the 18,690 hours are reimbursed at a rate of \$75.00 per hour (which is the average rate for a 25% reduction) instead of at the average of \$107 per hour, the cost to the CalVCP would be \$1,401,750, which would be a savings of \$598,250. This is a 14 percent reduction in the cost of mental health services for these two providers alone. Since the number of sessions provided by interns is not tracked, staff used a more conservative number (20 percent of sessions provided by interns) to demonstrate potential savings for all providers of mental health services, including the two largest mentioned above. Assuming that 20 percent of services reimbursed by the Program are provided by interns, the projected savings would be \$1.3 million (15 percent) for the first full year of implementation from the total mental health expense as detailed in the chart below.

| <b>Potential CalVCP Savings With A Reduced Intern Rate</b> |  |  |  |  |  |  |
|--|--|--|--|--|--|--|
|  | <b>Fiscal Year 09/10 (in Millions)</b> | <b>Average Rate Paid For A Session</b> | <b>Estimated Amount Paid For Interns (in Millions)</b> | <b>Estimated Hours Of Service By Interns</b> | <b>Estimated Payment For Interns With \$75/Hour Rate (in Millions)</b> | <b>Estimated Savings To CalVCP (in Millions)</b> |
| <b>Top two providers only</b>                              | \$4                                    | \$107                                  | \$2  | 18,690                                       | \$1.4  | \$598K (14%)                                     |
| <b>Total all providers</b>                                 | \$27.5                                 | \$100                                  | \$5.4  | 54,360                                       | \$4.1  | \$1.3 (15%)                                      |