

Crime Victim Compensation

QUARTERLY

Issue #1

2012

I N S I D E

- **VOCA Grants May Be Affected by DOJ Management Costs May Cut Into Grants**
- **Gene McCleskey is New NACVCB President**
- **VAWA Reauthorization Considered by Congress**
- **Programs Wrestle with Medical Issues**
- **National and Regional Conference Schedule**

THE NATIONAL ASSOCIATION
OF CRIME VICTIM
COMPENSATION BOARDS

H. GENE McCLESKEY
President

CLETUS NNANABU
First Vice President

GEORGE GUTIERREZ
Second Vice President

ETHEL DOUGLAS FORD
Treasurer

LAURA BANKS REED
Secretary

DAN EDDY
Executive Director

Programs Face Funding Challenges: Tight Budgets and Uncertainties

While most state victim compensation programs have enough funding to pay current claims without delays or reductions, a few are facing budget difficulties serious enough to affect their ability to help victims, a recent Association survey shows. The survey also shows that some programs have had to reduce payments to providers and limit some benefits for victims to ensure that the programs stay within the funding available to them.

If more funding were available, many programs said that they would expand or add benefits. A number of states would like to raise funeral caps, lift limits on counseling, or increase economic support in the form of lost wages and support. A few would raise their

overall maximum, or their catastrophic-loss limit. Some programs would add new benefits, such as crime-scene cleanup (currently covered in about half the states), emergency shelter and temporary housing (compensated now in only a few states), forensic-exams (a current benefit in 30 compensation programs), or bereavement work loss for family of murder victims. Some programs that have significantly reduced benefits to providers would use funds to increase those payments. Other programs would extend the filing limit, or ease reporting requirements for sexual as-

sault victims. And one program manager said that “more funding would simply help us keep up in the coming years.”

A large majority of program managers favor an increase in the federal VOCA grant percentage, which is set at 60% of state payouts. (If a state spends \$10 million of its own money, it gets a federal grant of \$6 million to spend as well.) And support was nearly unanimous for an increased administrative-cost allowance from VOCA

Victim Compensation Program Funding

grants. States are currently allowed to use 5% of their VOCA grants for operational improvements, and many compensation managers said they need more from this allotment to pay for software and hardware improvements to increase processing efficiency and ac-

countability. Hiring new staff to process claims more quickly also was a need identified by many managers.

State-government budgets generally have been in decline in most states, which concerns compensation program managers that need to protect their funds for the purposes they’ve been created. On the other hand, national health care reform, if implemented as currently planned, may provide some relief, if more victims have insurance to cover the costs of recovery. All in all, it’s a time of great uncertainty and concern for compensation program budgets.

I hope that this newsletter finds everyone has successfully begun the New Year with the challenges and the opportunities that face us each. Sadly, two of our colleagues have left the Association, but to take on new challenges in new positions. Shawanda Reynolds-Cobb has resigned as president, but her legacy will continue with those of us who knew her and valued her friendship and professional advice. Alice Robinson-Bond has also resigned from the board in order to run for public office in Indiana. We wish them both well. I also want to note Paul Coughlin's recent retirement, after decades of service in North Dakota and in this Association.

As a result of Shawanda's and Alice's departure, our Association leadership has changed. As authorized by our Constitution, and approved by the executive committee, I have assumed the role as President, Cletus Nnanabu becomes the 1st Vice President, George Gutierrez moves to 2nd Vice President, and Ethel Douglas Ford is now the Treasurer. The executive committee also has named Laura Banks Reed to fill the vacancy at secretary, and Tina Stanford to replace Alice on our Board of Directors. The membership will elect officers and board members at our next national conference this fall.

To continue the theme that Shawanda had as a goal, we will continue to ask for member participation in Association activities and decision making. We're planning two Regional conferences this Spring, as well as our national conference in the fall, and we'll be asking all of you for input on topics to address.

We also will ask you for recommendations on issues that arise at the federal level. And we will continue to depend on your responses to the questions and surveys we use to provide information and technical assistance to our members. Much of the information from these surveys and questions is on the Association Website in

the "members only" section, and we hope these resources may be of use as states enter their legislative periods. The site also has a blog that our Executive Director Dan Eddy uses to update us on his activities, as well as on information and ideas that come his way during his work.

While every state has different laws, funding issues, staff complexities, or other challenges in managing a victim services program, you all work hard every day to provide assistance. I do not think you hear it as much as you should, but . . . Thanks for what you do every day as you make a difference for victims and their families.

President's Message from Gene McCleskey

Association Officers

President: Gene McCleskey (Texas)
1st Vice President: Cletus Nnanabu (Washington)
2nd Vice President: George Gutierrez (Idaho)
Treasurer: Ethel Ford (South Carolina)
Secretary: Laura Banks Reed (District of Columbia)

Board of Directors

Virginia Woodward (KY) Julie Nauman (CA) Janet Kennedy (MS) Cheryle Hall (WV)
Angela Buckhanan (FL) Kristy Ring (NM) Janice Carmichael (NC) Tina Stanford (NY)
Bryan Nix (NV) Gary Scheller (UT) Rebecca Shaw (OR) Janelle Melohn (IA) Deb Rice (ME)

Federal Management Costs May Cut Into VOCA Grants

Uncertainty Exists About Effect of New Requirement

While Congress has approved for the third straight year a VOCA funding cap of \$705 million, it also is requiring that federal management and administrative costs in the Office of Justice Programs (OJP) relating to all its grant programs, including, VOCA, come out of the amounts allocated for those programs. No details have emerged yet on the extent of such costs, if any, that might come out of the \$705 million VOCA cap, and which might lower the amount available for state VOCA grants.

There is little precedent to understand the potential effect. For the last several years, management and administrative costs were a separate line item, outside the VOCA cap, so they didn't reduce the amounts available for state compensation and assistance grants. But in 2008, some OJP management and administrative costs were taken out of the cap, and assessed against some VOCA grant programs, but not others. Compensation grants were not affected, but VOCA assistance grants were reduced slightly.

At this point, we don't know what the total amount of administrative costs are, and we have no idea how they might be allocated against different grant programs. *Stay tuned . . .*



National Crime Victims Rights Week
April 22—28, 2012
Extending the Vision: Reaching Every Victim

Transitions . . .

Paul Coughlin retires after 20 years directing crime victim compensation and administering VOCA assistance grants for North Dakota (and 47 years total in government service). Paul served on our Board and was a loyal participant at our conferences. Great friend, great career, we wish him well in an active retirement! **Lori Steele** takes his place, having spent the last nine years managing an ND county prosecutor's victim-witness program. Welcome, Lori!

Matt Kanai is the acting chief of the Crime Victims Section of the Ohio Attorney General's Office. Matt replaces Alice **Robinson-Bond**, who has resigned to begin her campaign to become an elected county prosecutor (in the meantime, she will be working as an assistant prosecutor). Welcome, Matt, and good luck, Alice!

Marti Anderson has retired as director of the Iowa Crime Victim Assistance Division, and is embarked on a campaign to become a state legislator. **Janelle Melohn** is taking Marti's position, and **Anne Thomas** is replacing Janelle as administrator of the compensation program. Anne has been with the Division for 11 years, including six as a compensation specialist and five helping administer state and federal victim assistance funding.

Congratulations to **Shawanda Reynolds-Cobb** for her recent appointment as the Deputy Commissioner of Administrative Services of the Georgia Department of Juvenile Justice. **Robert Thornton** replaces her as Victim Services Division Director at the Georgia Criminal Justice Coordinating Council, and **Nicole Jenkins** remains as compensation manager.

VAWA Reauthorization Due

Bill includes ambiguous change to rape-exam payment rules

VAWA is due for another reauthorization by Congress this session, and some of the 30 compensation programs that pay for out-of-pocket expenses for forensic exams through special procedures – a key state VAWA eligibility condition – may want to pay attention to a proposed change described later in this article. The change could affect how insurance billing might be viewed when it comes to guaranteeing payment of all out-of-pocket expenses for a victim's rape exam.

VAWA, originally enacted in 1994, provides funds to strengthen the response of law enforcement to domestic violence and sexual assault, and to support victim assistance programs providing services to those victims. According to advocates, changes sought in the reauthorization are designed to streamline programs and increase accountability; support coordinated, community-based responses and direct services for victims; enhance criminal justice responses to the crime of sexual assault; strengthen housing protections for victims; provide services and prevention programs for young people, including college students; give law enforcement tools to hold offenders accountable in cases where the victim is from another country; and improve the response to violence against Indian women and other underserved communities.

A full discussion of all the issues relating to the VAWA reauthorization, and a toolkit for those interested in advocating on the bill, can be found at <http://4vawa.org>. Some advocates believe that VAWA will be authorized this year, but the question is whether any of the changes sought will be a part of that reauthorization.

The Compensation Connection

Currently, 30 state compensation programs have sole or primary responsibility in their states to pay for forensic exam charges for rape victims. They generally do so through direct billing procedures set up with hospitals and other exam providers, in a manner that is separate from the regular compensation claim process. And because VAWA requires states, as a condition for receiving VAWA grants, to cover out-of-pocket expenses for the exam without regard to whether the victim reports or cooperates,

nearly all of these compensation programs have eliminated those requirements for that expense. Typically, the victim has no involvement in this process, and no financial obligation for the charges.

So what change does the VAWA reauthorization proposal make to this process? Currently, VAWA tells states that there are three ways to comply with the rape-exam-payment condition:

- (a) Provide the exam free of charge (presumably through a state-funded clinic);
- (b) Make arrangements for the exam to be provided free of charge, which is the way most compensation programs do it now, through hospital billing arrangements; or
- (c) Allow the victim to seek reimbursement from the state within 1 year of the exam, and guarantee payment within 90 days.

The VAWA reauthorization bill simply deletes the third possibility, leaving the first two intact.

The effect of this change is uncertain. It would appear that in no case could a victim end up with a charge herself, for which she would have to seek reimbursement, such as a co-pay or deductible. While the change does not explicitly rule out a compensation program requiring that a victim's insurance be billed, it seems to prohibit a co-

pay or deductible from ever being an obligation of the victim. Conceivably, a system that uses a combination of state and private-insurance resources, with no co-pays or deductibles, would meet the new standard. For an interesting take on this from Senator Al Franken, who is the chief proponent of this VAWA change, go to http://franken.senate.gov/?p=press_release&id=1073

Most of the 30 compensation programs with special procedures do not require insurance to be used for exam payment, so this would not affect them. But some do expect insurance to be accessed, and they may want to consider the effect of this change. While VAWA does not directly govern compensation program operations, a failure by the state to comply with its conditions could jeopardize VAWA grant funding for the state, so it's likely the compensation program would be asked to make changes to ensure compliance.

Contact us if you have any questions; our executive director can discuss this with you.

**Legislation
We're
Following**

Association Responds to Info Requests

The Association asks its member programs for help on a wide variety of information and technical assistance requests. Sometimes we seek input from our officers and board of directors, which serve as an advisory board; other times, we run questions by all program managers. We've also begun using our NACVCB Blog, at www.nacvcb.org, to explore issues.

Below are some of the questions we've responded to in just the last few weeks. Let us know if you have a concern on which you'd like to get some thoughts from your colleagues — we'll do our best to get you some feedback.

Genetic Conditions Traced to Incest

A victim of incest asked a compensation program to pay for her child's medical complications that doctors said were genetically traceable to the rapist, who was the victim's father. The claim was first filed 3 years after the birth of the child. We asked our advisory board how they would handle this claim. About half said their programs simply could not pay, since they were precluded by law or rule from paying anything past delivery (and one state indicated it couldn't pay for abortion or delivery). The other half indicated they'd have to examine each situation case-by-case, and while none indicated that they had a definite policy to pay for post-partum problems, several said they'd be open to the possibility. But one person noted that if a program begins paying for post-delivery care, it would be difficult to draw a line on what would be covered. If a program's standard is that it pays for any genetic problem found in a baby delivered subsequent to a rape, it would have to acknowledge that modern medical science attributes many medical conditions to genes or genetic predispositions: cancer, Down syndrome, cystic fibrosis, low birth weight, Tay-Sachs disease, sickle-cell anemia, anxiety, depression, alcoholism, and many other diseases or syndromes. In other words, while it seems common sense that a baby

born of incest could have certain genetic issues, once you get into trying to determine what might be caused by a combination of the rapist's and the victim's genes, you're starting down a very complicated road. Not to mention HIV and other non-genetic diseases that can be transferred to the baby; why would the line be drawn at genetically caused conditions? All this coverage may be good -- certainly good for the infant and the victim-mother -- but it would seem a program would have to think hard about whether any real parameters could be set, and what the costs would be if such a precedent was set.

Medical Conditions: Covering Diabetes, High Blood Pressure?

A victim submits a claim for medical costs relating to treatment for diabetes, or high blood pressure, asserting that these conditions did not exist before the violent crime occurred ("I never had these problems before.") Would you pay? In general, how does a program approach medical care for problems that seem less directly related to a physical or

emotional injury?

Most programs responding said they make an effort to determine whether there is a real connection between the condition claimed and the criminal injury in each individual case. This is easier for some programs to do than others, since they have a medical professional to call on for an opinion, either on their board or their staff. The chairman of the New Mexico Crime Victim Compensation Commission, for example, is an emergency physician. Washington state said that since it's housed within the workers compensation agency, it can refer cases to an in-house medical director. And most programs have the authority to seek independent medical examinations in questionable situations. "We don't do this very often (in fact maybe one or two a year) because the cost is fairly expensive depending on the type of specialist required to examine the victim," a manager said.



More commonly, however, managers said they put the treating physician to the test, asking him or her to provide in writing a substantiation for the connection between the disease or condition and the criminal injury. “Outside of paying for an independent medical evaluation, a direct and to the point conversation with the service provider (not the nurse or the receptionist but the actual M.D., surgeon, therapist) is a good start,” one manager said. “That conversation begins with the kind and polite explanation that any expense we cover for the patient, we are obligated to show we first verified was a result of the criminal offender’s conduct. I then explain that the only method we have of meeting that obligation is by using what he or she, the licensed professional, is willing to put in writing. I then mention the possibility that they may be subpoenaed to testify at a restitution hearing and be challenged by the offender’s counsel. I then reiterate that I am completely dependent on their expert/professional opinion because, of course, I am not an expert and have no basis for making such a determination myself, ‘but I’m sure the offender’s attorney will find others who are.’ Whatever that conversation yields, I consider it to have met my due diligence. Often what the patient/victim feels is completely related will only be ‘partially’ or ‘possibly’ related, according to the licensed professional, who often will provide a reasonable estimate for the ‘percentage’ that the issue is related to the crime. We have monetary and time-limit maximums to limit our exposure beyond that.”

Other managers echoed this approach: “We draft a letter explaining briefly how our program works and that we need to have the link from the crime to the injury/condition in order to pay,” one said. “We are almost always successful in getting the doctor to give us a determination one way or the other.” “Our standard response to these requests is that a medical professional must explain the connection to the criminally injurious conduct and the resulting injury,” another manager said. And still another: “In most cases we will send a letter to the treating physician with specific questions regarding the victim’s condition and the necessary treatment.”

We also heard from managers who often simply did research on their own, relying on what information they could gather, as well as common sense, to decide what is related, and what is not. “We use the Internet a lot to document whether certain conditions can be caused by trauma or the stress of trauma,” one manager said.

When it came to the specific conditions of diabetes and high blood pressure, most managers did not have a

definitive answer, since it might depend on the specifics of the case. However, a good deal of skepticism was expressed by several people about paying for treatment for these particular conditions, particularly diabetes.

Household Eligibility

Unrelated individuals living in the same household as the victim of a homicide are eligible for counseling in a majority of state programs, according to a survey done recently. Some restrict eligibility to those who would be considered domestic partners under state law, while others would open eligibility further, to anyone residing in the household at the time of the crime.

However, a substantial number of compensation programs, by state law, cannot extend eligibility to anyone other than family members related by blood or marriage.

In many states, eligibility is extended to “individuals residing in the same household as the victim at the time of the crime.” This would mean that roommates as well as people living in a “domestic partnership” could be eligible for counseling. There are variations in a few states; Maine, for example, defines “family or household member” for purposes of eligibility as “the parent, step-parent, sibling, grandparent, spouse, child or stepchild of

a victim or a person who bears an equally significant relationship to the victim; or a person who had the time or discovery of the crime was living in the household of the victim or who previously had lived in the household of the victim for a period of not less than 2 years.”

Of the states that restrict eligibility to domestic partners but not roommates, some comp. laws

may define what this means, while others leave it to a definition in another state law. Washington state’s law says a “state-registered domestic partner” is eligible; it also defines “immediate family members” as “a claimant’s parents, spouse, children), siblings, grandparents, and those members of the same household who have assumed the same rights and duties commonly associated with a family unit.”

Some programs had discretion to determine whether to pay. Eligibility in D.C. can extend to someone “with close ties” to the victim. In Alaska, the law says compensation can be paid to “certain other persons who by virtue of their relationship to the victim incur actual and reasonable expense,” and the Board there has give wide latitude to this provision.

Compensation programs in between a third and a half of the states are limited by their statutes in extending eligibility only to family members related by blood or marriage.



NACVCB
Technical
Assistance

*National Association of
Crime Victim Compensation Boards*

Training Calendar

2012

National Training Conference
Atlanta, October 1-4

NACVVCB Regional Conferences
Southern-Eastern Regional
Nashville, May 7-9

Western Regional
Seattle, May 14-17

*Information on registration and hotels
will be sent to all member programs*