

California Victim Compensation and Government Claims Board
Victim Compensation Program Regulations
Title 2, §§ 649, 649.4, 649.8, 649.26, 649.29, 649.32, 649.40, 649.43, 649.62

INITIAL STATEMENT OF REASONS

Government Code section 13950 requires the Victim Compensation and Government Claims Board (Board) to “assist residents of the State of California in obtaining compensation for the pecuniary losses they suffer as a direct result of criminal acts.” This rule-making action includes revisions to the regulations to improve the verification process for initial eligibility, as well as income/support loss and mental health benefits. Finally, this rule-making action defines what constitutes a lack of cooperation with the Board by mental health providers, includes several provisions to clarify regulatory language, and corrects grammatical errors.

The specific purpose of each revision or proposed regulation and the reasons that the revision or proposed regulation is necessary, together with a description of the public problem, are described below.

Section 649. Definitions

Authority and Reference

Pursuant to Government Code sections 11400.20, 13920 and 13974, the Board has authority to adopt necessary regulations for the Victim Compensation Program (“CalVCP”). This rulemaking action is intended to further implement, interpret, and/or make specific Government Code sections 13950-13966.

Rationale

The revision is necessary to ensure that applicants understand where to file an application or supplemental application for CalVCP benefits, as well as to correct a grammatical error.

Specific Purpose of Regulation

- It is necessary to revise this provision to correct a grammatical error and to ensure that all applications are filed in central location in order to properly determine filing deadlines and control workload.

Section 649.4. Eligibility of Felons

Authority and Reference

Pursuant to Government Code sections 13920 and 13974, the Board has authority to adopt necessary regulations for CalVCP. This rulemaking action is intended to further implement, interpret, and/or make specific Government Code sections 13951 and 13956.

Rationale

It is necessary to revise this regulation to implement changes made necessary by the passage of AB 109 and AB 117.

Specific Purpose of Regulation

- Currently, the regulations do not reflect the changes in criminal justice policy which resulted from California's corrections realignment plan. Revising this provision will ensure that felons who are now being sentenced and monitored at the local level are treated no differently by CalVCP than felons incarcerated and supervised by state officials.

Section 649.8. Emergency Awards

Authority and Reference

Pursuant to Government Code sections 13920 and 13974, the Board has authority to adopt necessary regulations for CalVCP. This rulemaking action is intended to further implement, interpret, and/or make specific Government Code section 13952.5.

Rationale

Historically, CalVCP has not recommended payment on an emergency basis of bills or expenses incurred after an application has been allowed. The revision is necessary to specifically authorize such payments.

Specific Purpose of Regulation

- It is necessary to revise this provision to acknowledge that the payment of core CalVCP benefits such as reimbursement of relocation expenses or funeral expenses, may become necessary after an application has been initially approved by the Board. Payment of those and similar expenses becomes necessary if a perpetrator is released from incarceration, a victim later dies as a result of the crime, or if a victim incurs unanticipated medical expenses. Clarifying the language of this provision is consistent with the statute and will provide authority for CalVCP to recommend emergency payments whenever they become necessary.

Section 649.26. Direct Payment to Providers

Authority and Reference

Pursuant to Government Code sections 13920 and 13974, the Board has authority to adopt necessary regulations for CalVCP. This rulemaking action is intended to further implement, interpret, and/or make specific Government Code section 13957.7.

Rationale

The provision must be revised to both increase CalVCP's efficiency and streamline the payment of mental health benefits.

Specific Purpose of Regulation

- Currently, CalVCP staff spends an inordinate amount of time requesting treatment plans from providers in order to verify an applicant's request for mental health treatment either up to, or beyond the statutory limit. This results in wasted staff resources and delayed treatment. Revising this provision is necessary to incentivize providers to timely submit verification that is statutorily required. The revision will also help streamline the payment process for both victims and providers.

Section 649.29. Authorized Mental Health Providers

Authority and Reference

Pursuant to Government Code sections 13920 and 13974, the Board has authority to adopt necessary regulations for CalVCP. This rulemaking action is intended to further implement, interpret, and/or make specific Government Code section 13957(a)(2)(D)(i).

Rationale

This revision is necessary to acknowledge a new specialty recognized by the Board of Psychology and clarify which providers are eligible for reimbursement.

Specific Purpose of Regulation

- This provision must be revised in order to allow payment to licensed professional clinical counselors and interns, newly recognized mental health treatment specialists. The revision will hopefully increase the number of therapists eligible to assist crime victims recover from their trauma. Additionally, the provision lists for clarity the title of eligible mental health professionals as they are described in the Business and Professions Code.

Section 649.32. Verification of Income or Support Loss

Authority and Reference

Pursuant to Government Code sections 13920 and 13974, the Board has authority to adopt necessary regulations for CalVCP. This rulemaking action is intended to further implement, interpret, and/or make specific Government Code sections 13957(a)(4) and 13957.5.

Rationale

This proposed regulation is necessary to improve clarity of the existing provision and authorize CalVCP to consider all earned income when calculating benefits.

Specific Purpose of Regulation

- This provision must be revised to eliminate confusion. The current wording of the regulation makes it difficult for applicants to understand what information is needed to verify requests for income and/or support loss. The revised language more clearly lists what verification is required for both employed and self-employed applicants.
- The provision also clearly specifies that all earned income, for instance disability or a spouse's retirement payments, will be considered when CalVCP calculates income or support loss in order to more accurately compensate victims' losses.

Section 649.40. Examples of Threat of Physical Injury

Authority and Reference

Pursuant to Government Code sections 13920 and 13974, the Board has authority to adopt necessary regulations for CalVCP. This rulemaking action is intended to further implement, interpret, and/or make specific Government Code section 13955.

Rationale

This proposed regulation is necessary to clarify what conduct in a sexual battery constitutes physical injury.

Specific Purpose of Regulation

- It is unclear in the current provision whether a sexual battery, which may occur in public and not result in the need for medical treatment, constitutes a qualifying crime under CalVCP. Because pursuant to California Penal Code section 643.4(e) a sexual battery is committed simply by unwanted touching, and because the unwanted touching of another person's private areas for sexual gratification is particularly offensive, CalVCP has determined that physical injury may be presumed when a sexual battery occurs. This determination will allow CalVCP to more fairly and consistently process victims' applications.

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

Authority and Reference

Pursuant to Government Code sections 13920 and 13974, the Board has authority to adopt necessary regulations for CalVCP. This rulemaking action is intended to further

implement, interpret, and/or make specific Government Code sections 13954, 13956, and 13959.

Rationale

This provision must be revised to more accurately reflect the evidentiary weight of a final superior court order.

Specific Purpose of Regulation

- The current regulation must be revised to indicate that CalVCP will always consider a final order from a superior court when determining whether an applicant has provided sufficient evidence to prove they were the victim of a qualifying crime. Because superior courts typically require proof by a least a preponderance of the evidence, the same standard of evidence required by the statutes governing CalVCP, the Board has determined that a final order shall always be considered by CalVCP staff when evaluating eligibility.

Section 649.62. Failure to Cooperate with Board or Staff

Authority and Reference

Pursuant to Government Code sections 13920, 13974, 13957.2 (c), and GC 13957 (a)(D)(ii), the Board has authority to adopt necessary regulations for CalVCP. This rulemaking action is intended to further implement, interpret, and/or make specific Government Code section 13954.

Rationale

CalVCP staff unnecessarily spends an increasingly larger percentage of time attempting to process and verify incomplete supplemental applications for reimbursement of mental health treatment expenses. Revising this provision will allow CalVCP to incentivize mental health providers to timely submit required verification.

Specific Purpose of Regulation

- It is necessary to revise this regulation to authorize CalVCP to deny or delay payments to mental health providers who do not follow the Board's procedures, or adhere to the professional obligations of their own licensing authority. This provision will increase the speed with which victims' requests for mental health treatment are processed and, ultimately, the number of supplemental applications processed.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

The Board did not rely upon any technical, theoretical or empirical studies, reports or documents in proposing the adoption of these regulations.

REASONABLE ALTERNATIVES TO THE REGULATION AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES

The Board has determined that there are no other reasonable alternatives to this rulemaking action.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

The Board has no evidence indicating any potential adverse impacts to small business are expected as a result of this proposed action.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The regulations do not directly affect business within the State of California because the proposed regulations only clarify eligibility, as well as verification procedures in order to conform to statutory requirements and streamline the processing of applications. Because CalVCP is a program which offers limited benefits for a limited group of individuals, it does not directly impact business.

ECONOMIC IMPACT ANALYSIS/ASSESSMENT

The purpose of the proposed regulations is only to clarify eligibility and verification procedures in order to conform to applicable statutes and streamline the processing of applications. Because CalVCP is a program which offers limited benefits for a limited group of individuals, it does not directly impact jobs or the wider economy. There is no reason to believe the proposed revisions will either increase or decrease the number of victim applications.

The Board has determined that the selected alternative will not affect:

(A) The creation or elimination of jobs within the State of California,

Revising Regulation §649.29 to add licensed professional clinical counselors to the list of professionals who are eligible for reimbursement will not likely increase jobs in California because CalVCP has no evidence to suggest that specialty's, or any other specialty's main clientele is CalVCP applicants. None of the other proposed revisions impact jobs because they apply only to CalVCP applications.

(B) The creation of new businesses or the elimination of existing businesses within the State of California,

Because the proposed revisions do not impact the creation or elimination of jobs, there is no impact on the creation of new businesses or elimination of existing businesses in California.

(C) The expansion of businesses currently doing business within the State of California, and,

Because the proposed revisions do not impact the creation or elimination of jobs, there is no impact on the expansion of businesses currently doing business within the State of California.

(D) The benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment.

Clarifying eligibility and verification procedures in order to conform to applicable statutes benefits the welfare of California residents and the state's environment by ensuring that contradictory regulations do not remain in effect. In addition, streamlining the processing of CalVCP applications will benefit the health and welfare of California residents by ensuring that eligible victims timely receive benefits they need. There is no impact on worker safety.