

PROPOSED AMENDMENTS TO CALIFORNIA CODE OF REGULATIONS,
TITLE 2. CALIFORNIA VICTIM COMPENSATION BOARD
DIVISION 2.
CHAPTER 1.
ARTICLE 5.6. INDEMNIFICATION OF VICTIMS OF CRIME
§§ 649.7, 649.15, 649.16, 649.18, 649.19, 649.24, 649.28, 649.50

§ 649.7 Complete Application.

Applications for assistance as specified in Section Pursuant to Government Code section 13952, ~~applications for assistance of the code~~ will be deemed to be complete within the meaning of Section 13952, subdivision (c) of the code only if:

(a) The applicant provides all the information requested on the application and as directed in the instructions for completing the application, ~~to, and as elicited on, the application which the Board shall require to be certified under penalty of perjury or upon information and belief.~~ As part of the application the applicant must provide ~~Board shall require~~ the following information:

(1) The applicant seeking compensation must provide their name, residence residential address, ~~and if different, mailing address,~~ date of birth and telephone number. If the applicant uses an address that is different from their residential address to receive mail, then the mailing address must also be provided. ~~of the applicant seeking restitution from the Fund.~~

(2) A designation ~~as prescribed~~ on the application as to whether the applicant is a victim, or a derivative victim, or a person who legally assumed the obligation to pay for a deceased victim's medical or funeral and burial expenses, ~~or in the event of a death caused by a crime, a person who legally assumed the obligation, or who voluntarily paid the medical or burial expenses incurred as a direct result of the qualifying crime (Section 13957(a)(9)(A) and (C) of the code).~~

(3) If the person who signs signing the application as the applicant is someone a person other than the ~~actual~~ direct victim or derivative victim seeking assistance, the application must include some designation and supporting documentation as to the person's legal authority ~~of such person~~ to apply for benefits on behalf of the victim or derivative victim (for example, e.g. a minor's parent or legal guardian, for a child; or a court appointed conservator for an adults adjudicated who has been determined to be incompetent.)

(4) A description of the date, nature, location, and circumstances of the qualifying crime.

(5) Except in the case where the applicant has no pecuniary loss, a complete statement of the losses incurred and reimbursements received that are directly related to the qualifying crime, ~~including but not limited to the cost of medical care or burial expense, the loss of wages the victim has incurred to date, or the loss of support the derivative victim has incurred to date, for which they claim assistance.~~ This statement must include the date or dates that medical, mental health or other professional services were provided to the victim or derivative victim, and a description of the services provided, affirmation along with a statement that the services were in fact received, and affirmation that such services were required as a direct result of the qualifying crime and for no other reason. If mental health counseling or psychotherapy services were provided, the statement must indicate whether they occurred ~~include a designation as to whether any counseling or psychotherapy provided was in an individual, family or group setting.~~

(6) The application must be signed under penalty of perjury by the victim, derivative victim, or other eligible applicant, attesting that the information provided in the application is true and correct to the

best of their knowledge. Applications signed by an authorized representative must be signed under information and belief.

(7) (6) A signed authorization permitting the VCP Board staff or a joint powers victim witness center employee, or both, to verify the contents of the application.

(8) The Board may accept electronically signed applications and communications if the signature meets the following criteria:

(A) It is unique to the person using it;

(B) It is capable of verification; and

(C) It is under the sole control of the person using it.

(9) (7) If the applicant is represented by an attorney or other authorized person, the application must include the name, address and telephone number of the such representative. If the representative is an attorney, the application must include the attorney's California State Bar license number and the taxpayer identification number.

(10) (8) A statement indicating whether the victim, the victim's survivors, or the derivative victim have commenced or intend to commence a civil action to recover monetary damages from the perpetrator or perpetrators of the qualifying crime. If the applicant indicates that they have commenced or intend to commence a civil action for damages, they must include, if represented, their attorney's name, or any other parties in connection with the qualifying crime, along with the name, telephone number and address, of any attorney representing the applicant in such civil proceedings.

(11) (9) A promise to contact and repay the VCP Board if the applicant receives any payments from the offender, a civil suit, an insurance policy, or any other governmental or private agency to cover expenses that the VCP Board has already paid.

(12) (10) A statement disclosing all collateral benefits for which the victim, the victim's survivors, or the derivative victim have applied or for which they may be eligible. Collateral benefits include, but are not limited to, including any private or public insurance or benefits, any form of public or private assistance, any salary or bereavement leave, and any restitution paid by the perpetrator(s) of the qualifying crime, payable from private or public programs of assistance for which the victim, the victim's survivors, or the derivative victim have applied or for which they may be eligible.

(b) In addition to the information as specified in subparagraph (a) above, applicants seeking types of assistance as set forth in Government Code section Section 13957 of the code shall provide the following information relative to each category of assistance claimed:

(1) If medical or mental health expenses are claimed to have been incurred as a direct result of the qualifying crime, an itemized a statement from the professional treating provider for itemizing all medical or mental health expenses incurred as of the date of the application including was filed; and the provider's license number, of the professional certificate issued by the State of California or other jurisdiction to the medical or mental health practitioner providing the service as well as his or her business address and telephone number. Providers of services A service provider who are is not required to obtain a professional or occupational license but is authorized by law to offer such services as part of their on-going ongoing business activity, but who are not required to obtain a professional or occupational license must provide either their social security number, or their Federal Employer Identification Number. The VCP Board may require the submission of mental health treatment session or progress notes in order to determine whether the treatment will best aid

the victim or derivative victim and is necessary as a direct result of the qualifying crime. Session notes will be kept in a confidential locked file and after review, shall be returned to the provider or destroyed by the VCP Board upon request of the treating provider.

(2) If loss of income is claimed to have occurred as a direct result of the qualifying crime, the applicant shall produce evidence of income loss as well as a statement of disability from the treating medical or mental health provider, as described in Section 649.32 of these regulations.

(3) If funeral or burial expenses are claimed to have been incurred as a direct result of the ~~qualifying crime, the applicant shall provide an itemized statement for all funeral or burial expenses incurred.~~

(4) If rehabilitative services are claimed, the applicant shall produce ~~that~~ evidence of that need, and documentation for rehabilitation as specified in Section 649.25 ~~649.24(e)~~ of these regulations.

(c) A copy of the crime report evidencing the commission of the qualifying crime, including and setting forth the circumstances and factual events surrounding the crime it. ~~In order to expedite the processing of the application, applicants will be~~ are encouraged to obtain and submit, ~~along with the with their application,~~ a copy of the crime report as prepared by the law enforcement agency to which the qualifying crime was reported. ~~In cases in which~~ If the applicant or his or her their representative are is unable to obtain the crime report or declines to do so obtain such crime report, VOC the Board employees or the joint powers victim witness centers employees shall obtain the crime report.

~~No~~ An application shall not be deemed complete until ~~VOC the Board~~ or its contract agencies have received a copy of the crime report, unless ~~VCP Board staff or employees of its contract agencies are~~ is otherwise able to verify that a qualifying crime occurred.

(d) If a crime report is missing information or not yet available, the Board may accept a summary report for purposes of determining eligibility when the following criteria are met:

1. It must be signed and dated by a law enforcement officer with personal knowledge of the investigation; and

2. It must provide sufficient, specific facts to support any findings or conclusions reached; and

3. It must include the officer's title and badge number, and the law enforcement agency's name, phone number, and address.

~~(d) All applications and supplemental claims must be certified under penalty of perjury by the victim or derivative victim where the victim or derivative victim is the applicant, or shall be attested to under information and belief if completed by an applicant other than the victim or derivative victim, or by an authorized representative.~~

NOTE: Authority cited: Section 13920 ~~13974~~, Government Code. Reference: Sections 13951, 13952, 13952.5, 13954, 13956, 13957, 13957.2, 13957.5, 13957.7 and 13963, Government Code

§ 649.15 Good Cause for Filing Late Applications.

(a) A ~~petition request~~ request for relief from the period of limitations on grounds of good cause must be filed with the Board in writing ~~not no~~ no more than 30 calendar days following the date notice is mailed to the applicant and/or his or her their representative of the late filing. The request, ~~and~~ shall include a the statement under penalty of perjury as specified in subsection (b) which describes the reasons the applicant was unable to file their claim within the applicable limitations period. An applicant failing to ~~petition for~~ submit a request for relief in writing within the 30 calendar days ~~set forth herein~~ will have his or her their application recommended for denial.

(b) An applicant seeking relief from the period of limitations on the filing of an application shall, with their request for relief and accompanying statement, submit any corroborating documents which serve to verify the stated justification(s) for late filing.

(c) ~~(b)~~ In determining whether good cause exists justifying to justify the late filing of an application, the VCP Board staff may consider other factors in determining whether good cause exists, including, but not limited to the following: shall consider all of the following factors:

(1) Whether the victim or derivative victim incurs emotional harm or a pecuniary loss while testifying during the prosecution or in the punishment of the person accused or convicted of the crime.

(2) Whether the victim or derivative victim incurs emotional harm or a pecuniary loss when the person convicted of the crime is scheduled for a parole hearing or released from incarceration. An applicant seeking relief from the period of limitations on the filing of an application shall, with his or her petition for relief and accompanying statement, submit any corroborating documents which serve to verify the stated justifications for late filing.

(1) The physical, emotional, psychological, or developmental condition of the victim (for example, victim's age, cultural or linguistic barriers, disabilities, mental health diagnosis);

(2) Whether the victim sought treatment for interpersonal crimes upon which the application is based (for example, sexual assault, child molestation, domestic violence, human trafficking, or child abuse) within one year of the filing date; or

(3) Whether the victim incurred a new pecuniary loss within one year of the filing date as a direct result of the qualifying crime.

(d) ~~(c)~~ If VCP Board staff does not find good cause for the late filing and recommends that the application be denied, the applicant may request a hearing to determine the existence or nonexistence of good cause.

(e) ~~(d)~~ In all cases the determination by the Board as to the existence or nonexistence of good cause constitutes the final administrative determination on the issue, subject only to a proper motion for reconsideration upon a showing of new and additional evidence not reasonably available at the time of the initial hearing. Nothing in this Section shall be construed to prevent an applicant or his or her their representative from filing the above stated declaration and ~~petition~~ request for relief upon a showing of good cause simultaneously with the late application.

Note: Authority cited: Sections 13920 and 13974, Government Code. Reference: Sections 13953 and 13954, Government Code.

§ 649.16 Applications by Derivative Victims.

(a) The period of limitations for filing an application is tolled for derivative victims when the Board accepts and files an application that was submitted by a victim or on behalf of a victim for the same qualifying crime is accepted by the VCP.

(b) An applicant shall only be eligible once as a derivative victim of a crime regardless of the number of direct victims for that same crime.

(c) A derivative victim's application shall be denied if the direct victim's application is denied for lack of a qualifying crime.

(d) The Board shall determine the eligibility of a derivative victim's application regardless of whether the direct victim has applied to the Board for the crime on which the derivative victim's application is based.

(e) An applicant shall either be eligible as a direct or derivative victim. An applicant cannot be eligible as both a direct victim and a derivative victim for the same qualifying crime.

NOTE: Authority cited: Sections 13920, 13955, 13957, and 13957.5 and 13974, Government Code.
Reference: Sections 13951, 13952 and 13953, Government Code.

§ 649.18 Reimbursement of Funeral/Burial Expenses.

(a) ~~As funeral practices vary across cultures, the~~ The following traditional funeral and burial expenses, or their equivalent expenses, may be reimbursed:

(1) Burial costs, including but not limited to ~~expenses for:~~ the burial vault; casket; costs associated with the transport of the body; cremation charges; labor cost for opening and closing the grave; headstone; marker, or tombstone and the charge for its setting; the single-width, single-depth grave site; and, endowment care -- a one-time charge controlled by state law that ensures permanent maintenance of the grave.

(2) Funeral service costs, including but not limited to ~~expenses for:~~ preparation of the body for viewing; newspaper notices; copies of the death certificate; flowers for gravesite, chapel, and hearse; photography costs; musician's fees; burial clothing; cost of transport to the burial site; on-site funeral service fees for chapels or other memorial service locations; licensed security guard services; gravesite service fees and costs, including equipment charges; and, items necessary for performing services in other cultural traditions.

(3) Memorial service costs including flowers, ~~and~~ pictures, and picture frames at the service.

(4) If a double grave or headstone has been chosen, reimbursement may be made based upon an estimate of a single grave or headstone or half the cost of the double grave or headstone, whichever is the less expensive.

(b) The following expenses are not reimbursable by the ~~CalVCB Board~~: coroner's charges; finance or interest charges or processing fees on a funeral/burial bill; a pre-purchased funeral or grave for the victim; ~~alcoholic beverages~~; any expenses based upon a ~~CalVCB~~ an application filed by a mortuary, cemetery or other third-party service provider.

(c) If more than one applicant seeks reimbursement of funeral/burial expenses for the same deceased victim, the total amount paid by the Board shall not exceed the maximum amount as set forth in statute. Eligible bills will be paid in the order in which they are received.

Note: Authority cited: Section 13920, Government Code. Reference: Section 13957(a)(8)(B), Government Code.

§ 649.19 Residential Security ~~Home Security Device or System~~.

(a) ~~The VCP Board will may~~ reimburse the costs of a victim or derivative victim's new or additional residential security upon verification that the expense is necessary as a direct result of the crime. ~~home security device or system.~~ Examples of home security device or system items installing or increasing residential security include, but are not limited to, the following:

(1) Alarms, keypads, cameras, and motion detectors;

(2) Installation costs;

(3) Monitoring costs;

(4) Window bars and security doors; ~~and~~

(5) Replacing or increasing the number of locks; and-

(6) Replacement of doors and windows damaged as a direct result of the qualifying crime and necessary to secure the premises.

(b) Examples of items which do not qualify as “installing or increasing residential security” and are not reimbursable include, but are not limited, to the following:

(1) Weapons (guns or non-lethal weapons);

(2) Guard dogs; and

(3) Self-defense courses.

(c) Evidence to support this may include, but is not limited to, the following:

(1) The qualifying crime occurred in the victim’s or derivative victim’s home;

(2) The victim or derivative victim obtained an Emergency Protective Order, Temporary Restraining Order, or Restraining Order After Hearing against the suspect; or

(3) A mental health provider or law enforcement official determined the expenses to be necessary as a direct result of the crime.

NOTE: Authority cited: Sections 13920 ~~and 13974~~, Government Code. Reference: Section 13957, Government Code.

§ 649.24. Reimbursement to Service Providers Ineligible for Reimbursement.

(a) A provider ~~who fails to submit requested documentation to verify losses or injury~~ may be found to be ineligible for reimbursement by VCP. if any of the following circumstances apply:

(1) A provider fails to submit requested documentation to verify the victim’s or derivative victim’s losses or injury.

(2) A provider fails to submit requested documentation to verify the services provided.

(3) A provider provides, or causes another to provide, false information to the Board.

(4) A provider misrepresents a victim’s or derivative victim’s disability, injury, or other need for treatment or services.

(5) A provider fails to comply with statutes and regulations established by their licensing, oversight, or governing bodies.

(6) A provider fails to comply with any statutes or regulations governing claims before the Board.

(7) A provider fails to comply with a corrective action plan imposed by the Board. A corrective action plan need not be imposed as a prerequisite to a finding of ineligibility based upon any of the preceding circumstances.

(b) A provider who fails to adhere to statutes and regulations established by their licensing, oversight, or governing bodies may be found to be ineligible for reimbursement by VCP. The finding of ineligibility may extend to pending and future claims. The finding of ineligibility does not prevent reimbursement to victims or derivative victims for pecuniary losses.

(c) The Board shall notify the provider of the finding of ineligibility, the extent, and duration of ineligibility, and allow the provider 45 calendar days to challenge it. A finding of ineligibility is final if no challenge is timely received.

(d) The provider may challenge the finding of ineligibility by requesting an informal hearing before a hearing officer. The hearing officer will schedule the informal hearing, which may be on the written record, with at least ten calendar days' notice to the provider, taking into consideration the availability of the provider, any witnesses, and the hearing officer. After the hearing concludes and the administrative record is closed, the hearing officer shall prepare a proposed decision for the Board's consideration. The Board's determination of the provider's eligibility is final upon its vote.

(e) A provider who disagrees with the Board's final determination of ineligibility may challenge the Board's final decision by filing a writ of mandate.

Note: Authority cited: Sections 13920 and 13974, Government Code. Reference: Sections 13954 and 13957.2(a), Government Code.

§ 649.28. Oversight of Medical, Medical-Related, and Mental Health Counseling Providers.

(a) A provider of ~~outpatient~~ medical, medical-related, or mental health counseling-related services who receives payment from, or whose services were reimbursed by, the ~~Victim Compensation Program Board may be subject to~~ shall be subject to a clinical or fiscal audit, or both, to ensure that treatment and reimbursement were authorized by law.

(b) A provider shall make all necessary clinical and fiscal records available to the ~~Board staff~~ for review upon request for up to three years after the date that reimbursement was paid.

(c) A corrective action plan may be imposed by the Board if any of the following circumstances apply:

(1) A provider fails to comply with a clinical or fiscal audit.

(2) A provider fails to submit requested documentation to verify the victim's or derivative victim's losses or injury.

(3) A provider fails to submit requested documentation to verify the services provided.

(4) A provider provides, or causes another to provide, false information to the Board.

(5) A provider misrepresents a victim's or derivative victim's disability, injury, or other need for treatment or services.

(6) A provider fails to comply with statutes and regulations established by their licensing, oversight, or governing bodies.

(7) A provider fails to comply with any statutes or regulations governing claims before the Board.

(d) The corrective action plan shall identify the provider's noncompliance, the methods by which the provider must correct the noncompliance, and the deadline for correction.

(e) The Board shall notify the provider of the corrective action plan and allow the provider 45 calendar days to challenge it. A corrective action plan is automatically imposed if no challenge is timely received.

(1) The provider may challenge imposition of the corrective action plan by requesting an informal hearing before a hearing officer. The hearing officer will schedule the informal hearing, which may be on the written record, with at least ten calendar days' notice to the provider, taking into consideration the availability of the provider, any witnesses, and the hearing officer. After the hearing concludes and the administrative record is closed, the hearing officer shall prepare a proposed decision for the Board's consideration. The Board's determination on imposition of a corrective action plan is not subject to further review.

(2) The imposition of a corrective action plan does not constitute a final decision by the Board for purposes of review by writ of mandate.

(f) A provider who fails to comply with a corrective action plan may be found ineligible for reimbursement pursuant to Section 649.24.

Note: Authority cited: Section 13920(e), Government Code. Reference: Sections 13954, 13957(a)(2) and 13957.2(a), Government Code.

§ 649.50 Involvement in a Vehicle-Related Qualifying Crime.

(a) A victim or derivative victim who was the driver of a vehicle, aircraft, or water vehicle may be found to have been involved in the events leading to the qualifying crime if ~~one of the following was present~~:

- (1) the victim or derivative victim was driving the vehicle with a blood alcohol content exceeding the legal limit;
- (2) the victim or derivative victim was driving while under the influence of alcohol and/or drugs;
- (3) the victim or derivative victim was cited or arrested by law enforcement based on events leading to the qualifying crime; or
- (4) the victim's or derivative victim's conduct was the primary cause of the vehicle collision.

(b) A victim or derivative victim who is a passenger in a vehicle driven by a person under the influence of alcohol or drugs may be found to have been involved in the events leading to the vehicle-related qualifying crime if ~~one of the following was present~~:

- (1) the victim or derivative victim knew or reasonably should have known that the driver was under the influence of alcohol or drugs; or
- (2) the victim or derivative victim was under the influence of alcohol or drugs and if sober should have reasonably known that the driver was under the influence of alcohol or drugs.

(c) Subsection (b) shall not apply to passengers in a vehicle if:

- (1) the victim is under ~~14~~18 years of age; or
- ~~(2) the victim is under 18 years of age and the driver of the vehicle was a parent, guardian of the victim, or an adult who had responsibility for the victim; or.~~

~~(3) (2) the victim died, and the applicant is requesting funeral/burial expenses incurred on behalf of the victim. If this subdivision applies, the application may be partially allowed for funeral and burial expenses only.~~

(d) A victim or derivative victim may be found to have been involved in the events leading to the qualifying crime of a hit and run (California Vehicle Code section 20001) if ~~both of the following are present:~~

(1) the victim or derivative victim acted in a blatant, wrongful or provoking manner; ~~and or~~

(2) the victim's or derivative victim's conduct contributed to the events leading to the qualifying crime or was the primary cause of the vehicle collision.

(e) Significant weight may be given to the evidence from and conclusions of a law enforcement agency after investigation of the qualifying crime when evaluating the factors listed in subsections (a), ~~and (b),~~ and (d).

NOTE: Authority cited: Sections 13920 ~~and 13974~~, Government Code. Reference: Sections 13955 and 13956, Government Code.