PROGRAM HANDBOOK

National Association of Crime Victim Compensation Boards

This project is supported by grant number 88-VF-GX-002 awarded by the Office for Victims of Crime, Office of Justice Programs, U.S. Department of Justice. The Assistant Attorney General, Office of Justice Programs, coordinates the activities of the following programs, offices, and bureaus: the Bureau of Justice Statistics, National Institute of Justice, Bureau of Justice Assistance, Office of Juvenile Justice and Delinquency Prevention, and the Office for Victims of Crime. Points of view or opinions expressed in this document are those of the author and do not necessarily reflect the official position or policies of the Department of Justice.

PREFACE

This *Program Handbook* is intended as a reference and guide for crime victim compensation program directors, board members and staff. It is a living document, which will be revised in the future as the issues discussed here are explored further.

The Association is deeply grateful to many individuals for the contributions they have made to this *Handbook.* Among those who have served on the Association's Technical Assistance Committee are the following: John Ford (CT), Dick Walker (SC), Marianne McManus (PA), Dan Davis (UT), Michael Fullwood (MI), Charles Woods (OK), Barbara Kendall (CO), Sylvia Bagdonas (WY), Robert Armstrong (VA), Lee Smith (CT), Fran Sepler (MN), Lorraine Felegy (NY), Arthur Zeidman (NC), Gerri Fitzgerald (OR), Lori Del Buono (AR), Robert Wertz (LA), and Richard Anderson (WI). Others who have been directly involved in writing or providing material to this document include Marian Smith (MI), Cheryl Bryant (MT), Joseph Gilyard, Jr. (OH), Anita Armstrong Morgan (AL), Ted Boughton (CA), Meg Bates (FL), Richard Ervin (WA), David Hollingsworth (LA), Jackie McCann (IA), Jacque Taylor (WY), Jan Emmerich (AZ), Jerry Flakus (OR), Henry Thompson (AZ), and Chauncey Whitright III (MT).

We gratefully acknowledge the support of the Office for Victims of Crime in the U.S. Department of Justice in making this document possible.

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Section I

APPLICATIONS

Well-designed applications seek all necessary information, without being so lengthy or complex as to discourage victims from applying

An effective application form is the first step toward prompt and fair resolution of a claim. A well-designed form is one that the victim can complete without difficulty, and that will provide the program with the information it needs to evaluate the claim according to statutory requirements. A good application also will provide the program with all data it needs for state and federal statistical reporting purposes.

Victim dissatisfaction with complicated and time-consuming forms is often heard. Lengthy, detailed applications are unnecessary and should be avoided to the extent practical. While all programs require that certain information must be provided by a victim, programs should be aware that victims are frustrated and confused when confronted with cumbersome paperwork and red tape. Simplicity and clarity in the application are key to the smooth beginning of the claims process.

The information provided by the victim on the initial application is the essential foundation for effective claims processing. With good initial information, efficient and comprehensive verification and investigation can be performed. If the initial application is poor, however, investigators will be hampered from the start, and will have to waste valuable time chasing down or requesting information.

Programs must necessarily take different approaches to designing their applications, according to their perceptions of the information they must obtain. Nevertheless, all programs must look closely at how their applications are designed, and should regularly assess whether they're doing the job they're intended to do.

One good way to design an effective application is to study the forms in other states. Several excellent examples are provided at the end of this chapter. The Association also maintains a library of application forms available upon request.

SIMPLIFYING APPLICATIONS

A program should design an application form that is easy to read and to complete, and that seeks only essential information necessary to meet the program's statutory requirements, claims procedures, and statistical reporting needs.

The form should use simple, straightforward language. The information presented and the questions asked must be organized in a format that is easy to read and understand. Thorough, step-by-step directions on how the form should be filled out must also be provided. In wording the form, programs must remember that the median level of reading comprehension is not much better than the elementary-school level, and that some victims will have even less language skill. For programs serving significant numbers of ethnic minorities, a foreign-language translation of the application is worth considering. The Texas application, for example, incorporates both an English and Spanish application together in one document.

Equally important is to ask only for information essential to the claim, and that will not be readily obtained from other sources during processing. While programs must request all information essential to the commencement of claims processing, emphasis should be placed on avoiding unduly burdening the applicant. For example, the victim ordinarily need not provide a lengthy description of the crime, since police reports normally contain the same (or better) information. The description should be enough for the program to clearly establish what type of crime was committed, without demanding a great amount of detail.

For some victims, the length of the form alone is enough to discourage them from applying. Many programs are now using 3- or 4-page forms to provide them with all the information they need. Form length may be partly a function of print or type size, of course, but programs should under-

stand that the longer the form, the more difficult the form will appear to complete.

A background description of the victim compensation program can either be included on the form or attached as a separate document. This description is extremely useful to the claimant in understanding what the program can pay for, as well as why the program needs certain information.

OBTAINING ESSENTIAL INFORMATION

The application form must provide the program with a significant amount of essential information. The victim must present basic facts: a name, an address, a social security number, for example. The victim also must establish a justifiable need for compensation: that a crime occurred and was reported, and that there are compensable losses that either exist currently or will exist some time in the future. The application is all the program has to go on at the beginning.

In most, if not all, states, the following information is needed to properly establish a file.

1. Victim and Claimant information. This will include the following for both the victim and, if a different individual, the victim:
   - name
   - address
   - telephone number
   - social security number
   - date of birth.

2. Crime information. This will include the following:
   - brief description of the crime
   - name of the law enforcement agency to which the crime was reported
   - date of the crime
   - location of the crime
   - name of the offender, if known.

3. Employment information. The claimant should provide information on current employment, including the following:
   - name of employer
   - address and phone number of employer
   - length of current employment
   - income from employment.

4. Collateral resources. Resources available to the claimant should be provided, such as:
   - private medical insurance
   - life insurance
   - automobile insurance
   - public medical assistance (for example, Medicaid)
   - public income assistance (Social Security, welfare)
   - restitution (if already ordered).

5. Expenses. These should include the expenses for which the applicant seeks reimbursement, both present and expected. These could include one or more of the following:
   - medical bills or a portion of medical bills
   - lost wages
   - loss of support
   - replacement or support services
   - counseling
   - rehabilitation
   - funeral expenses, in death claims.

6. Signature and waiver. The victim's signature is essential for several purposes. First, it authorizes the program to consider the application on the claimant's behalf. Second, it specifically affirms that the program is subrogated to any third-party resources obtained by the claimant. Finally, the claimant's signature is necessary for a waiver by the victim to enable the program to obtain medical, law enforcement, and employment records. Some programs require that the signature be sworn or notarized, but a number of programs have found this to be an obstacle to victims, and unnecessary for program purposes.

Programs may have other information needs, but should be extremely careful in seeking more information than absolutely necessary.

STATISTICAL REQUIREMENTS

Programs must satisfy state and federal reporting requirements. Applications should be designed so that the necessary information can be easily captured and recorded.

Obviously, state reporting requirements will differ, but generally speaking, such program activity as total payout, types and numbers of crimes compensated, and amounts paid in each category of

allowable expenses must be reported on an annual basis, usually according to the state's fiscal year. Many states will require capture of the same data sought by federal authorities.

Currently, the Office for Victims of Crime (OVC) in the U.S. Justice Department requires that an annual Victims of Crime Act (VOCA) Performance Report be submitted by December 31 of each year by each program accepting VOCA funds. Some of the information sought on the report pertains to total payout, numbers of claims, and administrative costs. But much of the report seeks information that can be captured on each application form. The current VOCA Performance Report requires that the following information pertaining to compensation claims and awards be kept:

1. Whether the crime claimed for falls into any of the following categories:
   - Assault (non-familial)
   - Homicide
   - Sexual assault (adult only)
   - Child sexual abuse
   - Child physical abuse
   - Domestic assault (spouse abuse)
   - Drunk driving or driving under the influence
   - Other violent crime
   - Other crimes.

2. Whether the claimant is a:
   - State resident
   - Non-state resident
   - Federal victim.

3. The age of the recipient, according to these categories:
   - 17 and under
   - 18 - 64
   - 65 and over.

4. Whether the claim was for emergency payment.

5. What types of expenses are eventually reimbursed in the following categories:
   - Medical and dental, except mental health and sexual assault
   - Mental health
   - Economic support
   - Funeral/burial
   - Sexual assault examinations
   - Other.

6. Source of referrals, specifically including the following:
   - Victim assistance programs
   - Police agencies
   - Prosecutors
   - Hospitals
   - Public service announcements
   - Posters, brochures, etc.
   - Other.

Since the Performance Report also requires that programs report how many claims were received in the fiscal year, programs also need to capture the date the claim was filed.

OVC also requires programs to keep statistics on the race of victims making claims. This information need not be reported to OVC, but it must be maintained by the state and be available upon request. Since some states experience difficulty in requesting the victim's race, some programs have found that stating clearly on the application that "this information is required by federal law, and will remain confidential" reduces complaints and encourages victims to provide this information.

DESIGN AND GRAPHICS

Many practical design considerations are reflected in the final application form, such as paper size and color, choice of typeface, and the use of graphics. An attractive-looking form need not be more expensive to produce than an unattractive one, and may help encourage victims to apply. Programs should consider using a professional form designer (or even a commercial art student) if a designer is not available through in-house staff resources.

Studying applications from other states should provide some indication of what "works" in application design. A program logo or graphic can be appealing; organizing specific types of information (crime description, employment, insurance) in lined-off blocks can be useful; prompting the applicant with "yes" and "no" blanks can help elicit information.

One program has designed its form so that its waiver is all that appears on the final page. This page can then be photocopied and used as needed, without concern over divulging other portions of the application to outside parties.

EVALUATION

Forms should be evaluated on a regular basis to ensure that they are still functional and effective reporting tools. Readability and ease of completion, as well as agreement with statutory and statistical requirements, should be the criteria for this review.

Since program staff may not have necessary "distance" from the form to evaluate it, a program should consider asking victim service professionals and others to lend a critical eye to the form. Victim advocates may have specific suggestions for improvement based on their experience with victims.

Of course, one indication that the form may not be doing its job is the receipt of a significant number of complaints from applicants or others. While a program may never be able to eliminate these complaints, since it will have to continue seeking a certain amount of information, it should fully consider specific criticisms if appropriate.

Section II

ELIGIBILITY

A victim's eligibility may depend not only on meeting statutory requirements, but also on program discretion and flexibility

To qualify for compensation benefits a crime victim must be deemed "eligible" for such benefits. Although eligibility criteria vary from state to state, several basic requirements are common to most, if not all, programs.

All programs, of course, require that a crime of violence must have occurred. Some statutes list all crimes for which compensation may be paid, while others simply refer in general to violent crime causing personal injury. Eligibility universally extends to "direct" victims--the persons against whom crimes are perpetrated (the victims who are raped, assaulted, abused, etc.). In addition, in homicide cases, family members are eligible for funeral expenses, and dependents can receive lost support. About half the states also provide other benefits, chiefly mental health counseling, to "co-victims" or "secondary" victims--individuals who have not been the direct recipients of criminal violence, but who have been severely affected by the crime because of family or other close relationship to the victim.

Other eligibility requirements common to all programs include meeting reporting and filing periods, cooperating with law enforcement, absence of conduct contributing to the victim's injury and of criminal conduct relating to the incident, and providing necessary information and documentation to the program through the application process. Various program approaches to these requirements will be discussed below, with the exception of contributory conduct, which is discussed at length in another portion of this manual.

COMPENSABLE CRIMES

Compensation programs are designed to provide financial assistance to victims of crime and their survivors. Therefore, the most basic requirement in any case is that a crime has occurred.

Nearly every state will cover any crime that results in death or physical or severe mental injury. State compensation statutes either declare that coverage extends generally to any crime resulting in physical or personal injury, or they list all specific crimes that can be covered.

A typical provision extending coverage generally to all crime resulting in injury reads as follows:

> "Criminal act" means an act committed or attempted which constitutes a crime as defined by the laws of this state or the United States and which results in physical injury or death to the victim.

Practically speaking, whether a general crime definition is used, or whether specific crimes are enumerated, both approaches result in coverage for the same crimes. These typically include the following crimes or attempted crimes, if injury results:

- Assault
- Rape and sexual assault
- Child sexual and physical abuse
- Robbery
- Homicide
- Manslaughter
- Domestic violence
- Drunk driving
- Arson (coverage limited to physical injury)
- Kidnapping.

A majority of the statutes specifically exclude compensability for any acts or conduct arising out of the use of a motor vehicle, unless injury or death was intentionally inflicted (using the motor vehicle as a weapon, for example), or unless the injury or death was caused by a driver in violation of state drunk-driving, hit-and-run, and/or reckless-driving statutes.

VICTIM/CLAIMANT

All states allow for compensation awards to the actual person who sustained injury or death as a result of a crime. Additionally, dependents of the "direct" victim are universally eligible for funeral benefits and lost support. Most programs also provide benefits for "intervenors" or "good samaritans" who have suffered physical injury or death as a result of a good-faith attempt to prevent the commission of a crime, or to apprehend the offender.

Variations in state eligibility occur with regard to which other individuals, such as family members and other "close" persons, are eligible to apply for some or all benefits, particularly those that in many states would extend only to the victim who sustained the "direct" injury. While funeral benefits are generally available to any family member or any other individual who assumes financial responsibility for paying the costs of burial, and lost support is available to the victims' dependents, states may or may not offer mental health counseling for family members and others affected by the crime.

About half the states will offer counseling to other individuals than the person who directly sustained physical or personal injury. Most states limit such "secondary victim" coverage to individuals who are in the same family as the person against whom the crime was committed, and may additionally require that the family member have witnessed the crime. Some also limit coverage to family members of homicide victims. Only a very few states provide coverage benefits to witnesses of crime who were not family members of the victim. Those states that do cover non-family members indicate that such claims are carefully scrutinized.

About half the states also pay for mental health counseling for individuals who are threatened with physical harm during a crime, but who do not sustain physical or sexual injury or contact. (All states will offer coverage to victims of rape and sexual assault, whether or not physical injury actually occurs.)

Some states provide for secondary victim coverage by including such individuals in their statutory definitions of victim or injury, or both. California for example, defines victim and injury as follows (Cal. Gov't Code section 13960):

> (a) "Victim" means . . .
>
> (1) A person who sustains injury or death as a direct result of a crime.
>
> . . .
>
> (3) Any member of the family of the victim specified by paragraph (1) or any person in close relationship to such a victim, if that member or person was present during the actual commission of the crime, or any member or person herein described whose treatment or presence during treatment of the victim is medically required for the successful treatment of the victim.
>
> (4) Any member of the family of a person who sustains injury or death as a direct result of a crime when that family member has incurred emotional injury as a result of a crime. Pecuniary loss to these victims shall be limited to only medical expenses or mental health counseling expenses or both, of which the maximum award shall not exceed ten thousand dollars ($10,000). [California's general maximum is $46,000.]
>
> (b) "Injury" means physical or emotional injury or both. However, this article does not apply to emotional injury unless such injury is incurred by a person who also sustains physical injury or threat of physical injury or by a member or person as defined in paragraph (3) or (4) of subdivision (a).

Both Michigan and New York declare that "a surviving spouse, parent, child, or sibling of a victim of a crime who died as a direct result of the crime" shall be eligible for awards. New York also stipulates specifically that coverage for out-of-pocket loss shall include the following (N.Y. Exec. Law section 626):

> . . . the cost of counseling for the eligible spouse, parents, guardians, brothers, sisters, or children of a homicide victim, victim of a sex offense [and] the eligible spouse of the victim of any such sex offense who resides with the victim and crime victims suffering from traumatic shock . . . Out-of-pocket loss shall also include the cost of counseling for a child victim and the parent, guardian, brother or sister of such victim, pursuant to regulations of the board.

Defining bodily injury to include emotional injury is done in some states. North Dakota, for

example, includes in its definitions the following (N.D. Cent. Code section 65-13-03): "Bodily injury means any harm which requires medical treatment and results in economic loss and includes pregnancy and nervous shock."

Other states that require "personal injury" define that term broadly to include emotional or mental trauma regardless of physical damage. Texas for example has this definition (Tex. Rev. Civ. Stat. Ann. article 8309-1, section 3(11): "Personal injury means physical or mental harm to the victim or intervenor."

REPORTING TO LAW ENFORCEMENT

All states require that a law enforcement report be filed, generally within a required time frame--usually within a few days following the incident. Seventy-two hours has traditionally been the time limit within most states. California is one state that does not define an actual time period within which reporting must occur, but relies only on its "cooperation with law enforcement" provision to ensure that reporting takes place.

The rationale for requiring reporting within certain time periods is to assist police in capturing offenders or otherwise dealing with crime as soon as possible after an offense is committed. Police with "fresh" information stand a better chance to apprehend criminals and prevent further victimizations. Thus, compensation is offered to those who aid the criminal justice system, rather than those who frustrate it.

However, most states may extend the reporting period for "good", "just" or "reasonable" cause. States that authorize exceptions may do so by determining the earliest point at which the victim could have "reasonably" reported the crime, thereby establishing a revised time frame for consideration. Or, they may recognize that certain crimes are not always reported immediately following the crime, such as rape or other sexual offense, child abuse, and domestic violence. Massachusetts, for example, has a specific exception for victims of rape to its 48-hour reporting requirement. Iowa provides for the following exception to its reporting requirement (Iowa Code section 912.3):

> . . . a victim under the age of eighteen who has been sexually abused or subjected to any other unlawful conduct . . . or who has been the subject of a forcible felony is not required to report the crime to the local police department or county sheriff department to be eligible for compensation if the crime was allegedly committed upon the child by a person responsible for the care of a child . . . and was reported to an employee of the department of human services.

Family-violence and sex-offense victims in New York are required to report the crime to the police within a reasonable amount of time considering all circumstances, including the victim's physical, emotional and mental condition and family situation.

COOPERATION

All states require victims to cooperate with law enforcement as a condition of eligibility. This cooperation usually extends to timely reporting, providing information upon request to police and prosecutors investigating the crime, cooperating with police procedures such as appearing at lineups of suspects, and appearing in court to testify against the offender.

These provisions encourage victims to assist police and prosecutors in enforcing laws to protect public safety. Victims who frustrate law enforcement efforts should not be rewarded with public funds.

A few states can make exception to cooperation requirements in special circumstances, such as when the victim fears for his or her life or safety, and the victim cannot be adequately protected. One provision specifically recognizing this problem excuses a victim who fails to cooperate when "such claimant can demonstrate . . . that he possesses or possessed a reasonable excuse for failing to cooperate."

It should be noted that under VOCA, only a state that "promotes victim cooperation with the reasonable requests of law enforcement authorities" shall be eligible for federal matching funds. Guidelines from the Office for Victims of Crime allow each state to determine what such cooperation entails, but do specify that at a minimum, a report to law enforcement must be required.

It also should be noted that some states have found cooperation requirements to be a successful selling point when training law enforcement authorities about the benefits of providing information

about compensation programs to victims with whom they work.

FILING DEADLINES

All states require that claimants file an application for compensation benefits within a specified time period. These periods generally range from six months to two years from the date of the crime or, in some states, date of discovery of the crime or death of the victim. A number of states have lengthened filing periods in recent years.

The major reason for prompt filing of applications is to avoid the problems that may result when programs are faced with investigating a "stale" claim. Investigating the circumstances surrounding the crime is made more difficult as time lengthens from the date of the incident; for example, witnesses forget key facts, or disappear; and medical records may be more difficult to obtain and assess.

Nevertheless, the majority of the states provide for an exception to the time limit in certain instances. Most states that authorize an extension do so on the basis of "good," "reasonable" or "just" cause. In making such a determination, the program considers all circumstances surrounding the victimization including the nature of the crime and the mental, physical and emotional state of the victim. Nearly ever state will allow flexibility when the victim is a child, since children may not be reasonably expected to report within time frames expected of adults. Children may be under the threat or control of an offender, or may not even realize that criminal behavior is illegal.

Michigan, for example, adopted the following provision in 1988 (Mich. Comp. Laws section 18.355(2)):

> A claim shall be filed by the claimant not later than one year after the occurrence of the crime upon which the claim is based, except that if the police records show that a victim of criminal sexual conduct in the first, second, or third degree was less than 18 years of age at the time of the occurrence and that the victim reported the crime before attaining 19 years of age, a claim based on that crime may be filed not later than one year after the crime was reported.

CONTRIBUTORY MISCONDUCT

All states evaluate whether the victim's conduct caused or contributed to the injury the victim suffered. Contributory misconduct may involve actual criminal activity, or it may be some other action or negligence that resulted in the injury. For example, those perpetrating armed robbery are not eligible for victim compensation when they are shot by those preventing the crime. A victim who fails to retreat from a fighting challenge also may be deemed as contributing to his own injury.

All programs can deny a claim based on contributory misconduct; a number of states also have the power to reduce a claim depending on the degree of the victim's misconduct.

Very few statutes define what constitutes contributory conduct to any great extent. Programs are left to develop their own policies, and to apply them in many complex circumstances on a case-by-case basis, striving for as much consistency as possible.

Evaluating contributory misconduct is one of the most difficult and important issues facing compensation programs. A full discussion of this matter is found in a separate section of this handbook.

MEANS TEST

Approximately eight jurisdictions require a financial means test for compensation awards. The means test most often used is "serious financial hardship." New York changed its requirement of "serious financial hardship" to "financial difficulty" in 1986 on the basis that "financial difficulty" was easier to demonstrate.

Historically, the justification for means-testing has been based on program concern about having sufficient funds for victims that suffer the greatest financial distress. Programs should be aware, however, that seeking financial information that is either sensitive or difficult to obtain (e.g., certified tax returns) serves to discourage many victims from applying or following through on a claim. The result of a means test may be to discourage applications from precisely those victims whom the provisions were meant to assist.

VOCA REQUIREMENTS

The Victims of Crime Act (VOCA) provides that programs are eligible to receive federal matching funds if "such program is operated by a State and offers compensation to victims and survivors of criminal violence, including drunk driving and domestic violence . . ." Beyond the two specific crimes named (domestic violence and drunk driving), states are generally free to determine what crimes constitute compensable violent crimes. Domestic violence and drunk driving were singled out in VOCA amendments adopted in 1988, in recognition of the fact that many programs excluded victims of such crimes, either by law or in practice, from eligibility.

VOCA also requires that the program must provide "compensation to victims of Federal crimes occurring within the states on the same basis that such program provides compensation to victims of State crimes . . ." Practically speaking, this means that crimes committed on property under federal jurisdiction, such as Indian reservations and military bases, as well as any violent crime resulting in injury that may be included in the federal criminal code, must be covered.

VOCA also stipulates that each program must cover crimes committed against its state residents in states that do not have victim compensation programs eligible for VOCA funding. (As of this time, only crimes committed in Maine, South Dakota and Maine would be uncovered for non-residents of those states. Maine has no compensation program; South Dakota's program will begin covering its residents and nonresidents beginning July 1, 1992; and Nevada covers only Nevada residents, and is thus ineligible for VOCA funding.)

CONCLUSION

Eligibility is based on a wide range of factors. In essence, a compensable type of crime must have been perpetrated against a person who is innocent of illegal activity or contributory conduct; the crime must be reported promptly to law enforcement, and the victim must cooperate in the crime's investigation; and a claim must be filed with the compensation program within a certain time period.

Verification of these eligibility requirements is the basic task of each compensation program. It goes without saying that each staff member involved in evaluation and decision making must be fully familiar with all of the program's eligibility criteria.

Programs must evaluate each claim according to the same requirements; yet discretion may be necessary in individual cases. The latitude provided each program will vary according to its statute.

Section III

COMPENSABLE LOSSES

Some programs are considering a wide range of losses beyond the big four: medical, counseling, lost wages, and funerals

Compensation programs are authorized to pay for a number of different expenses that victims incur in the aftermath of violent crime. While programs spend the bulk of their award money on several major categories of expense, there are numerous other costs that programs can consider paying. Programs have, over the years, steadily expanded the types of coverage available, as new victim needs are identified, and new resources are made available.

There are three primary types of expenses for which the bulk of compensation awards are made. They are the following:

- Medical, including mental health counseling;
- Lost wages and lost support; and
- Funeral and burial costs.

Some other types of compensable expenses may be categorized as medically related, such as transportation to medical treatment, or modification of homes or vehicles to allow victims who are paralyzed or who have lost bodily functions to obtain access to their homes or retain mobility. Others may not be as easily placed in the above three major groupings, however. These include crime-scene cleanup; relocation of domestic violence victims; job rehabilitation; attorney fees; replacement value of evidence; pain and suffering, or permanent loss of bodily function; and certain types of property loss.

It should be pointed that the Victims of Crime Act (VOCA) will not allow use of federal funds to match payments for "property damage." This is the only exclusion set forth in the VOCA statute (42 U.S.C. 10602 (a)(1):

> Except as provided in paragraph (2), the [Office for Victims of Crime] Director shall make an annual grant from the fund to an eligible crime victim compensation program of 40 percent of the amounts awarded during the preceding fiscal year, other than amounts awarded for property damage.

The act further stipulates that "'property damage' does not include damage to prosthetic devices, eyeglasses or other corrective lenses, or dental devices; . . ." and that "the term 'medical expenses' includes, to the extent provided under the eligible crime victim compensation program, expenses for eyeglasses and other corrective lenses, for dental services and devices and prosthetic devices, and for services rendered in accordance with a method of healing recognized by the law of the state; . . ." (The Office for Victims of Crime, however, in its guidelines to implement VOCA, may or may not set further restrictions on what types of allowable expenses will not be matched by federal funds.) Neither VOCA nor the OVC guidelines preclude states from spending their own funds for property damage or loss, so long as the awards are not included in state certified-payout figures for purposes of receiving VOCA matching grants.

It also should be pointed out that many states limit expenditures in some areas, such as funeral expenses or mental health counseling. While some of these limitations will be discussed in the following material, a more thorough discussion is found in this handbook's section on "Controlling Costs."

MEDICAL EXPENSES

In most states allowable medical expenses are those for which the victim is not compensated by another source, and that are directly attributable and reasonably incurred as a result of the criminally injurious conduct. Nationwide, medical expenses are by far the leading expenditure category for state compensation programs.

While a comprehensive list of compensable medical costs is impossible, the following represents a sampling of medical expenses and services com-

monly covered by compensation programs:

- Physician and surgeon fees
- Mental health therapy or counseling
- In-patient procedural charges
- Rehabilitative services
- Accommodation and ambulance services
- Dental repair
- Home health services
- Chiropractic treatments
- Prescription drugs
- Medically necessary equipment
- Prosthetic devices
- Sexual assault evidentiary exams
- AIDS testing
- Termination of pregnancy caused by rape
- Colposcope examinations
- Adaptation of residences and vehicles as medically necessary.

Transportation To Obtain Medical Care

While all victims have a right to obtain compensation for medical care, some victims may not have ready access to that care, and must undertake considerable expense to obtain it. This is a particular need of victims who live in remote rural areas, such as Native Americans. Another example where transportation may be necessary is a multiple-victim crime in which local resources cannot respond to the extraordinary demands placed upon them, and victims must go elsewhere to find appropriate care.

Some states have adopted statutory language that specifically authorizes reimbursements for transportation. For example, New Jersey's statute reads as follows (N.J.A.C. 13:75-1.24):

> (a) Maximum reimbursement for transportation expenses incurred as a direct result of the incident giving rise to the claim shall not exceed $10.00 a day. They shall include, but not be limited to-visits to treating physicians, health and care facilities: substitute travel costs other than ambulance or ambulatory mobile care services incurred due to a criminally-induced physical incapacity: and attendance at court proceedings for purposes of prosecuting the alleged offender...

Adaption of Residences or Vehicles

Some victims may be paralyzed or lose bodily functions, making it impossible for them to enter their own homes unaided or to drive cars. Some programs provide financial assistance for structural modification of the victim's residence and automobile for ease of use and accessibility. Most states will simply consider these costs on a case-by-case basis according to necessity, but some states that do allow conversion benefits have established very explicit guidelines. California's policy is illustrative:

> a) The conversion must be consistent with the injury sustained as a result of the crime; and
> b) the claim file must contain documentation that clearly establishes the conversion as medically necessary; and
> c) the expense claimed should be reasonable.

MENTAL HEALTH COUNSELING

Perhaps more than any other single medical expenditure, demand for mental health counseling benefits has risen dramatically over the past few years. Prior to the passage of VOCA in 1984, with its mandatory requirement that programs cover counseling in order to receive federal matching funds, a number of programs did not pay for mental health therapy. Now all of the state programs provide some measure of counseling benefits, subject to various statutory and administrative limitations.

In addition to providing counseling benefits for direct victims, approximately half of all compensation programs cover mental health counseling expenses for family members of homicide victims and other "secondary victims." Connecticut, for example, provides six free sessions of counseling for family members of homicide victims through a contract mental health service program, and does not require that an application for compensation be filed prior to receiving those benefits.

Many programs require special documentation to confirm that counseling is for injuries relating to crime, rather than some other cause, and that the therapy is directed specifically toward alleviating crime-created conditions, such as post-traumatic stress disorder. Treatment plans, progress reports,

session summaries and notes, and other verification often must be provided by the therapists. As one example, Utah sets forth the following explicit requirements (Utah Admin. Rules R275-1-4):

> . . . mental health counseling awards are subject to limitations as follows:
> 1. The award shall be made on the basis of standardized treatment plan form completed by the provider and approved by the Reparation Officer.
> 2. Reparation Officers shall ask providers of services for periodic treatment plan updates as the need dictates . . .
> 3. Counseling cost will not be paid in advance but will be paid on an ongoing basis as victim is being billed.

Most programs stipulate as a condition of payment that treatment providers must be appropriately qualified, licensed or registered with state psychological and/or psychiatric boards, or are acting under the direct supervision of a licenced practitioner. For further discussion of these issues see the section in this handbook on "Mental Health Counseling."

LOST WAGES

Compensation for actual loss of past earnings, and anticipated loss of future earnings, varies from state to state, but there are basic similarities common to most compensation programs. In general, wage loss claims are awarded for loss of income from work the victim would have performed, and for which the victim would have received compensation if the victim had not been injured or disabled as a result of criminally injurious conduct. Most states have defined "injury" to include emotional or mental trauma, and allow lost wages for disabling mental conditions.

Programs typically require that employment verification forms must be completed by employers or authorized personnel staff prior to the payment of lost wages. In addition, loss of work claimed on application and employment verification forms are often cross-checked with medical notes, disability statements and letters from physicians or mental health treatment providers.

The majority of programs calculate wage loss by using the net rate of pay (as reflected in pay stubs or employment verification forms), multiplied by the time lost. In the event that a net pay rate is not provided, some programs simply deduct 33% as a standard tax reduction. Other states have adopted the following formula:

- If victim earns less than $25,000 annually, 15% deduction;
- If victim earns more than $25,000 annually, 20% deduction.

Many states place a maximum on what can be paid in lost wages, basing their limitations on unemployment compensation caps or workers compensation schedules. In addition, most states require that the victim first exhaust whatever sick leave, vacation, annual leave or holiday pay are available to the victim prior to obtaining lost wage benefits. Few programs consider sick leave to be compensable under program guidelines, the rational being that the use of sick leave generally does not result in an actual out-of-pocket expense to the victim.

Some programs will pay for wages lost not only because of the victim's disability, but also when the wage-earner misses work to attend court proceedings or to care for an injured child.

Self-Employment

Reliable confirmation of self-employment income is contingent upon adequate documentation. Federal and state quarterly tax returns are usually the verification of choice. However, the period of self-employment or the average income may be such that tax returns are not available. When tax returns are not available, some programs have established polices whereby income projections are generated based on work estimates, job logs, labor contracts and letters of verification from a victim's clients and customers. Wage loss estimates may then be calculated from these projections.

Replacement Services

Replacement cost for homemaker services are compensable under some program statutes. For example, Wisconsin will compensate for "an amount sufficient to ensure that the duties and responsibilities are continued until the victim is able to

resume the performances of the duties, or until the cost of services reaches the maximum allowable..."

Other types of replacement services could include child care for an injured victim unable to provide such care; or for a parent who must go to work following the death or disabling injury of a bread-wining parent.

Loss of Support

Loss of support awards are available as the result of criminally injurious conduct causing death, or in some states permanent disability, of a victim. Award determinations concerning loss of support generally are framed in accordance with a state's statutory definition of "dependent". Colorado's definition is typical and reads as follows (C.J.S. section 24-4.102 (5)):

> "Dependent" means relatives of the victim who, wholly or partially, were dependant upon the victim's income at the time of the death or would have been so dependent but for the victim's incapacity due to the injury from which the death resulted.

Loss of support payments are usually tied either to the victim's income at the time of death, or future earning potential. Payments are made in lump sums and/or periodic payments.

FUNERAL AND BURIAL COSTS

Compensation benefits awarded for funeral and burial expenses generally are limited to maximums set either in statute or by rule. Often, the statutes speak of "reasonable" expenses, which the programs are left to define. Maximums set in most states range from $1,500 to $2,500 for expenses actually incurred for funeral, burial or cremation. Several states have maximums of $1,000 or less, while a few states allow for $3,000 or more. In addition to actual funeral and burial costs, some programs will provide compensation to cover transportation costs and wage losses incurred by family members in attending the funeral and burial of a victim.

To determine "reasonable" funeral and burial costs, some programs have consulted with funeral directors within their jurisdictions, or taken surveys. Some programs also have defined what types of expenses are reasonable, such as transportation of the body from the place of the crime to the place where burial will take place; coffins; memorials; and funeral home services. While programs have disallowed costs for items beyond the ordinary, most programs generally take a flexible approach in respecting the family's discretion, so long as maximums are not exceeded.

OTHER COMPENSABLE EXPENSES

Crime-Scene Clean Up

It is understandable that victims could feel disgust, repulsion, and even terror at viewing the scene of the crime where violence has been perpetrated against them. Victims also may incur expenses in replacing broken windows or soiled bedding. Some compensation programs have sought to reduce the victim's expenses, as well as diminish their anguish, by providing compensation for the cost of securing and cleaning up the damage or residue left by the crime in the victim's residence. Wisconsin, for example, allows up to $1,000 for crime-scene clean up.

Relocation

Some states recognize that the primary personal safety and health need for many battered wives and abused children is to find a safe haven, away from their abusers. Since this need is directly attributable to the crime, some states have provided limited amounts to protect victims with temporary lodging or relocation. Most states do not specifically list this expense as compensable, but some programs have justified coverage as medically necessary. Expenses might be for transportation, moving vans, first month's rent and security deposits, and downpayments for utilities.

Rehabilitation

Victims who have lost a limb and other bodily functions often require vocational and other rehabilitative therapies to return to the work force as productive citizens. A large majority of programs currently will cover the cost of such rehabilitation.

As a practical matter, compensation program expenses in this area tend to be small, since other state programs are usually available to either provide free rehabilitative services or to cover its

cost. If the coverage by other types of state programs is insufficient to result in full rehabilitation, however, the compensation program may provide whatever further support is necessary.

Pain and Suffering/Permanency

A few programs provide limited amounts for "pain and suffering," or for permanent disfigurement or loss of bodily function. The assumption not only is that such victims' physical and mental distress should be worth some monetary compensation; it is also that the victim will undoubtedly face financial losses, as well as other problems, that may not be quantifiable at the time the claim is made.

Programs based on a court-system model, where the victim's claim is basically a civil suit filed against the state, are among those that cover pain and suffering. This is understandable, since civil suits to cover personal injury nearly always include demands for monetary damages for pain and suffering. Programs that offer payment for loss of bodily function or disfigurement often follow workers compensation schedules.

Attorney Fees

Many programs allow a limited portion of the award to go towards victims' legal fees incurred in seeking compensation from the programs, either as a separate allowable (and usually limited) expense, or as a specific percentage of what the program awards for other compensable costs. The justification for such awards is that some victims are unable to apply for benefits or to represent their own interests in complex cases without the help of an attorney.

While most programs regard themselves as "advocates" for the victim, willing to assist the victim in any way possible to perfect a claim, there is the possibility in some cases that an adversary relationship could develop over whether the victim meets certain eligibility requirements, such as innocence or absence of contributory misconduct. Victims may seek the assistance of attorneys to file applications and to appeal denials.

Even when fees are not authorized in a state's victim compensation statute and regulations, state civil procedure statutes or court rules may permit awards of attorney fees when cases are litigated on appeal, if it is determined that there was insufficient basis for denial of claim.

Expenses for Return of Abducted Children

The Minnesota program is authorized to provide compensation for reasonable expenses incurred in the return of abducted children, including the cost of transportation, meals and lodging. The statutory provision (Minn. Code section 609.06) reads as follows:

> . . . reasonable expenses actually incurred to return a child who was a victim of a crime under section 609.25 or 609.26 to the child's parents or lawful custodian. These expenses are limited to transportation costs, meals, and lodging from the time the child was located until the child was returned home.

Replacement Value of Evidence

Some programs will provide limited compensation, usually up to $200, for the replacement value of property held for evidentiary purposes.

Expenses Relating to Prosecution

In general, prosecutors are responsible for expenses related to witness participation in hearings and trials. However, in some instances, witness fees are very limited, and a few compensation programs will countenance paying some expenses relating to victim participation that are not covered by the prosecutor. These expenses could involve costs for getting to court, including travel from out of state; lost work time attending court hearings and trials; and child care necessitated by such attendance. Programs are cautioned, however, that they may not want to assume basic responsibility for witness costs that should be paid for by the most directly involved party--the prosecutor.

CONCLUSION

All of the above expenses represent legitimate financial needs of crime victims. Programs are limited by statute to certain compensable expenses, but many strive to meet needs of victims through broadly construing certain categories, like medical expenses. Programs should be careful to maintain consistency, however.

Section IV

COMMUNICATING EFFECTIVELY

Programs enhance victim satisfaction and increase operational efficiency by employing good communications strategies

Victim compensation programs exist to serve victims. How victims perceive the program's response to their needs is one measure of a program's success. And how effectively the program communicates with victims can play a major role in creating a favorable perception.

But there is another, equally important reason to pay special attention to the ways in which programs communicate with victims. To implement fully, fairly and expeditiously the statutes and rules under which they operate, programs must depend on the prompt cooperation of victims in providing required information. If the victim believes the program is trying to help, the victim may be more open and forthcoming. Again, effective communication can be the key to fostering a cooperative and productive relationship.

The theme of this article will be to demonstrate that in communicating effectively and empathetically with victims, the program is not only much more able to create favorable perceptions on the part of victims, but also to accomplish its primary goal of carrying out state law and its administrative responsibilities thereunder.

These two goals--promoting favorable perceptions, and fulfilling administrative responsibilities --need not be mutually exclusive. Programs need not hold victims "at arms' length" to accomplish their tasks in adjudicating claims. Instead, by opening up channels of communication, which in itself fosters victim satisfaction, the program can obtain more easily the information it needs to play its independent decision-making role.

How does a program communicate effectively? First, as with any public or private service, it's essential to have a thorough understanding and awareness of the unique needs of the population for which you exist. Recognition of the often shattering effects of crime and the trauma endured by many victims is crucial to effective communication. Failure to respond sensitively may result in unnecessary hindrances in the handling of claims and negative public perceptions of the program.

Second, the program must evaluate its communication strategy at each point of contact the victim has with the program: initial inquiries by phone, mail, or in-person; requests by program staff for information; responses to victims' calls concerning claim status; and final decision making. For example, when a victim calls in, do program staff really listen, or do they simply recite rules and regulations, unaware or unconcerned that the person on the other end of the line may well be in crisis, or may feel humiliated by the process of having to seek financial assistance for expenses brought on by a violent intrusion into his or her life?

Failure to provide a framework for responsive and sensitive exchanges between program staff and victims may lead first to individual dissatisfaction. If the situation doesn't improve, victim advocacy groups will begin to voice their discontent publicly, and urge state legislators and other officials to hold the program accountable. If the criticism becomes strong enough, pressure from outside may force changes from within; the program even may be removed and reestablished in another agency or department, as has happened in more than one state.

In this article we will explore advantages of instituting policies that can yield meaningful and effective communication between program personnel and crime victims. Some relate specifically to the claimants' initial perceptions of the program and how those impressions influence the ease with which reliable and comprehensive information is supplied and acquired throughout the investigative phase. Others are broader in scope and refer to overall public perception of the program's responsiveness toward victims. It is hoped that this information will demonstrate that effective communication strategies are well worth the extra time required to implement them.

ORAL VS. WRITTEN COMMUNICATION

There are relative advantages to both oral (telephone and in-person) and written communication with victims. Oral communication that demonstrates concern for the victim may create more victim responsiveness; it also may save time by directly asking the victim for an immediate response, and ensuring that the victim understands what is required. While letters and notices cannot establish this two-way dialogue that can aid in understanding, they also can be written with precision to accomplish the goal of clarity, and they offer a permanent record of what information was imparted or requested. This record may be important later when making and/or defending program decisions. Programs should carefully consider whether and how both means of contact can be used in an effective communication strategy.

Some programs have found claimants to be far more responsive following a personal telephone contact. Dialogue allows for transmission of necessary information as well as of attitudes and feelings. Conversations between program staff and claimants can create an atmosphere that defines the purpose of program inquiries, both oral and written, and at the same time acknowledges the victim's unique situation. For example, an initial conversation could begin with the program staff person saying the following:

> "From my experience in working with other victims, I know this can be a difficult and painful time. We are hopeful that our program can be of assistance. Before we can make a decision on your claim, however, we must compile specific information and we'll need your assistance in completing the application form and providing the necessary details."

Constructive verbal communication is in no way a panacea for information-gathering problems. It can be extremely difficult to "say what you mean and mean what you say"--to convey and to interpret intended meaning through words, whether oral or written. Differences in language, vocabulary and perceptions all contribute to these difficulties. Program staff must be sensitive to the possibility that their words and attitudes may convey something unintended and may be perceived quite differently by claimants.

The chance that claimants may misinterpret information provided over the telephone often reinforces apprehension about talking with victims. But letters and notices may be misinterpreted, too, unless care is taken to be clear and accurate in choice of language. There are, however, at least two advantages to written communications: (1) documentation of program inquiries, responses, and decisions, and (2) standardization of claims procedures.

First, the program can at any time produce a document to substantiate each and every contact with a claimant. This is particularly beneficial when a program decision is called into question, such as on appeal. Form letters that accurately set forth applicable rules and appropriate legal citations significantly diminish the possibility of communicating inaccurate information. Second, if each claim is processed with a series of identical forms, administrators can maintain consistency and can easily track claim processing and staff performance.

Some programs have found that by incorporating both forms of communication--standardized forms and letters, and a policy of routinely contacting claimants by telephone--they are able to satisfy their administrative requirements for documentation while offering more sensitive service. One approach could be to confirm in writing all important inquiries or responses upon which a claim decision may be based, such as a request for information that must be supplied by a certain time. Certainly a program will have to document much of its work, and spoken communication can never entirely take the place of written notices.

UNDERSTANDING VICTIMIZATION

Victims of violent crime often have been through a life-transforming event. They may recover, but they may never be the same. They may suffer severe physical injury and emotional trauma, as well as financial distress. Many victims of violent personal crime suffer from post-traumatic stress disorder (PTSD), anxiety, and depression, and can exhibit symptoms that disrupt daily functioning, such as impairment in concentration and memory. Professionals tell us that victims typically may move from an acute crisis stage, involving shock, disbelief, rage, and terror, through an often painful process of recovery and return to a more normal life.

The victim may be in contact with the compensation program at any point in this recovery continuum, and while program staff cannot know the precise emotional status of individual victims, they can be aware of and sensitive to what the victim may be experiencing. A staff person who knows that a victim may be suffering may be more understanding when that victim "vents" rage over his or her situation. The staff person who is aware that the victim may be having difficulty concentrating may take extra care in ensuring that the victim understands the need to respond to a request for information.

In our specialized realms of victim support we can benefit from the experiences and perspectives of those outside our particular area. Victim advocates, for example, can be a valuable resource for compensation programs. Most will welcome the opportunity to share their knowledge and expertise concerning the dynamics surrounding victimization. Some programs have found it beneficial to invite domestic violence and sexual assault advocates to their staff meetings for sensitivity training.

Sensitivity training can take many forms, including role-playing exercises in which compensation staff act out the part of a crime victim and actually go through the motions of filling out claim forms and answering questions. Trainers observe the exercises, offer feedback and facilitate subsequent discussions. This type of activity provides staff a rare opportunity to "sit on the other side of the desk" and can be very illuminating.

Compensation programs may reciprocate by offering to meet with the staffs of sexual assault and family violence centers in their area. Presentations may include a general overview of state compensation law and administrative guidelines to familiarize advocates with the specific restrictions under which award decisions are made. Ideally, participating advocates would then be better equipped to accurately inform their clients about the benefits and requirements of the compensation program. (Victim assistance programs receiving Victims of Crime Act (VOCA) funds are required to provide information and assistance on applying for compensation.)

Encounters such as described here will go a long way towards more effective service and communication with crime victims, and will definitely enhance the program's relationship and reputation with victim advocates and assistance providers.

INITIAL CONTACT WITH VICTIM

You never get a second chance to make a first impression. Often too little consideration is giving to what may very well set the tone for all future contacts between a claimant and a compensation program. A victim's first contact with the program may affect dramatically his or her overall impression and opinion of the program, regardless of the final disposition of the claim.

Compensation phone lines can be constantly busy. Callers may be upset, angry, or confused. Many of the same questions will be asked over and over again. Still, it is imperative that each victim calling in for information or assistance be treated courteously and with respect. Although the question may not be new, or even answerable by program staff, it may very well be the caller's greatest concern at the time. Program staff will do well to keep this in mind when answering what may often seem like routine or even peculiar calls. It is particularly important to avoid the "canned response" syndrome.

As previously noted, the victim may be in crisis or very confused at the time of a call. It is important to keep in mind that the caller's state of mind can affect the way in which he or she hears and responds to questions. Usually after talking for a short time, a sensitive listener will know if the person needs to be referred to another agency, or if a compensation staff person can assist them. In any event, the worst possible response is one that does not acknowledge the uniqueness of each situation.

Once it has been established that the victim is seeking compensation benefits, an application form should be offered and sent out to the victim. Specific eligibility requirements do not necessarily need to be discussed during the initial call unless the caller wishes to do so. However, it should be stated that there are requirements for eligibility, and that a determination cannot be made over the telephone. While some people will hear what they want to hear rather than what has actually been stated, it is incumbent upon program staff to attempt to be as clear as possible.

The application form and any accompanying instructions should be drafted in clear and simple language. It should also be noted that some victims may lack basic skills, such as reading and writing. Possibly as important as simplifying applications

and form letters is the need for programs to identify advocates and places where victims can be assisted in completing the necessary forms. If such assistance is available, the name and telephone number should be given to the victim. A program that has been doing some training with victim service providers--particularly those who have VOCA subgrants--should have a ready supply of advocates who can be of help.

CLAIM VERIFICATION

To ensure that investigation and verification of a claim is accomplished expeditiously, it is essential that effective communication is maintained. Program directors should carefully evaluate all form letters for clarity and sensitiveness. While a somewhat generic style may simplify the process of requesting information from an administrative standpoint, one-size-fits-all form letters do little to enhance communication and may serve to impede it. Special consideration should be given to the content and style of specific letters, such as those sent to family members of homicide victims, parents of child sexual assault victims and the elderly.

In addition to carefully worded letters and denial notices, effective communication strategies can and should be employed in the day-to-day nuts-and-bolts of claims analysis. The major task of a compensation staff person is to gather information from claimants, law enforcement, medical providers and insurance companies. Eligibility criteria require program staff to examine documents, pose questions and seek very specific information in order to render a decision. The existence or the absence of clear channels of communication with the victim can have an impact on the accuracy of the information received.

For example, most programs will not issue benefits until all available third-party sources have exhausted their coverage. Information necessary to make a determination is not always included with the application and may not be readily available. While some claimants may deliberately withhold this information, many more simply do not have a clear understanding of their insurance coverage, nor do they understand terms like "collateral resources", "third-party payers" or "civil recoveries".

And so, under a cloud of confusion, misunderstanding and absence of verification, claims either remain open for extended periods, or may be closed due to insufficient information. Victims are thus understandably perplexed and angered over what they perceive to be inaction on their claim.

Only by posing key questions in clearly understandable letters and by engaging in meaningful dialogue can program staff learn these and other relevant details. Such information may in fact save extremely scarce program dollars. Here again both the victim and the program mutually benefit from a policy and practice of clearly communicating. Often simply by talking with claimants, program staff learn of qualifying circumstances that may entitle victims to services from other state and federally funded programs, benefits that may cover not only the expenses for which they are seeking compensation, but other pressing needs as well.

Communication is a dynamic process, implying activity on the part of all persons involved. In providing a framework for responsive and sensitive exchanges between program staff and claimants, the program conveys a genuine sense of respect and consideration, and also increases the likelihood it will secure the information it is seeking.

DECISION NOTIFICATION

Sensitive and unambiguous communication is particularly important when advising claimants that benefits will be denied. South Carolina sends a special cover letter along with each notice of denial (see example). The letter opens with a brief and straightforward expression of sympathy for the victim and her or his family. When appropriate, letters encourage claimants to contact a victim advocate in their local solicitor's office for additional services. Program personnel report that use of the cover letter has reduced the number of calls from victims confused by the denial notice, and appears to have reduced the number of appeals, presumably because it provides claimants with a clearer explanation of why their claim has been denied.

A decision-notification letter also should state clearly the victim's options to accept or appeal the decision. If there is a time limit within which to appeal, it should be clearly stated, along with any other requirements that need to be fulfilled for an appeal to be heard. Pennsylvania, for example, has a three-part color-coded decision notice, that instructs the claimant to complete and return an enclosed blue letter if the award is accepted, or the

enclosed yellow notice if the claimant rejects the award and seeks an appeal.

TAKING THE EXTRA STEP

Just how far should a compensation program go in serving victims? Given high caseloads, limited staff and backlogs, is it reasonable or even prudent for administrators to expect program staffers to provide victims with more than information on compensation benefits, and a yes-or-no decision on a claim?

It's important to realize that referring victims to other sources of assistance not only helps victims, it also may have significant economic benefits to the program. If a program can refer a victim to an agency that can provide financial assistance, like Medicaid, or free services, like a VOCA assistance subgrantee, then the program not only has helped the victim, it's also found a cost savings for itself.

Victim compensation is but one component of the aggregate of services available for crime victims. Compensation is rarely the only--and sometimes not even the best--source of assistance for an individual victim. Other public programs, such as Social Security income and disability programs, may be in a better position to provide maximum financial assistance. But some victims seeking compensation may not be aware that other sources and services are available. While it is certainly true that the majority of compensation programs are not adequately qualified or staffed to offer counseling services, it is not unreasonable for programs to routinely offer appropriate and reliable referrals, and it may well be a logical extension of the objectives of victim compensation to help the victim while conserving scarce resources.

Most communities have numerous social service agencies. So many sources of help may be available, in fact, that pinpointing the appropriate agency and locating its telephone number can be distressing, especially to a person in need. In keeping with the goal of providing reliable public service, programs should consider implementing a referral policy whereby all staff members would be trained to make referrals when appropriate.

A referral policy would not necessarily require a great deal of extra staff time. Some states have found it useful to compile referral directories of various social service and victim assistance agencies throughout the state. Many state social service departments or human service information offices regularly compile human resources directories. State victim coalitions will generally be able to provide listings of all domestic violence and sexual assault centers in a particular state.

The directory could be compiled in a handy desk-top index and distributed to all staff members as part of a training session. Program administrators should see to it that each staff person develops a working knowledge of available community services and entitlement programs so that referrals are appropriate. If a referral policy is to be effective, it is vital that the information and telephone numbers provided remain current, so that accurate information is provided. Far worse than failing to provide referrals, is to give erroneous information, and simply pass the caller onto another agency.

CONCLUSION

Victim compensation programs serve at the pleasure of the public, and victim satisfaction must be an important program objective. It is also clear that programs must be administered in accordance with state and federal compensation laws. Satisfaction of both demands requires a keen awareness of the needs of crime victims, a thorough understanding of statutory limitations, and a consistent approach for integrating program policy toward sensitive and fair "customer relations" and decision making. Competent, compassionate and responsive communication with victims is at the very heart of the mission of crime victim compensation.

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RE: Claim # >

Dear >,

Please accept our deepest sympathy at the loss of your loved one. It is always sad to learn that crime has touched another family. We here at SOVA want to do whatever we can to help.

The laws that have been set up to govern the Victims' Compensation Fund in this state are very specific as to what can and cannot be paid. After comparing the circumstances of your case with the laws that govern the fund, we must deny your claim. We have attached a form which states the law upon which this denial is based.

Please note that there is an appeal procedure that you may follow if you disagree with our decision. The appeal procedure is described on the attached form.

In addition, you may wish to contact one of the victim assistance groups in our state. These groups are here because they truly want to help. Although there is nothing that can be done to erase the tragedy, many people find some comfort in talking with others who have lost a loved one through similar circumstances.

If you would like to know the groups in your area or if you have questions, please call us in Columbia at 737-9465 or toll free statewide at 1-800-521-6576.

Sincerely,

Richard C. Walker
Deputy Director

Enclosure

/hbt

Section V

CONFIDENTIALITY

Programs need to think seriously about their ability to protect the confidentiality of the information they receive and the records they generate

Most victims, advocates, and compensation programs agree that it is important not to expose victims who apply for benefits to unwanted publicity. Victims may be less willing to apply for compensation or cooperate with program personnel if they believe that their names and the details regarding their victimization and treatment will be exposed to public scrutiny. Indeed, a victim who has sought to avoid a particular at-large assailant--not an unusual situation in some domestic violence cases--may be exposing herself to great risk by providing her address to the compensation program, if it cannot guarantee that her assailant will not have access to it.

Yet despite this recognized need for confidentiality, some programs have little authority to withhold information from any member of the public who seeks to obtain it. Indeed, many programs have a responsibility to maintain open records under general "sunshine" or open public records acts governing all state agencies.

As one example, in one state where a new compensation program began operating, a newspaper sought to publish as a matter of public interest the names of claimants, the crimes involved, and the amounts awarded. The state found it had no specific authority to withhold the information. A number of programs also have received requests from defense attorneys seeking to gain information that could be helpful in prosecutions against offenders.

Lack of confidentiality, or confusion concerning such protection, can create problems not only in unwanted publicity for victims, but also in a reluctance of service providers, particularly mental health therapists, to offer necessary information. These counselors believe that highly sensitive and private information revealed in treatment should not be examined by anyone who has no specific need for the information. To ensure that victims feel free to apply without concern about unwanted publicity, and to reassure providers that sensitive information will not be released, programs need to think seriously about their ability to protect the confidentiality of the information they receive and the records they generate. This article will provide a number of specific statutory provisions that provide various orders of protection. Some appear to provide total confidentiality. Others protect only sensitive victims or apply in cases in which an assailant is still at large. Still others provide protection only for privileged information protected by other laws or regulations, e.g., doctor-patient and attorney-client communications. The last type may be the most common form of confidentiality protection, and it may not provide confidentiality for victim counselor records that are not protected generally by the state.

Whether the federal Victims of Crime Act of 1984 (VOCA) provides confidentiality protection for compensation programs is unclear. A somewhat vague confidentiality provision does appear in the law, supported, again rather vaguely, by a footnote in the legislative history backing the bill; further, guidelines issued by the Office for Victims of Crime assert that the provision is intended to assure confidentiality of communications between victims and counselors. In addition, several state trial court judges have recognized the provision as protecting against counselors being forced to testify in criminal cases, but the judges divided on whether the VOCA provision overrode applicable state law.

The issue has not been litigated in the context of compensation program records, however, and it would probably be a mistake for a program to rely wholly upon VOCA for protection.

The applicable provision of VOCA (42 U.S.C. 10604(d)) reads as follows:

> Except as otherwise provided by Federal law, no officer or employee of the Federal Government, and no recipient of sums under this chapter [compensation or assistance grants], shall use or reveal any research or statistical information

identifiable to any specific private person for any purpose other than the purpose for which such information was obtained in accordance with this chapter. Such information, and any copy of such information, shall be immune from legal process and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial, legislative, or administrative proceeding.

OVC guidelines interpret that subsection in the following way:

> This provision is intended, among other things, to assure the confidentiality of information provided by crime victims to crisis intervention counselors working for victim services programs receiving funds provided under the Act. Whatever the scope of application given this provision, it is clear that there is nothing in the Act or its legislative history to indicate that Congress intended to override or repeal, in effect, a State's existing law governing the disclosure of information which is supportive of the Act's fundamental goal of helping crime victims. For example, this provision would not act to override or repeal, in effect, a State's existing law pertaining to mandatory reporting of suspected child abuse. See Pennhurst State School and Hospital v. Halderman, et al., 451 U.S. 1 (1981.)

STATE CONFIDENTIALITY LAWS

Washington and North Dakota both have strong confidentiality provisions. Washington's reads as follows (Wash. Rev. Code section 7.68.-140):

> Confidentiality. Information contained in the claim files and records of victims, under the provisions of this chapter, shall be deemed confidential and shall not be open to public inspection: Provided, That, except as limited by state or federal statutes or regulations, such information may be provided to public employees in the performance of their official duties: Provided further, That except as otherwise limited by state or federal statutes or regulations a representative of a claimant, be it an individual or an organization, may review a claim file or receive specific information therefrom upon the presentation of the signed authorization of the claimant: Provided further, That physicians treating or examining victims claiming benefits under this chapter or physicians giving medical advice to the department regarding any claim may, at the discretion of the department and as not otherwise limited by state or federal statutes or regulations, inspect the claim files and records of such victims, and other persons may, when rendering assistance to the department at any stage of the proceedings on any matter pertaining to the administration of this chapter, inspect the claim files and records of such victims at the discretion of the department and as not otherwise limited by state or federal statutes or regulations.

North Dakota's statute reads as follows (N.D. Cent. Code section 65-13-10):

> Confidentiality of Records. All records of the board concerning the application for or award of reparations under this chapter are confidential and are not open to public disclosure. However, inspection of these records must be permitted by:
> 1. Law enforcement officers when necessary for the discharge of their official duties;
> 2. Representatives of a claimant, whether an individual or an organization, may review a claim file or receive specific information from the file upon the presentation of the signed authorization of the claimant;
> 3. Physicians or health care providers treating or examining persons claiming benefits under this title, or physicians giving medical advice to the board regarding any claim may, at the discretion of the board, inspect the claim files and records of persons;
> 4. Other persons may have access to and make inspections of the files, if such persons are rendering assistance to the board at any stage of the proceedings on any matter pertaining to the administration of this article.
> 5. Juvenile court records or law enforcement records . . . may only be released to the parties, their counsel, and representatives in proceedings before the board and must be sealed at the conclusion of the proceedings.

Florida has sought to protect information about victims not only within its compensation program, but also in any other agency that "regularly receives

information" concerning victims. The provision could apply to courts, prosecutors, and other criminal justice agencies. The provision reads as follows (Fla. Stat. section 119.07 (3)(aa)):

> Any document which reveals the identity, home or employment telephone number, home or employment address, or personal assets of the victim of a crime and identifies that person as the victim of a crime, which document is received by any agency that regularly receives information from or concerning the victims of crime, is exempt from the provisions of [the open public records law]. Any state or federal agency which is authorized to have access to such documents by any provision of law shall be granted such access in the furtherance of such agency's statutory duties, notwithstanding the provisions of this section.

Privileged Information

New York, Virginia, Wisconsin and a number of other states offer statutory protection to records or reports that are protected by other laws or regulations. The effect is to protect sensitive material to which some privilege pertains, such as the doctor-patient or attorney-client relationship, as well as any protected law enforcement records.

New York's provision is typical, and reads as follows (N.Y. Executive Law section 633):

> The record of a proceeding before the board or a board member shall be a public record; provided, however, that any record or report obtained by the board, the confidentiality of which is protected by any other law or regulation, shall remain confidential subject to such law or regulation.

Whether or not such provisions protect the perhaps most sensitive records--communications between a victim and a counselor--is a matter determined by state law. Some states provide for victim-counselor confidentiality, but as many as half the states do not. (A counselor may not be a physician to whom a recognized relationship privilege extends.) In 1982, when the President's Task Force on Victims of Crime recommended that "legislation should be proposed and enacted to ensure that designated victim counseling is legally privileged and not subject to defense discovery or subpoena", only six states offered such protection. By 1988, about 20 states had passed counselor-confidentiality statutes.

Sensitive Cases

Oregon's confidentiality provisions protect particularly sensitive victims, such as minors, sexual assault victims, and victims whose assailants are still at large and pose a danger to the victim. The provision (Or. Rev. Stat. section 147.115) reads as follows:

> (1) All information submitted to the department by an applicant and all hearings of the board . . . shall be open to the public unless the department or board determines that the information shall be kept confidential or that a closed hearing shall be held because:
>
> (a) The alleged assailant has not been brought to trial and disclosure of the information or a public hearing would adversely affect either the apprehension or the trial of the alleged assailant;
>
> (b) The offense allegedly perpetrated against the victim is rape, sodomy or sexual abuse and the interests of the victim or of the victim's dependents require that the information be kept confidential or that the public be excluded from the hearing;
>
> (c) The victim or alleged assailant is a minor; or
>
> (d) The interests of justice would be frustrated rather than furthered, if the information or if the hearing were open to the public.

Wisconsin law also protects the confidentiality of hearings in sensitive cases (Wis. Stat. section 949.11 (3)):

> All hearings shall be open to the public unless in a particular case the examiner determines that the hearing, or a portion thereof, shall be held in private having regard to the fact that the offender has not been convicted or to the interest of the victim of an alleged sexual offense.

Finally, Kansas law takes the special step of statutorily protecting sexual assault victims' names in its annual report. The statute reads as follows (K.S.A. 74-7316):

> The board shall prepare and transmit annually to the governor and the legislature a report of

its activities. Such report shall include the name of each claimant, except that in cases involving a sexual offense . . . the names of victims shall be deleted from the report . . .

CONFIDENTIALITY POLICIES

While statutory confidentiality provisions may carry more weight than mere policy or procedure developed by the program, some programs have used their own rules effectively to protect their files. New Jersey, for example, reports that while it has no specific statutory language protecting the confidentiality of claim records, the Board's policy to protect its records from disclosure has been upheld in state court against motions brought by defense attorneys.

Vermont has developed a policy regarding confidentiality and release of information that reads as follows:

> Claims for compensation and supporting documents and reports are investigative data until the claim is paid, denied, withdrawn or abandoned. Investigative data means that the information is confidential, i.e., not available to the public or the claimant.
>
> After the claim is paid, denied, withdrawn or abandoned, the claim and supporting information are private data on individuals. Private data means that the information is not public, but is accessible to the claimant.

Information about the status of a claim (whether all forms have been received, or the claim was paid or denied), may be given to claimants, service providers or collection agencies calling on behalf of a service provider, a victim advocate calling on behalf of the claimant, or an elected official inquiring on behalf of the claimant. No details should be given about the case.

Information about claim status may be given to the claimant's attorney or family members only with a letter of authorization form the claimant to release information.

No information can be given to any other individuals not listed on the claim form without authorization.

After the claim is paid, denied or abandoned, the claimant may be given detailed information regarding her or his claim.

CONCLUSION

Whatever the means by which compensation programs provide confidentiality to the records they receive and generate, it is important that such protection be available. Programs are then able to assure victims, and the providers that serve them, that sensitive information will not be exposed to public scrutiny. Greater cooperation and ease in obtaining necessary information should be the result.

Section VI

CONTRIBUTORY CONDUCT

A number of factors should be considered by programs as they seek to develop consistent standards for evaluating contributory conduct

Evaluating a victim's conduct is one of the most important and difficult issues that a compensation program can face. As the Court of Claims of Ohio has declared, the "innocent victim concept constitutes the soul of the statute and the solid basis on which it is anchored." The issue's difficulty stems from the fact that decision makers often must cope not only with a scarcity of credible information about the criminal incident, but also a lack of definitions and standards allowing for objective, impartial, and consistent decision making.

The statutory differences and the variety of approaches states have taken regarding this issue make it impossible to establish any one standard each state can use. Each program must define its own standards and approach, and try to ensure that all decision makers consider contribution fairly and consistently. While every person can have a different idea about what contribution is, a program must work toward developing one definition, understood by all decision makers, and one standard, evenly applied by all decision makers.

Given that contribution can be such a difficult issue to which to apply consistent standards, it is important for programs to involve and educate all staff members that document or decide claims. Every participant in the process must examine and confront ideas and biases concerning contribution, and then all decision makers must work together to develop objective standards to govern the analyses of all those who work on each case. Staff training can focus on specific cases or fact situations to examine how policies and standards will be implemented. Practical questions should be discussed: "What if the victim is dealing in drugs or look-alike drugs? What if the victim issues or accepts a challenge to fight?"

In analyzing statutes and case law, and in developing standards and policies, programs should consult carefully with legal counsel assigned to the program, bringing them into the process at an early stage. Legal staff are best able to advise on exactly what impact the statutes and case laws have on the program's decision making, and can explain legal concepts like burden of proof. The attorney should review any rules, policies and procedures as they are developed.

Decision makers and other staff should be encouraged to refer to any written definitions and standards regularly. Programs also may wish to consider a procedure whereby more than one individual reviews tough or borderline contribution cases before a final decision is made. This will help ensure that standards are being applied consistently, and may eliminate or minimize personal biases.

This section will first discuss statutory requirements for considering contributory conduct, and then explore some of the rules and policies states have developed to implement those statutes. Factors programs should consider in developing their own rules and policies also are examined. Finally, some examples of how courts have interpreted contributory conduct will be explored.

STATUTORY FRAMEWORK

All state compensation statutes intend that awards should either be denied or reduced when victims, through their own misconduct, have contributed to their injuries or deaths. Yet these statutes generally fail to define clearly "misconduct" or "contribution." This has permitted wide discretion on the part of compensation boards in their decision making. A number of states have developed written rules to guide their decisions, but many others simply proceed on a case-by-case basis, and rulings may vary to a significant degree.

Most statutes authorize both reduction and denial based on the victim's misconduct. The laws in Florida, Michigan, and Virginia, for example, direct the programs to "reduce the amount of the award or reject the claim altogether," in accordance

with a determination of misconduct. North Carolina's statute stipulates that a "claim may be denied and an award of compensation may be reduced" upon a finding of contributory misconduct, and in Iowa, "reparations are subject to reduction and disqualification." California and Indiana phrase their provisions slightly differently, authorizing denial "in whole or in part."

Several states seem authorize only denial, however, while others speak only of reduction. Wisconsin, for example, provides that "No award may be ordered" if the victim engaged in contributory misconduct, and Ohio's law says that its commissioners "shall deny a claim . . . if it is determined that there was contributory misconduct." On the other hand, Kansas' statute says only that "Reparations otherwise payable to a claimant shall be diminished", and Minnesota's states that "The board shall reduce claims where the victim contributed to the incident."

Precise definitions of contributory misconduct are usually absent from the statutes. Laws in Kansas, North Carolina, and Ohio, for example, authorize denial and/or reduction on the basis of "contributory misconduct" without elaborating on what that might mean. Laws in Michigan, Florida, and Virginia speak of conduct that "contributed to the infliction" of injury or death, again without further definition. The distinction between these two kinds of definitions may be important, as Michigan and Ohio cases described later suggest. In one court's interpretation, a claim could be denied more easily if the standard is contributory misconduct than if the standard is contribution to the infliction of injury. In other words, a victim might be engaged in contributory misconduct, but still might not have contributed to the infliction of his injury. Depending on which standard is being used, the claim could either be rejected or paid.

California's statute is a little more forthcoming; it speaks of reduction or denial based on "the nature of the victim's involvement in the events leading to the crime." Minnesota adds "negligence" as well as "misconduct" to the behavior that can lead to reduction. Wyoming's law states that to make an award the commission must establish that "the injury to or death of the victim was not attributable to his own wrongful act."

More detailed definitions of contributory misconduct are found in laws in Iowa, Louisiana, and Wisconsin. Iowa rules out awards when bodily injury or death results from "consent, provocation, or incitement by the victim." Louisiana law authorizes denial or reduction if the "behavior of the victim at the time of the crime giving rise to the claim was such that the victim bears some measure of responsibility for the crime." Wisconsin disallows awards if the victim "engaged in conduct which substantially contributed to the victim's injury or death or in which the victim could have reasonably foreseen could lead to injury or death."

Most statutes make a specific exception for contributory conduct arising from the victim's attempt to prevent a crime or apprehend a criminal. In other words, the claim will be allowed in those circumstances even if the victim engaged in dangerous activity likely to result in injury.

Nearly all statutes rule out awards when the victim attempts, commits, or acts as an accomplice in a criminal act, since the victim is not "innocent." In addition, at least several states have specific statutory provisions for denying claims resulting from crimes committed against inmates in institutions. Michigan, for example, cannot make an award unless the investigation verifies that "the crime did not occur while the victim was confined in a federal, state, or local correctional facility." Indiana's law is similar, while Wisconsin's contributory conduct guideline states that the victim's incarceration status "may" be considered in determining whether the victim engaged in contributory conduct.

It is worth noting that in at least one state, Ohio, a victim's "criminal lifestyle" not related to the crime giving rise to the claim may also disqualify the victim. If it can be determined that within ten years prior to the crime from which the claim results, the victim was convicted of a felony, or that a preponderance of evidence exists to show that such a conviction would have resulted, a claim cannot be awarded. In addition, if the conviction is more than ten years old, or if there is good cause to believe that the victim engaged in an ongoing course of criminal conduct within five years of the crime giving rise to the claim, the victim bears the burden to disprove any allegation of contributory misconduct made against the victim. (Ordinarily, the burden would be on the state to prove the allegation.) The constitutionality of this provision, which is also found in Great Britain's compensation scheme, was upheld by the Ohio Court of Claims in In re Cowan, 27 Ohio Misc.2d 12, 499 N.E.2d 937 (1986).

Finally, the special situation of drunk driving has been singled out in several state statutes. Awards may be reduced or denied in Louisiana and Utah if the otherwise innocent victim was operating a vehicle without insurance as required by law. Florida and Louisiana authorize reduction or denial if the victim was not wearing mandatory protective equipment, such as a seat belt. Louisiana also may reduce or deny claims if the victim was a willing passenger in a motor vehicle, boat, or aircraft operated by a driver in violation of driving-while-intoxicated statutes. A number of other states, either by rule or practice, also will reduce or deny awards if the victim is a willing and knowing passenger in an automobile driven by a drunk driver.

RULES AND GUIDELINES

While few states have detailed rules or guidelines regarding contributory conduct, some have developed standards to assist in decision making. Some states believe that rules should not be written in inflexible terms or strictly on the basis of fact situations, since new situations will no doubt arise that will require a change and rewriting of the rules.

Some states instruct that exact percentages of reduction should be applied in particular circumstances. Others, while they provide concrete examples of contributory behavior, do not specify precisely how a finding of such behavior should result in denial or reduction.

In the rules, misconduct most commonly includes consent, provocation, and incitement, which may be further defined as "using fighting words" or "obscene or threatening gestures." It may also include failure to retreat or withdraw when the opportunity is presented, failure to act as a "prudent person," the exercise of poor judgment because of alcohol or drug consumption, and knowing and willing acceptance of a ride in a vehicle operated by someone under the influence of alcohol or drugs. Membership in a gang, or regular engagement in a course of criminal conduct which subjects the victim to the threat of violence, are more rarely included in state rules.

States that stipulate specific percentages of reduction for particular misconduct include Florida, Kansas, Minnesota, and Virginia. Kansas and Minnesota simply require a minimum reduction of 25% when contribution is found, while Florida and Virginia direct that reductions of 25%, 50%, 75%, and 100% may be made, depending on the seriousness of the misconduct. For example, Florida and Virginia's rules both recommend a 50% reduction when "the defendant was provoked by the victim" but bodily harm to the defendant appeared "unlikely"; if it appears that bodily harm by the victim to the defendant appeared "intentional" or "unquestionable," the claim may be wholly denied.

Finally, California has developed guidelines and operational procedures that break contribution down into two primary categories: (1) contribution to the crime itself, and (2) contribution to the events leading to the crime. This follows their statutory scheme, which also refers to contribution before and during the crime.

DEVELOPING CONSISTENCY: FACTORS TO CONSIDER

Given the relative absence of detailed statutory guidance, rules and guidelines developed by the programs themselves become very important in making contributory misconduct decisions. What factors should programs consider in attempting to implement their statutory requirements? The following are among the elements that should be given some thought:

- U.S. Constitution and state constitution
- Burden of proof
- Compensation law
- Case law on compensation issues (within the state and, to a lesser degree, in other states)
- Statutes and case law on other issues besides compensation
- Political and social climate of the state
- Availability of funds
- Philosophical bent of decision makers in the compensation program.

With regard to some of the above factors, particularly those involving legal concepts or case law, it will be very useful to gain the advice of the legal counsel assigned to the program. The counsel also should review any policies developed before implementation.

U.S. and State Constitutions

The United States Constitution applies to all states, and it provides rights that programs must take into account. This may sound obvious or irrelevant, but there are some specific rights that may be affected by a compensation decision. For example, the First Amendment guarantees the right of association. As long as people are not associating for some unlawful purpose, there is little the state can do about it. If the association is resulting in harm, however, the program may arguably consider that fact when determining contribution. A growing number of cases where these considerations come into play involve gangs that have as at least one of their purposes violence against other gangs.

As another example, the Fourteenth Amendment guarantees equal treatment and due process. Therefore, all victims making claims must be treated equally, regardless of race, sex, religion, age, etc. A compensation program could not, for instance, decide that all crimes that occur in a certain place will be denied, or that certain types of victims automatically will be awarded benefits. Programs have a duty to decide claims without broad exclusions that are not contained in their statutes.

The state constitution may provide certain rights that go beyond the federal standards. (A state constitution cannot limit rights provided for in the federal constitution.) It also may set specific limits on legal behavior, such as a minimum age for drinking. Whatever rights or limits set in the state constitution must be respected by the compensation program.

Burden of Proof

The burden of proof is of primary importance in setting standards. Who has to prove what and by how much evidence? The usual standard is a preponderance of evidence, that is, evidence that makes a fact more likely true than not. The burden of proof lies on the one who has to prove a fact in order to gain a favorable decision. The burden of proof will usually be set out in a compensation statute as well as what standard must be met. The standard of evidence is usually defined in each state's rules of evidence and explained in jury instructions.

Most states place the burden of proof on the victim, but some states may require the state to show that the victim does not qualify. In other states, the burden is generally on the victim but shifts to the state for some issues, such as contribution and innocence. All the victim has to do is allege he or she is innocent and did not contribute, and the state must prove otherwise to deny or reduce a claim.

Compensation Law

Each state's own law relating to compensation is the primary consideration for that state. The law authorizes compensation to victims, but it also defines who can be compensated and under what circumstances. As shown previously, these definitions may not be very specific, but at least they provide the basis for making decisions concerning contributory conduct.

Statutory provisions reflect not only the maxim of jurisprudence that "no one should profit from one's own wrongdoing," but also the intent of legislators to compensate innocent victims of crime. The concepts of innocence and contribution go hand in hand, and both should be considered.

While every statute makes some mention of contributory conduct or innocence, very few define those terms. Absent a statutory definition, or a specialized meaning acquired through usage, most courts will use a dictionary definition. One definition found for contribution in Webster's Ninth New Collegiate is "to play a significant part in bringing about an end or result." A key word is "significant," which would indicate that the victim need not be a paragon of virtue or as pure as the driven snow. In fact, the reported decisions from hearings and court cases appear to show that the standard is not simply that any contribution whatsoever will result in denial or reduction of a claim, but rather that it requires some serious or substantial wrongful act on the part of the victim.

While innocence and contribution are closely related, they are not necessarily the same thing. Innocence may refer to whether the victim was engaged in illegal activity at the time of the crime, regardless of whether what the victim did proximately caused the injury. Contribution may refer to illegal activity as well, but it may more simply mean actions that caused a certain result, regardless of their illegality. Usually, there will be contribution

present when the victim is not innocent, so programs with authority to deny on both grounds could choose either. In some cases, contribution may not be readily apparent or provable, so a denial on the ground that the victim is not innocent can be used in conjunction with or to bolster the denial on the contribution issue.

Lifestyle may be a factor in determining whether a victim is innocent or not. Drug dealers or gang members are sometimes described as exemplifying a "live by the sword and die by the sword" existence. In using lifestyle as a basis for denial, however, proof usually must be of actual illegal acts committed by the victim that have a causal relation to the claim. It may not be enough simply to point to gang membership or some drug involvement; the victim's injury must be more specifically related to the victim's actions, e.g., the victim was shot because he didn't pay off on a drug deal, or because the previous night he went after a member of another gang.

Legislative history can help in showing a court just what the legislature intended with regard to contribution issues. The program should keep the minutes or reports from legislative hearings or debates regarding contribution-related issues. They may be critical in defending a decision, since they usually show what was debated and why the legislators decided to make the law as they did. Courts are required to defer to legislative intent, as long as the court knows what the intent was.

Case Law on Compensation Issues

Case law in the program's state will be very valuable. Written decisions may deal specifically with frequently encountered fact situations or meanings of specific words.

Theoretically, a court or hearing officer decides the individual case being considered, and that decision affects only the parties to that suit. But the decision also becomes a standard for later cases, simply because the particular judge or officer is likely to decide a specific issue the same way each time. In addition, decisions set precedent, in that their rulings are binding on all courts or decision makers lower in stature than the court making the decision. Only courts of equal or greater rank can reverse or change the precedent.

Compensation programs are clearly required to follow the rulings of the courts in their jurisdiction in making contributory conduct decisions. Cases from other states may be valuable to your thinking and are often looked to by your judges for guidance. But a different state's court is free to ignore those cases since each state has the power to determine matters strictly within the state's purview, as well as sole authority over its own compensation act and program. The more closely worded one state's statute is to another, the more likely judges in each state will follow each other's decisions. And if one judge's analysis and ruling is based more on the theory and philosophy of compensation rather than a specific provision, the more persuasive it may be to another judge.

There is more case law on crime victims compensation than might be supposed. It is an advantage to a program to know about the cases since they are available to the lawyers they face appealing denials--even though those lawyers may not bother to look them up. A good resource is West's Digest, found in any good law library, with specific references to compensation found under Criminal Law, key 1220. This section contains all of the reported cases on compensation, third-party victim suits, and restitution. The reasoning in cases from other states may be incorporated into your definition and standard, particularly if your own courts have not addressed the issue.

As examples of some of the ways courts have interpreted contributory conduct laws, some language from judicial rulings have been included at the end of this section.

Statutes and Case Law on Other Issues

Laws and cases on other issues also can be useful. For example, they can clarify whether the claimant has a right to protect himself or a duty to avoid harmful situations. They can shed light on what "fighting words" are, and whether the victim's consent to a fight means the victim is at fault in a mutual combat situation.

Programs must remember that compensation law is unique, however, and they should not confuse it with other areas of law, such as personal injury or "tort." In tort law, the standard used to determine liability usually involves comparative negligence. In other words, if one party's actions are considered worse than the other's, the party less at fault wins. Since crimes usually involve a victim who is less at fault than an offender, using a tort

standard would mean the victim would always receive compensation. While programs may wish to set up standards for reducing compensation on the basis of relative contribution or "guilt," they should not remove all barriers to compensation simply because the victim's behavior was less reprehensible than the offender's.

Political/Social Climate

The political climate of the state may play some role in determining how strict or lenient the program is in determining contribution. It will do no good to award benefits liberally if the legislature decides that victims who do not deserve benefits are getting them. The legislature will change the law and that may eliminate worthy claims as well. Each program is best able to judge what is acceptable to its own legislative body.

The social climate has a bearing on claims as well. There are different lifestyles in different states, and what is accepted behavior in one state may not be in another. The social climate cannot affect the constitutional rights of claimants, of course, and neither can it lessen the obligation of each claimant to comply with state law, including the compensation statute.

Availability of Funds

Theoretically, the relative scarcity of funds should not affect individual case decisions regarding contributory conduct. But when funds are scarce, there may be a tendency to screen claims more closely. In other words, a borderline claim that might have been awarded, wholly or partially, under a liberal budget might not be awarded when funds are scarce. This is usually a gradual process and not an abrupt change in policy, resulting when program administrators realize that the money available might not pay all clams. Simply put, the money tends to go to claimants who are the most clearly innocent and non-contributing.

Personal Beliefs of Decision Makers

Each decision maker has a unique way of looking at contribution issues, because every person is unique. It is impossible to eliminate this factor and may not even be desirable. It is important, however, to examine personal biases to see how they may affect decisions on contribution questions. And the element of personal belief highlights the importance of developing objective standards, even though those standards may change as decision makers come and go. A decision maker is not easily going to change his or her ideas just because a prior decision maker decided cases a certain way. But a decision maker will not easily ignore a rule, and can be called to account when he or she does. A decision maker with enough authority will eventually change the rule or modify the existing standard, but consistency will at least be maintained over longer periods of time and among all decision makers during a certain period of time.

COURT INTERPRETATIONS

There are too many court interpretations of contributory conduct to provide a full overview of the ways courts have ruled on this issue. It may be useful, however, to look at language used by two courts to see how contribution statutes may be interpreted.

The Ohio Court of Appeals has written as foilows:

> The Victims of Crime Act is a special statutory proceeding. It did not create a death benefit, a form of health and accident insurance or a welfare fund. It provides a vehicle for certain persons, in a restricted way, to participate in a legislatively created class gift.
>
> Accordingly, the philosophical approach of the decisions of this court uniformly has been that it is "innocent victims" of criminal conduct or those claiming through an "innocent victim," who are prima facie entitled to an award under the Ohio Act. By "innocent victim" is meant, with respect to the criminal injurious injury, a person without proximate fault. It is proper to observe that the "innocent victim" concept constitutes the soul of the statute and the solid basis on which it is anchored.

The court elaborated in another case:

> A victim does not have to be innocent of all misconduct, but only that misconduct which can reasonably be said to have caused or contributed to the injury. Contributory misconduct connotes a finding that the misconduct is "a" or

"the" proximate cause, but for which the injury would not have occurred.

The court has dismissed what it called a "frequently made" argument "that the criminal act of the offender was more gross or outrageous or evil than that of the victim," and that some compensation to the victim is therefore in order. Awards of reparations "based upon comparative misconduct, and not on rectitude of a victim's conduct" are "inconsistent with the [compensation] Act's basic purpose."

> A frequently expressed rationale for the enactment of legislation compensating victims of crime is that it is an admission of a species of liability on the part of the state because of the failure to protect a victim. . . . The greater the incidence of crime in general, the more difficult the task of the enforcement authorities in their mission of protecting the victim and preventing the crime, and consequently, the greater exposure of liability by the state.
>
> It would, therefore, be inconsistent, and certainly not within the contemplation of the legislature, to compensate an individual who at the time he incurred his injury due to criminally injurious conduct was himself contributing to the crime rate and thereby increasing the burden faced by the law enforcement authorities in their statutory mission. This proposition is true regardless of relative seriousness of the crimes involved. To compensate an individual for an injury due to criminally injurious conduct perpetrated on him while he is at the same time perpetrating a crime . . . is logically and legally inconsistent and incompatible with the purpose of the Victims of Crime legislation.

The Michigan Court of Appeals has distinguished its analysis of its own statute from Ohio's, by emphasizing that Michigan's statute requires the victim to "contribute to the infliction of his injury," in order for a claim to be denied, while Ohio's merely required "contributory misconduct" for denial. The court also has discussed the "foreseeability of the risk of injury" while engaging in particular activity, whether criminal or not. The court has noted its disbelief that the legislature "intended to prohibit recovery to a crime victim who was not in any way truly blameworthy for his injury."

> We believe . . . general proximate cause analysis should be applied in determining whether a victim "contributed to the infliction of his injury" by his violation of a criminal statute. If the risk that the victim's injury would result from his particular violation of a criminal statute is foreseeable and not too remote, then the board should be allowed to deny or reduce his award under the statute. However, if the risk of injury due to the victim's particular type of violation of a criminal statute is very remote and unforeseeable, the board cannot deny or reduce his award under the statute.

CONCLUSION

Contribution is part of compensation law and it requires that the victim's actions be scrutinized when deciding a claim. To be fair, this scrutiny must be as objective as possible and measured against an understandable standard. To do otherwise is to fail at what compensation programs are required to do, which is to administer the compensation law and pay only the claims that have met all the requirements for compensation.

EXAMPLES OF STATUTES AND RULES

California

Government Code, Article 1, Section 13964:

(b) An application for assistance may be denied, in whole or in part, if the board finds that denial is appropriate because of the nature of the victim's involvement in the events leading to the crime or the involvement of the persons whose injury or death gave rise to the application.

(c) No victim shall be eligible for assistance under the provisions of this article under any of the following circumstances:

(1) The board finds that the victim or the person whose injury or death gave rise to the application knowingly and willingly participated in the commission of the crime.

Florida

Florida Statutes, Chapter 969.13:

(6): In determining the amount of an award, the division shall determine whether, because of his conduct, the victim of such crime or the intervenor contributed to the infliction of his injury or to his death, and the division shall reduce the amount of the award or reject the claim altogether, in accordance with such determination.

Guideline 10L-4.02: Contribution:

Contribution is determined by the action portrayed by the victim at the time of or immediately preceding the crime. While there is no set formula for calculating the percentage of contribution to be assessed, the following factors should serve as a guideline:

(1) If it appears that the victim was provoked by the defendant in a manner threatening bodily harm to the victim, and the victim acted in self defense, no contribution should be assessed.

(2) If it appears that the victim was provoked by the defendant in a manner where bodily harm to the victim appeared unlikely, and the victim used poor judgement because of intoxication or other drug involvement, a 25% contribution factor should be assessed.

(3) If it appears that the defendant was provoked by the victim in a manner where bodily harm appeared unlikely, a 50% contribution factor should be assessed.

(4) If the victim is injured as a result of his conduct not being that of a prudent person, a 50% contribution factor should also be assessed.

(5) If it appears that the defendant was provoked by the victim in a manner where bodily harm to the defendant appears intentional, a 75% contribution factor should be assessed.

(6) If it appears that the defendant was provoked by the victim in a manner where bodily harm to the defendant is unquestionable, a 100% contribution factor shall be assessed and the claim denied.

(7) If the victim is not wearing protective equipment as prescribed by law, a 25% contribution factor shall be assessed. This includes helmets, seat belts, etc.

(8) If the victim was involved in drugs as verified by the police report or other official documents, a 100% contribution factor should be assessed and the claim denied.

Michigan

Michigan Statutes Sec. 11:

(4): The board shall determine whether the claimant contributed to the infliction of his or her injury and shall reduce the amount of the award or reject the claim altogether, in accordance with the determination. The board may disregard for this purpose the responsibility of the claimant for his or her own injury where the record shows that the injury was attributable to efforts by the claimant to prevent a crime or an attempted crime from occurring in his or her presence or to apprehend a person who had committed a crime in his or her presence.

Minnesota

Minnesota Statutes 611A.54:

(2): The board shall reduce claims where the victim contributed to the incident through misconduct or negligence.

Rule 7505.2900, Contributory Misconduct:

The board shall reduce, by a minimum of 25%, any claim submitted by or on behalf of a person who the board finds has engaged in any of the following acts or behavior that contributed to the injury for which the claim is filed:

A. used fighting words, obscene or threatening gestures, or other provocation;

B. knowingly and willingly been in a vehicle operated by a person who is under the influence of alcohol or a controlled substance;

C. consumed alcohol or other mood-altering substances; or

D. failed to retreat or withdraw from a situation where an option to do so was readily available.

Any of these provisions may be waived in cases of domestic abuse or sexual assault.

Montana

Montana Stat. 53-9-125(7):
Compensation may be denied or reduced if the victim contributed to the infliction of death or injury with respect to which the claim is made. Any reduction in benefits under this subsection shall be in proportion to what the division finds to be the victim's contribution to the infliction of death or injury.

Montana Policy & Procedure Manual

Definition: Contribution results in denial or reduction of benefits. A victim contributed to the infliction of death or injury with respect to which a claim is made if the victim's actions brought about to any degree the resulting injuries and such injuries were reasonably foreseeable by the victim at the time of his or her contributing actions.

Contribution applies only to the victim, but an innocent claimant cannot get benefits based on a non-innocent, contributing victim's actions (such as the family of a drug dealer killed while dealing drugs).

Benefits shall be denied or reduced to the extent a victim contributes to his own injuries. This is the largest area of concern since everyone's idea of contribution is different. Check the rules for guidance. Contribution is based on the victim's actions, not on a comparison between the offender's actions and the victim's actions. If a comparison is used, benefits almost never will be denied since what the offender does is usually worse than what the victim does. The offender is the one charged with the crime while the victim is not.

Avoid the question, "do the victim's actions justify what the offender did to the victim?" The victim's actions never justify the offender's actions, unless the offender is acting in self defense, in which case, there is no criminally injurious conduct. Contribution is meaningless if the justification approach is used.

Contribution concerns the victim's illegal or wrongful actions. Contribution is not stupidity, but gross stupidity can be contribution, that is, no reasonable person would have done what the victim did. Each case must be decided on the facts. The victim's need or sympathetic posture is not a factor.

Intoxication is not contribution, unless it is illegal for the victim to possess or consume alcohol (under 21 years of age). Intoxication goes to the credibility of the victim. A person who is intoxicated may not recall the facts as clearly as a sober witness or the offender.

Some situations are 100% contribution. The victim issues or accepts a challenge to fight. The victim was involved in illegal drug transactions, buying, selling or using, which has some connection to the incident. The victim was committing a crime which has some connection with the incident. There must be a connection between the victim's acts and the incident. Beware of moral judgments. It is inappropriate to deny benefits on a moral issue and may be unconstitutional and illegal as well, since the decision maker is using an arbitrary standard.

Some situations result in reduced benefits. Drinking by an under-age-21 victim results in 25% reduction. It is an illegal act for that person to commit. It is generally a factor in how the incident occurred but since it is a status crime, based on age only, it does not warrant a complete denial.

Juveniles are held accountable for their actions. Acts by a juvenile which would be contribution in an adult are also contribution by the juvenile. A juvenile may not deal in drugs, issue or accept a challenge to fight, etc., and receive benefits because of his/her age. A female age 16-17 may consent to sex and it is a defense for the defendant. Under 16, look at the actions of the victim and, if she was truly willing, deny for contribution. Defenses not available to the defendant, i.e., consent of the victim, are not denied to the program.

It is difficult to make a comprehensive list of specific acts by a victim that result in denial or reduction. A specific list of victims' acts may be impossible to compile. Each case is different. The location of the crime may be a factor. Acts in a bar that would be contribution, are not contribution if done in the victim's own home (for instance, throwing someone out). The timing of events may be a factor. An argument with name calling and threats by the victim immediately before the inflic-

tion of injuries is contribution, while a time lapse of an hour or more may not be. Alternative actions the victim could reasonably have taken, such as calling police, leaving the area, or pursuing a legal remedy may result in contribution if the victim did not take those actions. A victim has a right to protect himself.

North Carolina

North Carolina General Statutes, Chapter 15B-11:

(b) A claim may be denied and an award of compensation may be reduced upon finding contributory misconduct by the claimant or a victim through whom he claims.

Guideline criteria:

(1) whether the victim provoked the perpetrator and, if so, the reasonableness of the actions of each;

(2) the mental capacity of the victim at the time of the criminally injurious act and whether his capacity was reduced by mental illness, mental retardation, disease or the voluntary use of alcohol or drugs;

(3) whether the victim was engaged in the commission of a criminal offense at the time of the criminally injurious conduct which resulted in his injury or death, or at a time so proximate thereto that it may be reasonably concluded that his death or injuries are directly and proximately related thereto; or whether the victim was regularly engaged in a course of criminal conduct or enterprise which he knew or should have known through the exercise of reasonable prudence directly subjected him to the threat of violence and which, but for the victim's engaging in such course of criminal conduct or enterprise, the offense which caused his injury or death would likely not have occurred; and

(4) whether the actions of either the victim or the perpetrator which resulted in the injury or death of the victim were taken in self defense.

Ohio

Ohio Revised Code 2743.60:

(E) Neither a single commissioner nor a panel of commissioners shall make an award to a claimant who is a victim, or who claims an award of reparations through a victim, who within ten years prior to the criminally injurious conduct that gave rise to the claim, was convicted of a felony or who is proved by a preponderance of the evidence presented to the commissioner or the panel to have engaged, within ten years prior to the criminally injurious conduct that gave rise to the claim, in conduct that, if proven by proof beyond a reasonable doubt, would constitute a felony under the laws of this state, any other state, or the United States.

(F) In determining whether to make an award of reparations pursuant to this section, a single commissioner or panel of commissioners shall consider whether there was contributory misconduct by the victim or the claimant. A single commissioner or a panel of commissioners shall deny a claim for an award of reparations if it is determined that there was contributory misconduct by the claimant or the victim. If the attorney general recommends that a claim be denied because of an allegation of contributory misconduct that is supported by his finding of fact in division (C)(7) of section 2743.59 of the Revised Code, the burden of proof on the issue of that alleged contributory misconduct shall be upon the claimant, if either of the following apply:

(1) The victim was convicted of a felony more than ten years prior to the criminally injurious conduct that is the subject of the claim or has a record of felony arrests under the laws of this state, another state, or in the United States;

(2) There is good cause to believe that the victim engaged in an ongoing course of criminal conduct within five years or less of the criminally injurious conduct that is the subject of the claim.

Wisconsin

Wisconsin Statutes section 949.08:

(2) No award may be ordered if the victim:

(a) engaged in conduct which substantially contributed to the victim's injury or death or in which the victim could have reasonably foreseen could lead to injury or death.

Rule JUS 107(3)(a)(b):

The department may not make an award if the department determines:

(3) The victim engaged in conduct which substantially contributed to the victim's injury or death or engaged in conduct in which the victim could have reasonably foreseen could lead to injury or death. In determining whether the victim engaged in contributory conduct under this subsection the

department:

(a) Shall consider any behavior of the victim that may have directly or indirectly contributed to the victim's injury or death including consent, provocation, verbal utterance, gesture, incitement, prior conduct of the victim, or the ability of the victim to have reasonably avoided the incident upon which the claim is based.

(b) May consider whether the victim was under the influence of an intoxicant or controlled substance at the time of the incident upon which the claim is based; whether the victim has engaged in an ongoing course of criminal conduct within five years or less of the date of the incident upon which the claim is based; or whether the incident upon which the claim is based occurred while the victim was incarcerated in a city or county detention facility pending the disposition of criminal charges or after the victim was convicted of an offense and was serving a sentence of imprisonment.

Section VII

COLLATERAL RESOURCES

A thorough understanding of all the many alternative resources available can help programs preserve scarce funds and better assist victims

As demand for compensation escalates, and compensation program funds grow increasingly scarce, the need for prudent fiscal management of program dollars is crucial. One important way to preserve resources is to ensure that the program pays only for those expenses that are not covered by other sources of financial aid, whether public or private. Identifying other potential reimbursement sources is not only sound fiscal policy, but also mandated by law, since nearly all programs operate under statutes requiring that these collateral resources be considered in determining an award amount.

In general, compensation programs are authorized only as payers of last resort, designed to fill in gaps left by public assistance programs or private insurance. One of the central tasks of a program administrator, then, is to fashion policies and procedures which facilitate the identification of potential reimbursement sources which may reduce, in part or in whole, some of the costs for which crime victims seek compensation benefits.

Looking closely at collateral resources available to the victim is in the victim's best interest as well. There are victims that are unaware that they qualify for other financial help, and that those other sources of assistance may ultimately pay far more than the compensation-program maximum allows. The effort to locate collateral resources, then, has benefits for the victim as well as the program.

There are a number of important potential collateral resources that should be examined in each claim. Private health, automobile, and life insurance; Medicaid and Medicare; Social Security Income and Disability; and state and local indigent hospitalization care programs are among the most important. Eligibility requirements will vary for most of these programs, according to contract or state law.

It is extremely important to provide training to claims analysts and decision makers to expand understanding and awareness of various entitlements and public assistance programs available to victims. Procedures should be in place to ensure that the possibility of collateral resources is fully explored.

STATUTORY CONSIDERATIONS

Essentially all compensation programs are required by statute to consider, prior to determination of an award, benefits that a claimant receives, or is eligible to receive from other collateral sources as a result of the crime for which compensation may be awarded. Typically such provisions require programs to reduce compensation awards to the extent that compensable losses are thus recoverable. For example, New York's statute (N.Y. Executive Law section 631(4)) reads as follows:

> Any award made pursuant to this article shall be reduced by the amount of any payments received or to be received by the claimant as a result of the injury (a) from or on behalf of the person who committed the crime, (b) under insurance programs mandated by law, (c) from public funds, (d) under any contract of insurance wherein the claimant is the insured or beneficiary, (e) as an emergency award pursuant to section six hundred thirty of this article.

States may take different approaches to the question of prior availability of benefits. Was the victim receiving, or entitled to receive benefits before filing an application for compensation? Several states' have statutory provisions or administrative rules that prevent consideration of welfare benefits or other public funds as collateral resources if the claimant was not receiving, or had not applied for, assistance at the time the application was filed. For example, Alabama's collateral resource provisions clearly prohibit program staff from requiring claimants' to apply for assistance not

previously available. The provision (Alabama Stat. section 15-23-9) reads as follows:

> The commission shall not require any claimant to seek or accept any collateral source contribution, unless the claimant was receiving or was entitled to receive such benefits prior to the occurrence giving rise to the claim under the provisions of this chapter; provided, however, no applicant shall be denied compensation solely because such applicant is entitled to income from a collateral source.

Other programs not operating under such strictures may adopt other policies to encourage a victim to apply for those benefits that will serve the victim's needs most fully.

Programs also should be aware of their ability to recover funds after an award is made, if the victim subsequently gains a civil judgment, receives restitution, or is otherwise reimbursed from another source for expenses the compensation program has covered. For a full discussion of fund-recovery issues, see the section in this handbook on "Restitution and Subrogation."

TYPES OF COLLATERAL RESOURCES

Experienced compensation personnel are keenly aware that the costs of victimization are often staggering, and that these expenses rarely coincide with resources available to the victims compelled to shoulder the financial burden of crime. In light of the broad range of possible reimbursement sources --both public and private--it is essential that program directors familiarize their staff with eligibility requirements and application procedures of various public assistance services, as well as basic elements of the principal types of insurance available to offset the cost of crime.

The National Crime Survey of the U.S. Department of Justice found that about two-thirds of violent crime victims were covered by private medical insurance or a public medical assistance program. Compensation programs will no doubt find a smaller percentage of their claimants covered by those private or public programs, since the claims might not be filed if benefits were available. Still, programs must be alert to the many types of insurance that could come into play.

The collateral-resource synopsis provided here is in no way all-encompassing. Insurance regulations and community and public health programs will undoubtedly vary from state to state. It is hoped, however that the outline will assist program directors in the development or revision of policies concerning identification and verification of collateral resources.

Private Insurance

Health Insurance: Private health insurance varies widely, since it depends on specific policy benefits and restrictions. It usually covers hospitalization and numerous outpatient charges for injuries. However, even those victims fortunate enough to have private insurance often face increasingly restrictive coverage limitations and high deductibles, that could force them to seek assistance from victim compensation programs.

Insurance limitations can be particularly acute for those facing prolonged recovery periods. Victims who are seriously injured may be placed on indefinite leave from work and held personally responsible for their medical insurance premiums. Some compensation programs have adopted policies that allow for payment of a victim's premiums under such circumstances. Given the respective costs of comprehensive medical bills and monthly insurance premiums, program savings could be substantial.

Automobile Insurance: Many states require drivers and car owners to carry automobile insurance, and most drivers even in non-mandatory states choose to purchase policies. A victim of an intoxicated driver thus may be eligible for reimbursement for medical expenses by any one, or a combination of the following: the driver's insurance carrier, or, if the driver was a minor at the time of the accident, his or her parent's insurance; if the accident occurred while the driver was working, the employer's carrier; the victim's own automobile insurer, either through victim's injury coverage, or through an uninsured or under-insured motorists policy.

Claims examiners and investigators should pay careful attention in their review of police reports and witness statements for any reference to insurance coverage, as claimants may not always include this information on the application form.

Life Insurance: The American Council on Life Insurance estimates that approximately 60% of the population is covered by life insurance. Some, but not all, programs review life insurance benefits in connection with reductions of loss of support and funeral and burial awards. In fact, some programs are prohibited by statute from reducing claims for benefits received under any life insurance policy. Other states allow for consideration of life insurance proceeds only if benefits exceed a designated limit, such as $50,000. Some programs have implemented administrative policies whereby life insurance is not considered a collateral resource unless the claimant's dependents received proceeds earmarked for funeral and burial costs. Many policies do not specifically designate funeral and burial benefits, however, and in those cases some programs do not reduce their maximum funeral/burial award to the victim's survivors. (Funeral maximums for many compensation programs often do not cover fully the costs the family incurs.)

If life insurance is taken into account, the diversity of benefits and the extent of coverage of various policies are such that program staff may want to obtain a detailed itemization of payable benefits, if possible. Variations in policy provisions and proceeds may make it extremely difficult for programs to assess accurately whether claimants covered by life insurance will have adequate coverage to support their dependents.

Public Resources and Assistance

A brief description of some of the principal public assistance benefit programs is provided below. Types of programs, as well as their eligibility rules and restrictions, may vary from state to state, even for federal programs. (Medicaid, for example, is administered through state agencies.)

Some federal programs, such as Medicaid, Medicare, Aid to Families with Dependent Children (AFDC), food stamps, and Social Security, are entitlement programs, and by law must be made available to all persons who meet certain eligibility requirements. So called "means-tested" entitlements are provided to those eligible on the basis of income or "means". Victims who suffer catastrophic injury or illness as a result of a crime may also become eligible. Recipients of AFDC and Social Security Disability, as well as the blind or the elderly may receive medical, hospital and long-term care under Medicaid or Medicare.

Medicaid. Medicaid is a federal government health insurance program for indigent persons. Recipients of AFDC, children who become wards of the state, and other low-income persons are among those eligible. Eligible persons must apply for Medicaid benefits within 90 days of incurring a cost.

Medicaid typically pays only a percentage of the full and reasonable cost of a medical service, but doctors and hospitals who accept Medicaid patients must accept that payment as payment in full. For that reason, some doctors refuse to accept Medicaid patients.

(In most states, victim compensation programs have always regarded Medicaid as a primary payer, i.e., the compensation program will not pay for medical bills incurred by Medicaid-eligible victims, since Medicaid is expected to pay. In 1990, however, state Medicaid programs were instructed by federal authorities that under federal law, victim compensation was the primary payer, rather than Medicaid, for Medicaid-eligible victims. Efforts to change federal law are underway as of press time.)

Medicare. Medicare is the most common insurer of Americans over 65 who are entitled to Social Security; Medicare also is available for those receiving Social Security disability benefits. Medicare's coverage is limited in terms of how long the program will pay for inpatient services, and Medicare requires beneficiaries to share some of the cost of the services covered. It will cover up to 80% of most "reasonable" fees for physicians, hospitals, nursing facilities, home health care and hospice care for eligible recipients. Programs may obtain a pamphlet from any medicare office which outlines all "reasonable" charges and fees as established under Medicare guidelines.

State and Local Hospitalization Programs. Many states have their own state and local programs providing free hospital care to indigent patients that do not qualify for any of the federal medical programs. These programs are funded from state general revenue.

Supplemental Security Income (SSI). SSI provides monthly benefits for individuals who are economically needy and who qualify as one of the following: disabled, blind or elderly.

Social Security Disability. Victims who are disabled as a result of a crime may apply for this program, if they have worked long enough and recently enough under Social Security to be insured. Disabled family members (unmarried children under

22, spouses) also may qualify under the covered worker's record. Eligibility rules require that a period of five months of no earned income must elapse prior to the victim's receiving Social Security Disability. If a compensation program makes a payment for lost wages to the victim during that five-month period, the five-month period is simply pushed back further. Thus, the payment from the compensation program is essentially useless.

Social Security Death Benefits. Dependents of murdered victims usually qualify for death benefits through Social Security.

Community Mental Health. These programs typically offer mental health services on sliding fee scales. In most states, eligibility for fee reductions based on income should not be affected by the availability of victim compensation benefits; in other words, the program should charge only what it could expect the victim alone to bear, rather than charge a high fee in the expectation that a victim compensation program will foot the bill. Programs have encountered abuses in this area, however, and some have adopted written policies that clearly prohibit such practices. Wisconsin, for example, has the following provision:

> The department may not make an award when the department determines in a particular case that the claimant would not ordinarily have been required to pay for the service but for [the availability of compensation benefits].

Such a provision would apply to all sliding-fee-scale providers, including private victim assistance programs, particularly those that receive grants through state or federal funding (e.g., Victims of Crime Act).

It should be noted that in some states, the program may be required to pay full fee; Nevada's Attorney General recently issued an opinion to that effect.

Unemployment Insurance. State or federal unemployment insurance may be obtainable for victims who lose their jobs as a result of a crime, but not if the victim is disabled. To be eligible for unemployment insurance, an individual must be fit for work, so the discharge from employment must be for other reasons. If a victim is on unemployment insurance at the time of the crime, however, a program should consider this as a collateral resource, so long as the victim continues to receive the benefits. (If the victim is disabled in the crime and rendered unfit to work, unemployment benefits may be stopped for the period of disability.) Unemployment eligibility normally requires that victims must have been employed for a required period of time and earned minimum required amounts. In general, unemployment benefits fall below what the victim would have earned. Program policies in this regard should stipulate what, if any, lost wage compensation will be awarded for the difference.

Workers' Compensation. This program allows for payment of related medical expenses and a percentage of an employee's gross wage in the event that the employee is injured or killed during the course of his or her employment. As with unemployment benefits program policies should specify at what rate income differentials (percentage of wages not recovered through workers' compensation) will be compensated.

Veterans' and Military Benefits. In most cases, veterans who have previously suffered service-related injuries are eligible for treatment at no cost in Veterans' Administration hospitals. However, a provision in the current Veterans' Administration statute stipulates that victim compensation programs must reimburse the VA for treatment accorded veterans for crime-related injuries, and federal courts have upheld this provision against several challenges by states. (Programs are still free to evaluate a veteran's claim according to eligibility criteria set forth for all victims; but if the veteran is deemed eligible, then the program must treat the VA hospital as if it were a private, billing hospital, whether or not the veteran is actually billed. Congress is considering changes to this law as of press time.)

In addition, military personnel on active duty, retirees, and their dependents are covered by a medical insurance program known as CHAMPUS (Civilian Health and Medical Program of the Uniformed Services), administered through the Department of Defense. Active-duty personnel and their dependents are covered at 80%, and retired persons and their dependents are covered at 75%.

Food Stamps. Food stamps may be available for crime victims whose income is reduced, temporarily or permanently. Eligibility guidelines require that any compensation benefits awarded for wage loss must be included as income. As a result, claimants may not be eligible for food stamps until all compensation wage loss benefits have been

exhausted. Program staff may wish to notify the claimant's social service worker, in writing, following issuance of final award.

Restitution

Restitution from the offender to the victim is a sentencing option in all states, and has become mandated in more and more jurisdictions as a result of victim-oriented legislation. Because many offenders lack resources to pay for the damage they do, however, and because courts and parole and probation authorities typically fail to enforce restitution orders, restitution has yet to become a significant source of financial help for most violent crime victims.

While restitution is a collateral resource that can be evaluated to determine how much the victim's total loss has been reduced prior to an award, this is rarely done in practice, simply because restitution is rarely received prior to an award's being made. More likely, if restitution is collected at all, it is paid in small amounts over extended periods of time. Most programs will not reduce a victim's award simply because restitution is ordered, since it may not ever be paid fully. Most programs choose rather to monitor restitution payments, and to require either that a victim turn over to the program those funds received that, combined with the compensation award, are in excess of the victim's total loss.

Civil Litigation

All crime victims can--and some do--sue those responsible for the harm that befell them. Again, because most offenders lack resources to pay, and because civil litigation can be expensive and time-consuming, civil suits are rare.

Victims can sue any responsible person or institution, whether that be the offender himself or some third party. Successful suits have been filed by rape victims against hotels, for example, for failing to provide adequate security. Suits against corporate third parties are expected to increase, as more victims--and more attorneys--make use of third-party liability options. Suits against third parties, if won, are far more likely to produce actual income for the victim.

Victims who file civil suits ultimately may be reimbursed for actual expenses and "pain and suffering." Unfortunately, however, civil suits often drag on for many years. Most personal injury attorneys prefer to wait until the conclusion of the criminal case before civil proceedings are initiated. Consequently, most victim compensation programs will not hold in abeyance an award to a victim pending the outcome of a civil proceeding, but will instead seek to recover the award if the victim obtains a favorable judgment.

In the event that a victim is successful, most compensation statutes allow programs to collect reimbursements of funds stemming from the crime for which benefits were awarded. If a victim receives a judgment for medical costs, for example, the portion of the judgment debt received by the victim can be applied by the program to reduce its award in that area. Whether "pain and suffering" award could be applied against the compensation program's award is doubtful, since most states do not award monies for that purpose. (There are four states that do, who could undoubtedly recover their payments for pain and suffering.)

All states put victims on notice, usually on the application form itself as well as in award notifications, that the victim is obligated to reimburse the program if the victim receives any funds through a civil suit (or through restitution). At least one program makes it a practice to call each victim who may have filed a civil suit, reminding the victim of this duty to repay, as well as to keep in contact with civil courts to check if suits have been filed.

EVALUATION AND MONITORING

Monitoring collateral resources can be difficult. While all victims can be put on notice that they are required to reveal other sources of payment, some will not, whether unintentionally or by design. It's up to the program and its staff to ensure that collateral resources are fully investigated prior to payment of an award.

Staff Training

It's essential that every claims analyst have a thorough knowledge of the variety of resources available to help victims meet the costs of crime. Programs should focus attention, through training and procedures, on ensuring that claims analysts are alert to all potential sources of income that could help reduce the program's award.

Programs may want to spend considerable time familiarizing staff with the various types of public and private collateral resources available. Claims analysts should understand eligibility requirements, benefit policies, and other details regarding each possible outside source of payment.

In an attempt to expand staff awareness of entitlement programs, there can be no substitute for person-to-person contact, especially if the contact is with a primary information source. Program directors may consider inviting representatives from state Medicaid, Medicare, and Social Security offices as well as members of state medical, dental and psychiatric examining boards, to participate in staff training sessions. Training sessions could be organized so that each focuses on a particular program or service, and includes a presentation by an agency representative followed by question and answer periods for staff participants. Written materials can be valuable as well. Most public benefit programs publish brochures describing their requirements and procedures. These should be available as reference tools.

Training necessarily involves some effort on the part of the director and the staff. The widespread gains, however, in terms of competent and consistent program management, far outweigh the short-term expenditures of time and/or resources.

Monitoring Procedures

Once a thorough familiarity with various collateral resources has been attained, claims analysts are then faced with the task of looking at individual claims to determine whether a particular benefit is available. While there are no procedures to follow that will guarantee that all potential collateral resources will be identified, analysts can regularly check documents for certain key indicators. These "red flags" should automatically trigger a more thorough effort to confirm or eliminate the possibility of a collateral source.

For example, the victim may not show on the application that there is any insurance available to him or her. Yet the victim indicates that he or she is working with an employer who probably carries medical insurance for employees. As another example, an examination of the medical bills submitted may show that the cost of the ambulance was billed to an insurance carrier. Or a document from the hospital may indicate that a Medicaid eligibility card was used when the patient was admitted.

If no employment history is shown on the application, staff should know that the victim may already be eligible for public medical benefits. The program may want to consider establishing a relationship with its human services department or Medicaid-administering agency so that it can regular check to see if victims are listed in the eligibility files. Similarly, the program may want to establish links with medical records offices in hospitals, to check prior billing records of victims.

Careful and consistent evaluation of billing invoices, explanations of benefits, and other verification documents is a critical function that significantly effects the ability of the program to identify collateral resources. Obviously, staff will become more familiar with key indicators as they handle more claims, and their experience will make them more effective in finding alternative sources of payment. Program directors should use means to ensure that this experience is shared among all investigators.

In addition, to the extent possible, programs should consider putting effective procedures into writing. Another way to accomplish some standardization is to require claims analysts to consult a check-off sheet listing all potential collateral resources.

CONCLUSION

A thorough familiarity with the many types of collateral resources that could be available to individual victims is essential if programs are to ensure that they spend funds wisely. Programs are urged to train all staff about public and private benefits, not only so that program resources can be conserved, but also so that victims can be directed toward those programs that, in the long run, will provide them with the best financial assistance for their needs.

Section VIII

RESTITUTION AND SUBROGATION

To maximize recovery income, programs must develop monitoring procedures, and make restitution a priority for judges and prosecutors, too

All awards made by compensation programs to victims are potentially recoverable. In an ideal world, if all offenders or liable third parties were held accountable for the harm done to victims, and if those responsible had the resources to pay, compensation programs might not even be necessary, or at most would simply pay victims while they awaited payment from others. But the reality is somewhat different. A significant number of perpetrators are never found. If they are, prosecutors may fail to request restitution in criminal trials, judges often fail to order it, court clerks and probation and parole authorities may be lax in collecting it. In any event, many offenders don't, and never will have, resources to pay. Similarly, civil suits filed by victims or compensation programs against offenders or third parties are relatively rare, since civil litigation is expensive and time consuming, and the outcome is uncertain. Unless victims--and the lawyers that represent them--are convinced that money can be recovered, they generally will not embark on a difficult journey through the court system.

Still, crime victim compensation programs can take seriously their opportunity--and obligation--to recover from offenders the funds they pay out, and obtain enough money to make their recovery efforts worthwhile. Through diligent efforts, programs can encourage restitution orders and monitor the collection of money gained through restitution and civil action. While funds recovered may never be a major revenue source, it can be significant, and the effort to make offenders accountable is one for which all programs can feel some pride.

The authority to recover funds from offenders is provided to all states through their statutes. Compensation statutes authorize programs to recover the funds they award to victims when the victim collects restitution or obtains money through a civil judgment. Most programs also can file suits directly against offenders whose victims have received awards, or against other third parties liable for the victim's injuries.

All programs can expect to receive a small amount of restitution or subrogation income, simply by beyond putting victims on notice of the program's statutory rights to be reimbursed if the victim recovers money. But to maximize income, programs must consider the following actions:

- Playing an active role in promoting and monitoring restitution, to ensure that restitution is ordered, collected, and, when appropriate, returned to the program.

- Reviewing cases to determine which ones are likely to present opportunities for either the victim or the program to gain a collectible judgment in civil court, and following up with the victim, the victim's attorney, and the program's own legal staff to protect or further the program's interests.

Some programs have developed detailed procedures to follow in monitoring restitution, as well as civil suits filed by victims. Several states have dedicated full-time staff to fund-recovery efforts. In at least one state, the program expects to be able, through a direct computer linkup, to access information in its court administration office and its corrections department, so that it can track restitution orders, payments, and the status of convicted persons.

And some states are looking harder at a growing area of tort law, involving suits against corporations and other parties that may be liable for crimes that occur on property they control. This search for "deep pockets" to pay for criminal injury is receiving more attention from private attorneys representing victims, and compensation-program counsel should remain cognizant of the opportunities these efforts present.

It's clear that maximizing fund recovery requires an investment of personnel on an ongoing

basis. In most instances, the eventual return on that investment is uncertain, at best. Each state must determine for itself whether it has the necessary resources for whatever commitment of time and energy to recovering funds it wishes to make.

It should be noted at the outset that the Office for Victims of Crime requires programs to make adjustments to VOCA certified state payouts to reflect amounts "reimbursed" to the program in restitution and third-party recoveries. Basically, the program must reduce its annual certified state payout by the amount of state dollars recovered, i.e., if the program makes an award of state dollars to a victim, and then receives some portion of that award back, it must reduce its payout figure by the amount returned. If, however, federal funds were used in the initial award, the program should not reduce its state payout (since no state dollars were involved), but should only ensure that the federal dollars returned are then used again to make further awards. (If this is not possible, because restitution is not returned directly to the program, but rather to the state treasury, the program is required to reduce its certified state payout by the federal dollars recovered.) Since most states may not be able to determine whether state or federal dollars were used in the original award, OVC will allow states to reduce their payouts only by 60%, which is the presumed portion of any award which would consist of state dollars, given that the federal VOCA match is currently 40%. Programs should consult OVC guidelines for full information and further details.

MAKING RESTITUTION A PRIORITY

Restitution involves a number of institutions and authorities in the criminal justice system. The compensation program is, at least at the outset, a relatively minor "player" in that arena. To improve both the system and its own position within it, the program must take active steps to make itself known and to seek necessary changes to make restitution a higher priority for other officials and agencies.

To begin with, the program should thoroughly understand and analyze the laws, court rules, and policies and procedures of other involved agencies that affect the ordering and collection of restitution. The program should know exactly who within the system is given responsibility to monitor restitution. The program also should understand exactly what it can do under the law and working within the system to assert its rights to subrogation.

Just as important, a determination must be made concerning how each part of the criminal justice system is meeting its responsibilities regarding restitution. For example, if district attorneys have the responsibility to request restitution, are they doing so regularly or only in certain cases? How do prosecutors determine the amount of restitution requested? Is a separate restitution hearing held, or is restitution simply ordered at sentencing? Answers to these questions can be found in several ways. A written survey with follow-up phone calls can determine procedures that are currently in place. When time permits, visits to each court jurisdiction within the state can be invaluable in determining how written procedures are actually implemented. Attendance at association meetings, such as the district attorneys' association, the judges' association, or the clerks' association, can also provide valuable insight into implementation of laws and procedures.

Through this research, the program can identify the obstacles to effective restitution collection, and can develop strategies to overcome those problems. Such strategies might involve active outreach to persuade judges, prosecutors, and court and probation officials to give more priority to restitution. Establishing relationships with key individuals and agencies will help provide effective networking to ensure restitution orders are monitored, and that the money recovered is directed to appropriate parties, including the compensation program.

If systemic changes need to be made, the program should consider encouraging development of a model system for the ordering and enforcement of restitution. If possible, a team consisting of representatives from all parts of the criminal justice system (judges, prosecutors, clerks, etc.) relating to restitution should be assembled to discuss all alternatives and reach agreement on how a model restitution program should work. The compensation program then can help promote this model statewide. Among important elements for consideration are sample affidavits, restitution motions and order forms, procedures for clerks to use in setting up accounting systems, procedures for monitoring dockets and determining delinquent dockets, procedures for probation offices to use in monitoring their case loads, and procedures for corrections officials to document restitution pay-

ments during incarceration, as well as to ensure payments are made while convicted persons are on work release and parole.

It's obvious that such a model system cannot work to its full effectiveness unless sufficient trained personnel are in place. The compensation program should encourage the criminal justice system to prioritize restitution and victims' needs, and do whatever possible to help acquire additional personnel to handle the increased work requirements for an effective restitution program.

If current laws are inadequate to ensure effective restitution, the compensation program can propose and support measures to improve statutory authority and procedures. For example, a number of states have enacted laws mandating restitution hearings, or enabling restitution orders in criminal cases to have the effect of civil judgments. Some corrections departments are authorized to take work release money earned by prisoners and transfer it toward restitution payments. These and other laws can dramatically change the system's ability to seek and enforce restitution.

An effective restitution program also requires adequate staff. If necessary, the compensation program should recommend increasing personnel, or using volunteers to perform certain tasks. Since funding may be limited for additional paid positions, volunteers may be crucial. The following are examples of the ways volunteers can be used:

- Assisting a judge for two hours a week in doing a "restitution review" to check on all probationers the judge has ordered to pay restitution.
- Helping a prosecutor's office to obtain affidavits from victims showing their financial losses resulting from the crime.
- Placing victim affidavits in the files with a prominent note to cue the prosecutor in requesting that restitution be included in the judge's order.
- Entering restitution data for court clerks in their record systems.
- Helping probation officers track whether probationers are meeting their probation conditions, including restitution, and calling or sending letters to delinquent probationers.

MONITORING RESTITUTION: A SUGGESTED APPROACH

While compensation programs will have to develop their own specific monitoring procedures to suit their overall claims management approach, and tailor their efforts to fit within the restitution "system" in place in the state, a review of a comprehensive approach used by the Alabama Crime Victims Compensation Commission may be valuable.

Alabama begins its restitution monitoring procedures by classifying each awarded claim in a particular "Recoupment Category" according to certain characteristics. The system then provides procedures to follow in pursuing restitution or taking other action within each category of cases. This approach not only allows the program to monitor its prospects for recovery in each case, but also to evaluate how well different components of the criminal justice system (judges, prosecutors, parole and probation officers) are performing their statutorily defined duties.

There are five categories within which cases are placed:

Type I: Cases in which restitution is ordered, along with a sentence of less than 2 years in a state institution. This category includes all probationers regardless of the length of their probation, as well as any persons participating in some form of pretrial diversion. It also includes those cases in which some form of split sentence is imposed. Any sentence that in final disposition results in less than two years spent in a state institution will fall within this type.

Type II: Cases in which restitution is ordered, and the sentence is more than 2 years. This category includes all sentences greater than 2 years regardless of their duration, including life without parole and death sentences.

Type III: Pending cases. These are cases in which the disposition of the criminal case is still pending, or cases in which the disposition has not become final. This includes cases pending arrest, grand jury, or trial, in which a suspect has been identified.

Type IV: Cases disposed, with no restitution ordered. These are cases in which the criminal case has resulted in a disposition which did not include the ordering of restitution. If amendment of the

court order is permitted, it may still be possible to obtain restitution; otherwise, civil action may be justified. This category is also useful in identifying why restitution has not been ordered.

Type V: Cases in which the defendant is unknown, deceased, or found not guilty. This category also includes those cases in which charges were dismissed or nolle prossed. Since no restitution can be recovered in these cases, this category exists only for reporting and statistical purposes.

After identifying the type for each case, a Defendant Recoupment Ledger is begun for each defendant, which will detail amounts paid back. The ledger must be filled out as completely as possible, and information not available through ordinary court documents is obtained through any source available. The following information is particularly critical: sentencing date, restitution amount ordered, sentence, and correctional status.

Once a recoupment ledger has been established, specific monitoring procedures are followed according to the category in which the case is classified. (These procedures are described later in this chapter.) If for any reason the case category changes, the procedures will change as well.

Recoupment logs also are established on a county-by-county basis, and form the means by which all defendants owing money to the compensation program can be monitored. The log enables the program to determine on a monthly basis those defendants who have or have not paid their restitution.

One of the first procedures followed is to send a letter to all victims who receive awards, informing them of their obligation to pay the program back when they receive amounts through restitution or civil suits. They also must inform the program if they file a civil suit. The system also enables the program to check independently to see whether victims receive restitution, and if so, the program contacts them to remind them of their obligation to the program. The program determines what amounts a victim owes that are still outstanding, and allows the victim to use amounts received to pay those other remaining bills before paying the program back.

It is important to record all restitution orders as civil judgments, if authorized by state law. (Such authority is provided in Alabama, and in a growing number of other states.) These judgments are then enforceable without having to file a separate civil suit to establish liability or damages. (More detailed civil-suit procedures are described later in this chapter.)

Specific Monitoring Procedures

Alabama's specific monitoring procedures for each case type are described below.

Type I: Restitution ordered, sentence less than two years.

1. Determine the status of the defendant: probation, parole, work release, SIR, or other release or pre-release programs. If currently incarcerated, determine the defendant's end of sentence date.
2. If defendant's status is other than incarceration, place the file in the county in which conviction was obtained.
3. On a monthly basis, note whether defendants have made payment or not.
4. Contact appropriate agency or official (district attorney, probation, parole, etc.) to determine reasons for non-payment. If reasons qualify as acceptable, make a notation on the defendant's ledger. If delinquency is without justification, note this on the ledger, and refer to delinquency procedures.

Type II: Restitution ordered, sentence more than two years.

1. Determine the status of the defendant: incarcerated, work release, SIR, parole, probation, or any other type of release or pre-release program. Also, note defendant's end of sentence and initial parole eligibility date on ledger.
2. If possible, determine inmate's "prisoner's money on deposit," and note the information on the ledger.
3. If the inmate maintains a "prisoner's money on deposit," monitor the ledger in the same manner as a Type I case.
4. If the defendant does not maintain money on deposit, place ledger on inactive status until such time as the defendant is placed on a release program or is otherwise released.
5. Upon defendant's release, parole, or change to any status other than incarceration, convert defendant's ledger to a Type I and monitor it according to the procedures established for Type I cases.

6. Examine all Type II cases periodically to determine any unanticipated change in status and note changes on the ledger accordingly.

Type III: No final disposition reached.

1. Once a determination has been made by the compensation program to make an award to the victim, complete a Restitution Affidavit.
2. File the notarized Restitution Affidavit with the clerk of the court in which the defendant is being tried.
3. Monitor disposition of the case to ensure that restitution is requested and ordered.
4. If restitution is ordered, make appropriate notation in defendant's ledger and place in Type I or Type II depending on sentencing. Process ledger according to procedures for appropriate type.

[Note: Type III cases must be processed in a timely fashion to ensure maximum recoupment potential. Failure to file a Restitution Affidavit in a timely fashion may preclude the possibility of restitution being ordered by the sentencing court. If restitution is not ordered, refer to the section relating to "Failure to Order Restitution."]

Type IV: Case disposed, no restitution ordered.

1. Determine whether or not a request for restitution was made by the victim or the district attorney. If a request for restitution was made and the reasons for not ordering restitution do not comply or otherwise conform with statutory requirements, refer to the section on "Failure to Order Restitution" [described below]. If restitution was denied in accordance with statutory provisions, funds will not be recoverable through the restitution process.
2. If the case has not yet exceeded the time in which an amendment to the court order is permitted, address a request to the sentencing judge to amend his order to provide for restitution. If the time to amend has tolled, recoupment will not be possible unless civil proceedings are initiated.
3. Evaluate all Type IV cases to determine the feasibility of initiating civil proceedings to facilitate recoupment. If it appears such recoupment is possible, refer to "Civil Proceedings" [described below]. If recoupment appears extremely unlikely, record this information on the ledger.

Type V: Defendant unknown, deceased, or not guilty.

These are cases in which recoupment is precluded. The category is maintained for statistical purposes.

Delinquency

On a monthly basis, the Alabama program examines its recoupment logs and defendant recoupment ledgers to determine if each defendant has paid restitution. Failure by a defendant to meet financial obligations results in notice being sent and inquiry made to the authority having control over the defendant as to the reason payment was not made. If the defendant is under no legal authority, notice and inquiry are made directly to the defendant. Included in the notice to the defendant is an explanation of the consequences of non-payment.

Upon receipt of information detailing the reasons for non-payment, the Alabama program makes an evaluation as to whether the reasons are justifiable and acceptable. The decision is noted on the defendant's recoupment ledger. If the defendant fails to meet his or her financial obligation the following payment period, notice is again sent and inquiry made as to the reasons for non-payment. Information received is again examined for justification and the decision of acceptability noted in the defendant's ledger. If the reasons are acceptable, normal monitoring continues.

If reasons for non-payment are not acceptable, however, notice is sent to the defendant and his supervising authority stating that legal action is being requested or initiated against the defendant for failure to comply with a court order. For defendants who are on parole or probation, a request is made to the parole or probation officer to initiate parole/probation revocation proceedings and/or restitution wage-withholding proceedings. For individuals in a correctional community-based program, a request is made to the commissioner of corrections to deduct moneys from the prisoner's "money on deposit," or to have the individual removed from the program. If the individual is under no legal authority, a request is sent to the sentencing judge to cite the defendant for contempt of a specific court order.

Failure to Order Restitution

If information is received that restitution was not ordered by the court, the Alabama program makes the following inquiries:

- Was restitution requested by victim and/or the district attorney? If not, and if it is still possible to seek an amended court order to include restitution, an affidavit should be filed detailing the amounts awarded by the program.

- If restitution was requested, was the denial justified by statutory considerations, or was the judge merely acting in a discretionary manner? If the request was justifiably denied, recovery through criminal proceedings will be precluded; civil proceedings may still be pursued, however. If the denial was based on reasons not consistent with statutory provisions, a request should be made of the judge to reconsider. If necessary, action of mandamus can be initiated to compel the sentencing judge to order restitution. If such action is unsuccessful, civil proceedings may be initiated.

CIVIL PROCEEDINGS

Compensation statutes in most states provide that an award of compensation subrogates the compensation program to the rights of the claimant regarding collateral sources, and empowers the program to initiate legal proceedings consistent with the claimant's rights. Since the collection of restitution through civil proceedings is a remedy available to claimants, the program may seek to recover monies through civil suits in the amount of compensation awarded. Such a civil suit can be either filed against the defendant or against the victim, if the victim receives a favorable judgment in a civil suit and refuses to pay back the compensation program for the amount it awarded on the victim's claim.

Most states also provide that criminal restitution proceedings do not limit or impair the right of a victim to sue or recover from the defendant in a civil action. Regardless of the outcome of the criminal proceedings, then, the victim or the compensation program can seek to obtain a judgment from the defendant in civil court. Obviously, it is extremely important to choose with care those cases in which civil proceedings are initiated. Those case most likely to result in recovery would receive highest priority, of course. It should be remembered, however, that defendants who are indigent or have few assets at the time of a civil judgment may later improve their financial picture. The judgment will then be in place to enforce.

It's also extremely important to consider whether other parties may be liable for the injury perpetrated by a criminal. For example, hotels have been successfully sued for failure to provide adequate security to victims. Similarly, businesses such as restaurants that are open to the public may have some obligation to ensure that security is provided to those on its premises. Purveyors of alcoholic beverages are liable in many states for damage done by those who drink excessively at their establishments (these are called "dram shop laws").

Finding financially sound third parties, or insured individuals, to sue has long been the practice of savvy attorneys specializing in personal injury litigation. Suits involving automobile collisions, for example, are common, since most drivers are insured for precisely that possibility. Increasing numbers of lawyers now are transferring liability principles to other areas of criminal victimization. Of course, these same legal avenues are open to government attorneys representing compensation programs.

An organization has been formed recently to promote knowledge and understanding of tort principles in the criminal victimization field. One of its leaders, Frank Carrington, Jr. (a member of the 1982 President's Task Force on Victims of Crime) publishes a law book summarizing important cases regarding crime victims' civil remedies. [For further information, contact the National Victim Center at 2111 Wilson Blvd., Suite 300, Arlington, VA 22201; (703) 276-2880.]

Again, the specific procedures used in Alabama to monitor civil suits should be instructive. The program begins by sending along with each award a letter and affidavit to be signed, witnessed and returned stating that the claimant understands that it is necessary to notify the program if the claimant files a civil suit [see attached form]. The form must be returned within five days and is placed in the claimant's file. A note is placed in the file that the form was mailed to the claimant, so a record of notification is available in the event the form is not returned.

Every six months, the Alabama program sends to the clerk of each circuit a letter with a list of all the victims compensated by the program during the prior six months. The letter requests that the clerk check to see if civil suits have been filed, and if so, whether judgments have been awarded. A copy of the clerk's response regarding particular claimants is placed in that claimant's file. The claimant also is sent a letter asking if the claimant has filed suit.

If a civil suit is pending, a letter is sent to the claimant describing clearly the compensation program's subrogation rights and stating that the program must be notified of the outcome of the case. The letter also requests information regarding the civil case number and the claimant's attorney. A copy of the letter is forwarded to the assistant attorney general representing the compensation program.

If a civil suit has been disposed of and a judgment entered, the Alabama program sends a letter to the victim and to the victim's attorney requesting payment of the full amount awarded by the program to the claimant and again setting forth the program's statutory subrogation rights. (The Alabama program, by law, is not allowed to accept less than the full award paid to the victim, and neither is the program allowed to negotiate with the victim on the amount subrogated. The program will, however, allow the victim to use money obtained in a civil suit to satisfy outstanding bills before reimbursing the program.)

If after sending a letter to the victim who has received a favorable judgment, the victim does not respond or provide payment, the Attorney General is notified. A letter is then sent to the victim and the victim's attorney warning of a civil suit by the program against the victim to recover the funds. A civil suit may be filed by the program if there is still no response.

When funds come in from civil suits, a copy of the check will be placed in the victim's file. A balance is kept on each suit. The computer operator keeps a tickler system on civil suits pending and on judgments.

CONCLUSION

While a program should operate under no illusion that even a sustained restitution and subrogation effort will result in a large proportion of its awards being recovered, there are a number of states that have earned a substantial return on their investment of personnel in this area. It would certainly be advisable for every program to be alert to its possibilities for regaining some of the usually scarce public funds paid to victims. How aggressive each program wishes to be, or can be, given limited staff resources, can only be determined by each program. And each program should also remember that in recovering funds it is not only augmenting its ability to help other victims, it is helping to hold perpetrators ultimately responsible for their behavior. This in itself may be a goal worth pursuing.

Section IX

APPEALS

Programs' objectives on appeals should be both to provide appropriate assistance and bring about prompt closure of a claim

For most programs, appeals form a small but important part of their workload. While the number of appeals filed is usually minuscule, each one may require a significant amount of time spent in reexamining documents, reconsidering decisions, and preparing for and holding hearings.

It is essential that programs think seriously about their approach to handling appeals, so that they can be handled both fairly and expeditiously. Programs need to consider adopting procedures that not only will give the applicant full opportunity to make a case for changing an initial decision, but that will also facilitate prompt and final closure on a claim.

Clearly, a compensation program does not want to further "victimize" a claimant in the appellate process by setting up unreasonable obstacles. On the other hand, certain procedural aspects of the appellate process must be preserved. The issue most commonly encountered is how to balance the two.

Perhaps the most important aspect of a fair and efficient appellate process is good communication with the claimant. Applicants whose claims have been denied often find the appellate process quite complicated. They may have trouble understanding what their rights and responsibilities are, and frequently fail to follow the correct procedures for filing appropriate documents within required time limits. The difficulties experienced by claimants pose problems for programs, too, when deadlines aren't met, procedures aren't followed, and time must be spent on an "appeal of the appeal."

By assisting claimants to understand the appellate process and to fulfill their duties, appeals are made much easier for compensation programs, too. Simplifying forms, explaining fully the process in writing, devoting some staff time to answer questions, and exhibiting reasonable flexibility regarding certain requirements are among the ways programs can both assist claimants and promote prompt resolution.

APPEALS LAW AND PROCEDURE

All states provide in their statutes a right for claimants to seek reconsideration of the initial decision made on their claims. The law usually delineates the path which reconsideration will take, with each step in the process necessitated only by disagreement at a lower step.

While each state has its own law governing reconsideration and appeals, there are many similarities. A claimant typically has the alternative to accept or reject an initial decision rendered by the program on an application. If the claimant rejects the decision, the claimant may request reconsideration, which often may be accomplished without a hearing. If the claimant is still dissatisfied, the claimant can request a hearing, which usually will be conducted by compensation board members or other decision makers of the compensation program. An appeal of the decision rendered following the hearing is usually made to an administrative law judge, and then to a regular court of law. In some states, the initial hearing following reconsideration will be conducted by the administrative judicial agency, or the first appeal is directly to a court of law.

Programs have developed procedures and rules to comply with their laws, and to meet the contingencies faced when applicants are dissatisfied with decisions made on their claims. Again, there are many similarities in program approaches.

Often, a dissatisfied claimant will simply call the program and complain. While some programs may be able to reconsider their decisions with simply an oral request, most programs will require written notice that the claimant is formally seeking reconsideration, and will further require that the request be filed within a certain time limit. Fifteen states require appeals to be filed within 30 days of denial, while six require appeals to be filed within 20 days of denial. Three require appeals to be filed within 15 days of denial, and three give denied applicants

60 days to file appeals. Only one state gives denied applicants more than 60 days to file an appeal. In addition, some programs require the claimant to provide some reason for rejecting the decision and requesting reconsideration. Failure by the claimant to do so may lead the program to reaffirm and finalize the decision without further reconsideration or a hearing.

When a request for reconsideration is received, some programs will simply review the application and supporting documents, and perhaps speak to the claimant to gain additional information, before revising or reaffirming the initial decision. If mistakes have been made, or a new perspective is provided by the claimant, the program can revise its decision and notify the claimant. If the program believes its initial decision was correct, it so informs the claimant and provides information on how to request a hearing.

If a hearing is necessary, the claimant is notified in writing of the time, place, and purpose of the hearing. This notice is usually mailed not less than 30 days before the date of the hearing. In some states, the claimant is required to submit a prehearing statement in advance of the hearing, and failure to do so may result in cancellation of the hearing. The prehearing statement may have to include the findings of fact and/or conclusions of law in the initial decision with which the claimant disagrees; a statement explaining why the claimant disagrees with the decision; a list of any documents not previously submitted that will be offered; the names and addresses of witnesses who will testify at the hearing; and a synopsis of proposed testimony, motions or other matters.

If a hearing is held, it may or may not be governed by formal rules and procedures. Frequently, the individuals conducting the hearing use their discretion to provide wide latitude to the claimant to ensure that all issues are fully aired. The claimant is usually allowed to appear personally before the decision-making body, present documentary evidence, call witnesses, and cross-examine any witnesses appearing in opposition to the claim. In many states, the claimant may be represented by counsel.

In states where decisions are made by compensation boards rather than administrators, the hearing is conducted usually by a board chairperson or member, with other board members in attendance. In states without such boards, some other hearing officer or body will preside and make a decision on the appeal.

At the conclusion of the hearing, the decision maker will examine the claimant's case again along with any new evidence submitted by the claimant. A transcript may be prepared, which could be useful on appeal to a higher authority. The claimant is notified of the new decision. If the claimant does not accept the decision, the claimant usually may appeal to an administrative hearing authority within state government, or to a court of law. The appeal must be taken within a certain time period. A full discussion of the administrative and judicial court process is beyond the scope of this chapter; it may be enough to note here that in any appeal beyond the program itself, decision makers in the program will have to cooperate with the counsel assigned by the state to their case, although it usually will not require appearance as a witness in any court hearing.

NOTIFYING CLAIMANTS

The most significant problem facing program personnel is effectively communicating to an uninformed claimant what the procedural steps are that are necessary to preserve that claimant's appellate rights. In many cases, claimants do not have benefit of an attorney or a trained victim service representative to assist them when they receive a notice from the program that the claim filed has been denied or not fully paid. The program should do what it can to assist in the claimant's full understanding of the appeals process and the responsibilities of various parties within it.

Claimants come from all walks of life, and have varying educational backgrounds. The more complex the correspondence, the more likely a claimant will be confused and unable to follow directions. This confusion may perhaps adversely and unfairly affect the adjudication of the claim. Therefore, correspondence with claimants on appeals should be written in easy-to-understand language. Letters and forms should be designed at the third-grade reading level when possible. (See example following this section.)

The program should be especially clear in explaining to claimants the reasons for denial or reduction of awards. Claimants are often unable to understand such issues as the statute of limitations for filing, the requirement that there be a compensable loss, and the need for an absence of con-

tributory conduct. It is extremely important that the program explain the statutory provision upon which it relies in simple, uncomplicated language, rather than merely citing a subsection in the law verbatim. Further, the program decision should also relate the law or rule to the particular facts of each claimant's case.

For example, a claim denied for untimely filing might read like this:

> The claimant, Mrs. John Smith, age 62, was the victim of an assault on September 20, 1986. Mrs. Smith filed her claim with the program on January 30, 1989, two years and four months after the crime injury. The board must deny this claim because the law states a claim must be filed no later than two years after the date the crime was committed, unless good cause for extending the filing deadline exists. No good cause was provided to the board for Mrs. Smith's failure to file the claim within the deadline.

Rather than like this:

> The claimant, age 62, a victim of an assault on September 30, 1986, filed a claim with the program on January 30, 1989. Title 71 P.S. Section 180-7.4(b) states: "a claim must be filed not later than one year after the occurrence of the crime upon which the claim is based, or not later than one year after the death of the victim or intervenor; Provided, however, that for good cause the program may extend the time for filing for a period not exceeding two years after such occurrence." This claim is hereby denied.

For those claims involving no loss of either out-of-pocket expenses or loss of earnings, providing the claimant with the actual calculation, along with the deductions for collateral resources and other statutory reasons, is a useful method to assist claimants in understanding why their claim is not compensable.

PROVIDING INFORMATION

Typically, applicants are notified in writing at the time a claim is denied that they may appeal the decision. Notification alone, however, is rarely enough information for the victim to understand adequately the victim's rights and responsibilities in making an appeal.

Every decision rendered should be accompanied by a fact sheet detailing to the claimant the options available if the claimant disagrees with the program's decision. The fact sheet should also be clear about any responsibilities the claimant has in providing information to the program on an appealed case.

One suggestion to help programs communicate with claimants, as well as to help program staff handle forms, is to use color-coded forms. These forms can assist program staff, victim service representatives and claimants in identifying the type of information needed at any particular time. In communicating with the claimant, program staff can reference a form by color and thereby eliminate problems claimants have in choosing between several pieces of correspondence.

For example, when a decision is rendered, a color-coded packet can be sent to the claimant with the "Decision and Order" of the Board in white, the claimant's "Acceptance" in blue, the claimant's "Rejection" in yellow and an instruction sheet in pink. Then, when a claimant indicates either to program staff or a local victim assistance representative that the claimant desires to accept the decision, the claimant can simply be told "sign, date and return the BLUE form." Claimants who wish to reject the decision would be instructed to "return a YELLOW form." In Pennsylvania, this color-coded system has assisted immensely in ensuring that claimants return appropriate forms, and has thus cut considerably into staff time spent on dealing with victims filing appeals.

In some states, the claimant is required to provide reasons for appealing the decision. A mere indication that the decision is rejected is not sufficient. The claimant also must submit a pre-hearing statement with supporting information to refute the findings by the program. It should be useful for both the claimant and the program to provide, on the form the claimant uses to reject the claim, a space in which the claimant is specifically instructed to fill in the reasons for rejection.

The claimant also can be instructed to attach additional documentary evidence to support this position.

Program personnel should be trained to provide information to claimants who call or write seeking assistance or clarification on appeals procedures. One excellent alternative is to name at least one person who can act as a Claim Service Representative to field calls and questions regarding the claims process. Responsibilities of the Claims Service Representative should include advising claimants about the status of their claims, fielding general questions about the claims process, explaining why the program may have requested certain documents from them, assisting with the completion of the claim form, providing guidance to claimants about appellate procedures and the rules of practice during hearings, and helping with the preparation of the affidavits and the prehearing statement if the claimant is not represented by an attorney. The Claims Service Representative should also act as a primary contact for victim service personnel located throughout the state who may need assistance with the claims process from time to time.

The program also may consider developing a Practice and Procedure Manual for use by claimants and those who represent or advise them. This would aid private attorneys as well as potential claimants who need assistance with various aspects of the claims process, and might reduce the number of inquiries as well as improve the quality of claims received and hearings conducted.

The manual could be divided into several sections dealing with various aspects of the claims process, including appeals. Each section would be devoted to presenting a detailed explanation of how a particular aspect of the process works. The types of documents used and an overview of the statutes and regulations relevant to the particular topics should be included. Suggested topics are eligibility requirements, completion of the claim form, the verification process (included in this segment should be a discussion of the use and purpose of forms), contributory conduct, deductions required to be made to an award, and appeals and hearings. Appendices should contain the claim form, copies of the state law and regulations, policy statements, practice rules, commonly used forms, and reference telephone numbers (such as Social Security Administration, Medicare, Blue Cross/Blue Shield, and Veterans Administration) that can aid claimants in obtaining documents required to apply.

The program also may want to consider developing a regular newsletter directed toward victim service personnel. The newsletter could include information and practice tips on appeals.

SHOWING FLEXIBILITY

In spite of the best efforts made to clearly explain procedures, many claimants are certain to be unable to follow instructions correctly. For example, many claimants fail to file their appeals notices or request a hearing within the time allowed. Claimants also may not be able effectively to represent themselves at hearings without some aid in presenting documents or testimony.

To the extent possible and appropriate under state law and rules, the program should exhibit flexibility with regard to claimants' meeting appeals procedures and rules. While programs must enforce the law, their mission also is to serve victims, and within the bounds of their discretion they should work to ensure that victims are given full opportunity to exercise their rights. Obviously, this is a balance that each program must find for itself.

Programs may wish to provide extra time beyond the appeals deadline if the claimant requests it and provides sufficient reason for the delay. For example, a claimant could preserve appellate rights by submitting a notice to this effect: "I am awaiting documents in support of my claim, please allow me X days to submit the documents." If the claimant makes such a request, the program could allow the claimant 30-45 days to submit the items before reviewing the case file again. The program also can build in a 10-day grace period for claimants seeking appellate relief.

The program also should show as much flexibility as possible in the conduct of its hearings, consistent with the necessity to observe procedural requirements and to guarantee impartiality. This may involve nothing more than patience, or taking extra time to explain each step of the hearing process and to elicit information from the claimant. This does <u>not</u> mean that hearing officers must bend rules regarding the claim itself, or the victim's eligibility; it simply means that the claimant is given every reasonable opportunity to make a case for a favorable decision.

This will be particularly important for claimants who appear at hearings <u>pro se</u> (representing themselves without benefit of attorney). Many, if not

most, claimants do not understand how hearings are conducted, despite efforts of the program to inform the claimant of the procedural rules governing the proceeding. The only guide claimants usually have to gauge how to conduct themselves in a hearing is what they have seen in the media (television dramatizations of trials, etc.).

CONDUCTING HEARINGS

While programs will conduct hearings in only a tiny percentage of cases, it is nevertheless important for those conducting the hearings to be able to do so confidently and efficiently. If the hearing is run correctly, and all sides of any question at issue are fully explored, the claim may be fairly reconsidered and brought to closure. If the hearing is flawed, questions may remain open that may hinder reconsideration by the decision makers, or that will lead the claimant to appeal another step higher. The presiding officer has an inherent responsibility to ensure a fair and impartial hearing for both sides. While the officer should show some flexibility toward the claimant, the officer must see that the rules of practice and procedure in effect are followed. This often involves a delicate balance between educating a confused claimant and maintaining objectivity. One effective tool in ensuring that a hearing is conducted in an orderly fashion is to explain the claimant's rights to the claimant on the record before the proceeding begins. After the explanation, claimants are encouraged to ask questions. This procedure has shown itself to be useful in pro se cases since it decreases the number of interruptions during the course of the hearing.

When a claimant is represented by counsel, the proceeding may or may not run more smoothly. Some attorneys are ill prepared and unfamiliar with the rules of administrative practices and procedure in administrative hearings. As a consequence, a claim with some merit may suffer at the hands of ineffective counsel unless the presiding officer poses questions that may assist in the resolution of certain issues.

In any hearing, the applicant should be given a full opportunity to present new evidence or provide his or her perspective on the documentation already submitted. Decision makers should also elicit whatever information they need to reconsider the claim. Experienced decision makers will develop a "feel" for how to conduct hearings with appellants of various abilities and styles.

The program may wish to develop a "script" for use by the presiding officer at hearings, to ensure that all procedures, rights, and responsibilities are explained clearly to all participants and followed during the hearing.

CONCLUSION

By providing information to claimants when notifying them of the decision on their case, and assisting them to understand their rights and responsibilities regarding appeals, programs not only can ensure that each claimant is afforded an ample opportunity to obtain compensation, but also can help speed and the appeals process. This is not to suggest that programs should encourage appeals; appeals are time consuming and, of course, call into question initial decisions. Nevertheless, each victim should be provided information about appeals options, and programs should be prepared to assist and advise as necessary to ensure that victims avail themselves of whatever rights they possess under the law.

NOTICE OF BOARD DECISION

Please be advised that you have the following options regarding your claim:

OPTION ONE

You may accept the decision as rendered by the Board. If an award has been made which you wish to accept, you must complete the Acceptance, Release and Refunding Bond form enclosed (BLUE COPY - ACCEPTANCE). Unless a request for reconsideration or appeal is made by the Office of General Counsel, a remittance in the amount indicated will be forwarded to you. If you have made any payments on any bills listed as outstanding in the order, please advise us accordingly.

OPTION TWO

You may, if you have not previously done so, reject the decision of the Board and request the Board to reconsider its decision. To do this, you must complete the enclosed Rejection of Decision and Request for Reconsideration form, giving your reasons for rejection of the decision (YELLOW COPY - REJECTION). The completed Rejection of Decision and Request for Reconsideration form must be filed with the Board with thirty (30) days of the date of the decision rendered by the Board.

In the event you do not within thirty (30) days from the date of the Board's decision as rendered (unless you are proceeding pursuant to OPTION THREE hereof for a hearing) file a completed Rejection of Decision and Request for Reconsideration form with the Board, the decision of the Board shall be final as of receipt of the decision.

OPTION THREE

You may, if you have not previously done so, reject the decision as rendered by the Board and request the Board to hold a hearing affording you the opportunity to appear in person before the Board at its office located at [address]. At that time, you may present witnesses and evidence in support of your claim, and cross-examine any witnesses which may appear in opposition to your claim. (Use YELLOW copy for this also. You must use the language "I request a hearing.") The hearing will be held pursuant to and under the requirements of the Administrative Agency Law [cite].

The request for hearing must be filed with the Board within thirty days from the date of the decision as rendered by the Board. The Board will schedule a hearing and notify you as to the date and time thereof.

If you request a hearing as provided herein, you must submit to the Board AT LEAST TEN (10) DAYS PRIOR to the date set for said hearing a clear and concise statement in the manner hereinafter provided.

The statement shall include the findings of fact and/or conclusions of law in the Board's decision with which you disagree and why; what documents, if any, not previously submitted to the Board will be offered at the hearing; the names and addresses of witnesses which you will present to the Board with a brief general synopsis of their proposed testimony; and any other information or motions which you would like the Board to consider preliminarily.

You may have legal counsel represent you in the proceedings and the law permits the Board to award the payment of counsel's fees of up to 15% of the final award, if any. If you plan to have an attorney represent you at this hearing, he should forward a notice of appearance to the Board as soon as possible, if he has not previously done so.

In the event you do not within thirty (30) days from the date of the Board's decision as rendered (unless you are proceeding pursuant to OPTION TWO for a reconsideration of the Board's decision) file a request for a hearing before the Board, the decision of the Board shall be final.

Section X

CONTROLLING COSTS

When scarce funds don't keep pace with a growing demand, programs can consider a number of cost-containment strategies

For most programs, controlling costs is a major concern. Scarce resources necessitate careful expenditure of funds, and a growing number of programs are exploring ways to contain or limit the amounts they award to victims. While controlling costs may mean that some victims or providers are not paid fully for their losses or services, it may also mean that the program is better able to compensate as many victims as possible.

Among the strategies used by programs are the following:

- Setting overall award maximums;
- Reimbursing a set percentage of compensable expenses, rather than 100% of costs deemed eligible;
- Setting specific reimbursable rates for medical procedures, through use of fee schedules based on insurance-industry or models or workers' compensation;
- Using medical professionals (doctors, psychologists, trained nurses) to review medical and mental health counseling bills and records to ensure legitimacy and reasonableness of cost;
- Negotiating on a case-by-case basis with hospitals, medical providers, and others to determine acceptable fees;
- Setting maximums for mental health counseling awards, or for hourly rates of therapists;
- Contracting for services on set-fee basis; and
- Setting maximums for certain compensable expenses, such as funerals, lost wages and support.

Every cost-containment technique will have implications for programs' ability to cover individual victims' losses fully. But programs are being forced to recognize that an ever-increasing demand for assistance, coupled with projected shortfalls and cutbacks in funding, may mean that many programs will no longer be able to pay the full amount of every bill or expense presented to them by victims and providers.

Worth noting is that a number of programs are, by statute, authorized and obligated to pay awards only to the extent that funds are available. Consequently, if budgetary conditions are such that funds remain fixed or are reduced, yet demand for assistance swells, the programs can only pay out as much as the compensation fund has in it. Practically speaking, this could mean that in a particular fiscal year or other budget period, awards are proportionately reduced for all applicants according to the funds available to the program.

Wisconsin's provision regarding awards depending on available funds is typical, and reads as follows (WI Stats.949.06 (5)(e): "[T]he department shall make payments. . . to the extent that moneys are available and in accordance with rules . . ."

OVERALL MAXIMUMS

Nearly every program has an overall maximum for the total amount it can award to any one victim, or for any one claim. These maximums are usually written into the statutes that create compensation programs. But while some states have been able to raise their maximums in recent years, to enable more victims who have suffered severely to recover more of their financial losses, a few programs have had to lower maximums to ensure that all claimants receive payment for some portion of their bills.

Maximum caps actually apply only to a very small percentage of claims, since most victims seek payment for bills totaling far below the maximum. Average awards in various states range from less than $1,000 to about $5,000. For many programs, less than 5% of awards will reach the maximum.

Maximums range from a low of $1,000 in Georgia to $50,000 in Minnesota, Utah, and West Virginia. In addition, New York has no limit on medical expenses, and Washington has a $150,000

maximum medical cap, with a capacity to go beyond that cap if necessary; both states have maximums for other types of expenses.

About half the states have maximums of $15,000 or below, and half have caps of $20,000 and above. Fifteen states have $10,000 maximums, and 10 states have $25,000 maximums.

PERCENTAGE REDUCTIONS

Responding to dramatic increases in applications for compensation, some programs have recently adopted rules and statutory amendments that institute across-the-board percentage reductions and payments. For example, in June 1991, the New Jersey Violent Crime Compensation Board determined that limitations would be placed upon both the "items of loss compensated and the amount of monetary awards entered." The new rule reads as follows (N.J.A.C. 13:75-1.7):

> For all claims closed on or after the date of adoption of this rule the Board shall make no award in an amount greater than seventy five percent of the out of pocket unreimbursed or unreimbursable medical expenses, loss of earnings or support or related pecuniary loss, incurred by the victim, claimant or secondary victim as defined by N.J.A.C. 13:75-1.28 and as verified by the Board's investigative staff, approved by the Commissioners and subject to limitations provided by these rules.

Other states have adopted similar rules, recognizing that by paying only a portion of an individual victim's medical bills and other expenses, the program saves money for use in paying other victims that might not be paid if funds were depleted.

In Louisiana, for example, all compensable medical expenses under $500 are compensated at 100% of the total bill, with the exception of ambulance charges which are limited to a $200 fee cap. Medical expenses in excess of $500 are compensated at 75% of the remaining balance.

Percentage reductions may at first appear harsh to both victims and providers. In actuality, though, compensation programs are simply following the lead of both private and public third-party benefit programs. Private insurance plans nearly always require payment of a deductible, and often pay only a percentage of the total bill. (A typical major medical plan may pay only 75% or 80% of bills rendered.) For providers who may regard some of their services to indigent victims as uncollectible, a payment that covers a large percentage of their cost is better than no payment at all. Medicaid and other public medical-benefit programs also pay only a percentage of providers' normal fees.

From the compensation programs' standpoint, the percentage-payment strategy recognizes that not all of a medical provider's bill goes to pay the actual costs of a particular service. Medical providers, like other businesses, know that some portion of their bills will go unpaid. Providers and businesses "cover" these costs by recouping them from those who <u>can</u> pay. A person or entity paying for service is not simply paying for that service; payment also goes for the value of services that is not collectible from others. Some programs believe that while they should pay fair value for services rendered, there is no justification for a public benefit program to cover these "business losses."

Still, programs must be cautious that percentage payments do not create a "backlash" resulting in providers refusing to treat victims. As an example, many doctors refuse to treat Medicaid patients because the fees allowable are too far below what their customary fees are. Programs must find the correct cost-conscious level that also will be acceptable to providers, so as not to deny victims the capability to secure competent care.

A program can mitigate the potential for the victim having to pay the unpaid percentage by requiring or encouraging providers to accept the program's reimbursement as payment in full. This can be done by statute, with ample precedent in the workers compensation arena. Or it can be done by notifying each check recipient that the payment must be accepted as payment in full. Arkansas has adopted the following provision along with its rule providing for payment of no more than 75% of medical bills:

> The provider of medical services to whom the award is made will be notified that by accepting the payment of 75% of their bill, they are agreeing not to commence civil actions against the victim or his legal representative to recover the balance due under the bill.

There is some question whether providers may be forced to abide by the "payment in full" prin-

ciple, absent specific statutory mandate. Some states report that as a practical matter providers have raised little or no objection to the procedure, and have not billed victims for the uncovered amounts. This is particularly true of hospitals and institutional providers that are used to accepting less than full fees. However, one state performed a survey of a random sample of its cases, and found through calling victims that about 50% had been billed by doctors for the charges unpaid by the program.

FEE SCHEDULES

Fee schedules for medical procedures are universally used by most third-party payers, including workers compensation. Typically, each procedure is assigned a code, for which a predetermined fee has been set. These fees may or may not be as much as what the provider bills or would like to recover. Depending on the insurance plan or benefit program in effect, the
the doctor or hospital may or may not seek payment from the patient for the difference between the doctor's bill and the fee-schedule payment. In workers compensation and Medicaid, for example, the doctor understands prior to providing services that only the allowable fee will be paid, and that no billing to the victim is permitted. The doctor or provider may then choose whether or not to treat the patient and accept these conditions.

As mentioned above with regard to overall percentage reductions, programs must be cautious that use of fee schedules does not create a "backlash" resulting in providers refusing to treat victims. Some doctors refuse to treat Medicaid patients because their recovery is too low to justify their services; they may even claim they take a loss on Medicaid patients. A balancing act is required of the program employing fee schedules; the payment should not be too high, since too much scarce money will then be spent; but the fee cannot be set too low, or providers might begin turning away victims.

Washington is one state that requires all medical service providers to accept maximum allowable fees as provided by the state Workers Compensation Schedule. Further, providers are advised that if an eligible victim has paid a provider for expenses incurred as a result of a compensable injury, the provider must refund to the victim any amounts that are in excess of the amounts that the victim is entitled to, and bill the department for services at established fee schedule rates.

All participating providers receive the following notice from the Washington compensation program:

> WAC 296-30-081 ACCEPTANCE OF RULES AND FEES. Providing medical or counseling services to an injured crime victim whose claim for crime victims benefits has been accepted by the department constitutes acceptance of the department's medical aid rules and compliance with these rules and fees. Maximum allowable fees shall be those fees contained in WAC 296-30-080 less any available benefits of public or private collateral resources.
>
> An injured victim shall not be billed for his or her accepted injury. The department shall be billed only after available benefits of public or private insurance have been determined.
>
> If the medical provider has billed the injured victim and is later notified the department has accepted the victim's claim, the provide shall refund to the injured victim any amounts paid that are in access of the amounts that the victim is entitled to from public or private insurers, and bill the department for services rendered at fee schedule rates if such rates are in excess of the public or private insurance entitlement.

PROFESSIONAL REVIEW

A few programs make use of professionals to review medical and/or mental health counseling bills. Some programs employ an in-house medical professional, such as a trained nurse, to go through hospital bills on a regular basis to ensure that all items of cost are legitimate, reasonable, and related to the criminal injury. At least one program has a psychologist on its board that can review mental health counseling claims. Other programs contract on a case-by-case basis to review specific complex or costly cases.

Programs making use of in-house professionals profess a belief that the costs involved in employing these individuals are more than justified by the

savings realized. According to these programs, there are numerous unrelated, inconsistent, and unjustifiable expenses that may show up on hospital and medical bills. In addition, provider knowledge that professional review will be undertaken on bills may discourage "sloppy" billings.

NEGOTIATION

Some program directors report success in negotiating with major medical providers about bills of unusual cost or dubious merit. These directors may rely on the providers' knowledge that the claimant may pose collection difficulties, and that the compensation program is the only source for any payment at all. Professional relationships developed over time with hospitals and doctors also may facilitate the ability to negotiate reasonable and mutually acceptable fees in individual cases.

MENTAL HEALTH COUNSELING

As described above, a number of programs currently employ some prescribed method to limit expenditures for medical care. Mental health counseling expenses in particular are closely regulated in some states, through overall maximums, flat hourly fees, and special requirements for documenting or justifying treatment. While a full discussion of these approaches is included in a separate section of this manual, it is worth noting some important aspects of cost-control strategies regarding counseling claims.

Programs regard the complex problems surrounding evaluation and payment of mental health counseling as justification for establishing special policies and procedures governing payment in this area. Unlike medical treatment for physical injuries, where a simple review of the diagnosis and subsequent treatment usually serves to provide a general sense of the propriety of the medical procedure, mental health is vastly less well defined. The standardization of credentials, diagnoses, and treatment protocol available in the physical-medicine world are generally absent in the mental health arena. In establishing special cost controls, programs are, in a sense, simply attempting to impose the same kind of order that already exists with regard to physical injuries.

While no standard lengths for treatment are officially recognized by the mental health profession, and little research exists to establish conclusively that most victims recover within set periods of time, programs have made use of the experience of therapists and their own average requests for payment to determine standard time frames within which therapy is expected to conclude. A number of programs have set maximum lengths for treatment ranging from 15 to 52 weeks, or maximum awards for all mental health claims, such as $2,000. For some programs, these limits admit of no exceptions, while in other states, the limits are flexible, and allow for consideration of claims for treatment of unusual duration or intensity.

Hourly rates set by programs vary according to the educational background of the therapist, with psychiatrists receiving more than psychologists, social workers, and other counselors. Programs also may require that providers possess certain degrees and/or licenses in order to qualify for payment for therapeutic services.

Treatment plans and other special documentation are often required by programs to ensure that compensable mental injuries caused by the crime exist, and that treatment is directed toward alleviating those injuries rather than other conditions that preceded the crime or are unrelated to it. Developing treatment plans is standard practice for many therapists, who use it as a guide for planning and evaluating treatment. Programs could also require progress reports and other special justification for treatment lasting beyond standard lengths as defined by the programs.

Peer review is also used by some programs for evaluating the need for and length of treatment. Peer review is usually accomplished by contracting with professional therapists to look at especially complex or lengthy cases.

Programs can make use of all the above strategies to control counseling costs. For example, a program might set a limit for mental health counseling benefits of $2500 or six months of treatment, whichever comes first. Payment could require submission of a treatment plan detailing precisely what condition is being treated, and what therapeutic techniques will be used to alleviate specific symptoms. Exceptions to the $2500 limit may be granted if the counselor offers a sufficient written explanation for the extended treatment; these exceptions could be subject to professional peer review. Individual sessions could be further limited to a per-hour fee ranging from $75 to $125 for

Board-certified professionals with Ph.D. or M.D. degrees, and $60 to $80 for Board-certified M.S.W. or counseling-degree holders.

Minnesota is among the states that have developed a special mental health counseling reimbursement policy; it reads as follows:

- The service provider must submit a treatment plan if treatment will last longer than six months after the date the claim is filed and the cost of additional treatment will exceed $1,500 or the total cost will exceed $4,000.

- The treatment plan must include: date treatment began; expected date of termination or treatment; diagnosis; treatment goals; proposed method of treatment including measurable outcomes, information, information regarding pre-existing conditions and prognosis.

- The treatment plan must be revised after six months and on a quarterly basis after that.

- If the treatment is likely to continue more than 30 days beyond the date of the termination given on the treatment plan, the provider must submit a new plan with a revised termination date. The Board must review the revised plan and approve or deny the extension.

- Treatment plans are reviewed by the program director to assure that the information given is accurate and to make a recommendation regarding payment. If there is a question as to whether the treatment should be approved, or if the Board is unable to determine "reasonableness," the Board will engage outside expert consultants to assist in the determination.

CONTRACT SERVICES

While contracting for services is rare, some programs report that savings can be realized when some types of care are provided by specific providers for fees agreed upon in advance. For example, a few programs work with mental health services to ensure that quality care is provided at reasonable cost, or to provide special counseling services. Connecticut, for example, provides each family member of a homicide victim with six sessions of free counseling through a contract service.

FUNERAL CAPS

Almost all programs set a maximum for funeral expenses, and many such caps were included in the original enabling legislation for the program. About 10 states each set maximums of $1,500, $2,000, and $2,500; the remainder of the states have caps above $2,500 or below $1,500.

These caps indicate that while the states want to assist survivors of homicides with the proper burial of their loved ones, they do not feel an obligation to pay for services costing extraordinary amounts of money, or involving unusual or uncustomary services.

In setting maximums, some programs have consulted with or surveyed funeral directors or their associations to determine average or reasonable costs in their states. These costs vary from state to state, according to custom and general economic situations.

LOST WAGES AND SUPPORT

All programs will pay victims for wages that they lose because of injury sustained in crime, and will offer lost support coverage to dependents of murdered victims. While some programs will pay the actual earnings lost, subject to a reduction for taxes (typically one-third), other programs place limitations on the amounts paid per week or other pay period.

Programs setting limits may peg them to unemployment benefits. Weekly limits of $200 or $400 also are reported. These rates of payment are intended to ensure that victims and their families can survive, but they may not always support some individuals and families to the extent that the disabled or killed victim could have if the injury or death had not occurred.

CONCLUSION

Clearly, any cost-containment strategy must be carefully researched in advance to determine its implications for program funding, service-provider cooperation, and victim satisfaction. With demand for compensation outstripping supply, more and more programs will have to consider some of the means discussed above to ensure that as many victims as possible receive some amount of financial assistance.

Section XI

OUTREACH AND PUBLIC RELATIONS

Reaching out with the compensation "message" should be a priority, and can be accomplished through a broad range of methods

Victims must know about crime victim compensation programs if they are to take advantage of the benefits available to them. Programs have a responsibility to do what they can, within given resources, to provide information to those who have been criminally injured, those who they are likely to come into contact with in the aftermath of victimization, and the public at large. Some programs may even have specific statutory duties to make information available.

There are a number of different ways that programs can reach out to victims, law enforcement, victim service providers, and the public. Program resources available for outreach and public relations efforts will vary widely from state to state, but each program, to the extent feasible, should consider developing a strategy that could include some or all of the following components:

- Printed brochures and posters
- Training of police officers, judges, prosecutors, and other criminal justice personnel
- Training of victim service providers
- Media relations
- Advertising
- Networking
- Special events
- Public speaking.

Some of these components are easier or less costly to implement, but that doesn't make them less important. Each is discussed and compared in detail below.

It should be kept in mind that developing and implementing a successful public relations strategy takes careful planning. First, a target audience or audiences must be identified. Second, appropriate means to reach that target must be determined, and the outreach or PR product must be created. Finally, the outreach campaign must be evaluated to learn whether goals have been accomplished, and to make improvements in later efforts.

BROCHURES AND POSTERS

Most states have developed brochures describing their programs. Perhaps the best way to get ideas for a brochure is to look closely at brochures from other states. (A number of brochures are available through the Association's executive office.)

Printed materials developed by the program can be creative, innovative, and interesting. Brochures and other written materials should catch the reader's or viewer's attention; devices such as questions, unusual offers, and leading remarks can be used. Make sure it's written in a straightforward, helpful manner, and that the language in it is aimed at a sixth-to-eighth grade reading level (the median level of comprehension in this country today).

If program staff knowledge of layout, graphic design, and the printing process is limited, it is essential to work with a good printer who can assist with those aspects. It isn't necessary to find a large-scale printing outfit; quick-service printers can do amazing things with today's technology, and they're usually less expensive and more responsive.

The most successful brochures have the following:

- Eye-catching graphics, incorporating an appropriate illustration and/or attractive typefaces;
- A clear, understandable, and positive message about the assistance available;
- A concise, easily readable description of benefits available;
- A brief summary of the most important eligibility requirements, such as reporting and filing deadlines, innocence of wrongdoing, and out-of-pocket loss, as well as the need to provide certain documentation; and
- Numbers and addresses to call or write for further information and applications.

Many programs also have produced posters for display in police departments, emergency rooms, victim service programs, and other places where victims and information providers may see them. Posters will emphasize a visual image to attract interest, and will include a brief message about the assistance that can be provided. A phone number and address for further information must be included, of course.

TRAINING

Police Officers

Police officers are usually the first professionals to encounter the victim in the aftermath of crime. It is vital that these officers understand crime victim compensation and are prepared to provide information to the victim about where to seek help.

While police officers should understand basic compensation laws and rules (for example, that property generally isn't covered, that uninsured medical costs are compensable), it isn't necessary to make each officer an expert. The officer's role is to tell the victim that the program exists, and to provide facts on where the victim should go to gain an application or more information. The officer should provide information about other victim services available as well.

Police officers are provided training throughout the year on numerous subjects, and compensation programs should seek an opportunity to speak to these officers on a regular, ongoing basis. Applications and brochures also should be available in each police department, and officers should be encouraged to carry such material with them.

One very successful technique to encourage police officers to provide information to victims is to provide them with a card that on one side provides Miranda rights, and on the other, victim rights, including phone numbers to call for compensation and services. States have found that giving each officer a plastic card that survives longer than cardboard, and that can be carried constantly rather than replenished, may be the most effective method.

Victim Service Providers

There may be no more important outreach element than victim service providers. These individuals, whose purpose is to provide the victim with all necessary and available services, must be trained to provide compensation information to all victims that they see, unless, perhaps, the victim is clearly outside eligibility requirements. (Most programs would prefer that a referral be made, if any doubt exists, so that the program may make the appropriate eligibility decision, rather than to have an eligible victim fail to apply because of bad advice.)

Victim service programs receiving VOCA funds are <u>required</u> under the terms of their grants to provide information and assistance to victims on compensation. This is a rule that <u>all</u> VOCA-funded service programs must certify they are complying with. Yet it appears that in very few states do state VOCA administrators take action to ensure observance of this important rule.

Victim compensation programs should work with the state VOCA assistance administrator to identify and train victim service programs throughout the state. If it is evident that the "information and assistance" rule is not being honored, the compensation program should let the state administrator know, so that appropriate enforcement steps can be taken.

Training can be provided at state-wide victim service conferences or at other conferences, seminars and workshops where providers meet. Compensation programs also should consider sending representatives to meet directly with service program staff if possible, particularly where the service program is a large one serving many victims.

Victim service personnel need not be expert in all details of the compensation program. They should be able to help fill the application out with the victim, however, so they must be familiar with each part of the application, and be prepared to provide some explanation for the need for specific items of information.

For the states where VOCA compensation and assistance grants are handled in the same agency, ensuring compliance with this requirement is made somewhat easier. More control exists, and compliance is under the watch of the compensation program. At least one compensation program has held <u>mandatory</u> training for victim service programs.

Another useful means of ensuring compliance is to require that each service program designate a victim compensation specialist who is responsible for compliance by program staff, and for any necessary contacts between the victim and the

compensation program. If the compensation program needs more information from the victim, it need not try to figure out which of the service program's staff is assigned to the case; it need only contact the one specialist.

Providing ample supplies of applications and brochures, as well as posters, is essential for effective outreach through service programs. Compensation programs may wish to check regularly to be sure that a supply is maintained.

Other Key Personnel

Judges, prosecutors, probation officials, other criminal justice personnel, and medical providers, funeral directors, and other providers of services should be familiar with victim compensation. For criminal justice personnel, knowledge of the mission and operation of the program will assist them to understand the need for ordering and collecting restitution, as well as enabling them to provide information to victims. Medical personnel and other providers of services to victims also should be able to tell the victim that help is available for those expenses that would not otherwise be covered.

Judges and prosecutors hold meetings or conferences at least annually, as do other criminal justice components, and compensation programs should make an effort to gain a spot on their agenda. Similarly, medical providers, social workers, therapists, and others hold training sessions or employ newsletters or other vehicles to exchange information, and the compensation program should consider making use of them.

MEDIA RELATIONS

Media relations is an important part of a public relations strategy. Dealing with the media should never be thought of as coping or struggling with reporters, pacifying them, or escaping from them. This is not a conflict, but rather a mutually beneficial, working relationship, in which the program and the media have compatible interests in providing information to the public.

The program can access print and broadcast media with well-timed, interesting, and informative press releases from the program. There are two essential things to remember: one, that the purpose of the release is to make it easier for the media outlet to report on newsworthy items of interest to its audience; and two, that the media outlet is in business to make money. Public service is a secondary issue. The media will use news releases that, **in their opinion**, will capture the interest of people they want to buy their services. If the program's news release doesn't match this simple criterion, it won't be used.

When sending out a news release, first be sure to send it to the outlets that will have some interest in it. A news release about a housewife who helped a homeless victim, for example, will probably be of little interest to a weekly business paper. Second, make sure the information in your release is timely, by tying it to a season of the year, or an event happening in town. Third, make sure your news article is newsworthy. The world may not need another article about how to protect yourself from shoplifters during Christmas season, but it does need to know that victims of drunk drivers are now eligible for compensation in your state.

It is crucial to use the correct format for a news release (see example). Formats and rules have been developed over hundreds of years, and must be followed for the media to take the release seriously. As for the actual information presented, a news release must contain the most important facts right up front in the first paragraph, without a lead-in or introduction. This is because the lead must tell the editor how important your information is and where it belongs in the paper or broadcast. It also allows someone to gain the most valuable information without having to read further. The second paragraph of a release should contain the second most important material; the third paragraph, the third most important, and so forth. Why this order of descending importance? Primarily because editors follow a time-honored practice of chopping away from the bottom up. So the most important material should not be lost by burying it at the end. In writing the release, it is not important to worry much about transitional phrases or elegant construction. In the media, each word is worth money, so unnecessary verbiage should be avoided.

How often should a news release be written? No hard and fast rule exists, but a balance should be struck between (1) **only** sending out timely, newsworthy information and (2) maintaining consistent media contact. If the program sends out two releases a week, it's probably sacrificing quality for quantity, but if it hasn't sent a release out in three

months, the media may have forgotten the program exists. The program should not wear out its welcome, but it should stay in touch. And it should be prepared to receive some "no thanks, we're not interested" responses. These rejections should be accepted as a news judgement, and the program should try again at an appropriate time.

ADVERTISING

To the extent feasible given program resources, the program should consider the use of commercial advertising to reach the public and/or target audiences.

Advertising principles are similar to those just described for printed materials: Use simple language. Keep your message straightforward. Aim toward a specific audience. And if unsure about how to proceed, ask the experts.

Why advertise? To guarantee that the program's message is put in front of the public in the manner you choose, with the message you intend. You need not rely on the media to do it for you, and possibly change the program message in the process.

When to advertise? There are two basic approaches. The first is to advertise consistently as an ongoing supportive mechanism to the program news-making efforts. The second is to advertise selectively to boost public awareness of a specific event or piece of information. Both approaches can work together. For example, two commercials per week could air year-round on the morning show of a local radio station. Then, in April, for National Victims Rights Week, you could add a commercial airing each day of the week during the same show. A lot will depend on the program budget, of course, and the program effectiveness can be established only through trial and error.

Where to advertise? It depends on the program's objectives. Newspapers are excellent for immediate impact on a specific date. And print advertising has the advantage of being very easy to buy; simply by picking up a phone the program can usually have an ad in tomorrow's paper. Radio takes a little more planning, but does provide highly targeted audiences, e.g., teens, yuppies, and senior citizens. Radio stations can provide the program with their demographics to show exactly who makes up their audience. Television, of course, is the most expensive and requires the most work and advance planning, but no other medium delivers such a sizable audience.

But it's wrong to assume that newspapers, radio and television are the only outlets for advertising. Magazines, business journals, newsletters, busses, bank clocks, grocery store bulletin boards, cultural arts programs, those little bags hung on doorknobs are among many alternatives. Each reaches an intended audience, at a certain cost, and a salesperson will be happy to fill the program in.

Incidentally, don't let any prejudices against pushy, talkative, annoying salespeople prevent the program from making use of their services. When it comes to advertising, they can be the program's best ally. They'll do just about anything for the program to make the sale, so don't be afraid to ask them to bring in production experts, get a rough draft laid out for the program, find some talent, pick up a tape, or do whatever the program needs.

In creating the program's advertising, make sure to seek expert help. Get the program sales representative to arrange a meeting for the program with the production people, the individuals who actually perform the technical magic for the ad. All newspapers, radio and TV stations have production capabilities within their organizations, and if the program decides to buy an ad in any one of those outlets, those capabilities are available to the program free or at a very low cost. Use them, and don't be intimidated by their professional expertise. Ask for demonstrations, and for clarifications of terminology. It's the program's money, and the program will have to justify each and every decision.

NETWORKING

The program should network with other groups and organizations to reach a wide audience.

While networking is a familiar concept, there are some different considerations with regard to its use in a public awareness campaign. It's not enough to network simply by becoming involved with a club or committee; the program should create a public awareness committee with appointed members to advise the program. The committee members, naturally enough, will also find it in their best interests to talk about their work with the program organization, and the program will thereby have created some good word-of-mouth awareness.

Offer people something that they may want, and that they can get at no cost simply by contacting the program. (One of the most common offerings is a Speaker's Bureau, which will be discussed in the next subsection.) Offer a free home security survey, a free subscription to the program newsletter, or free videotape materials from the program lending library. Offer money-saving coupons at an ice cream parlour in return for attending one of the program events. Once they've contacted the program, they're aware of the program.

Make sure to recognize other people. Look through those "Awards and Achievements" columns in the paper, and watch the "We Salute" segments of the evening news programs. Then send the people mentioned in these programs a congratulatory note. They'll remember the program, and that means they're aware of the program.

Once begun, networking keeps spreading, like a ripple in a pond. That's the beauty of it.

SPECIAL EVENTS

The program should consider creating or sponsoring special events that will help in getting its message out. Special events are basically short-term public awareness programs, each requiring its conceptualization, implementation, and evaluation. In conceptualizing, the program should determine whether this is an event it alone is going to run, or whether it will participate in an event put on by several agencies. It also must decide whether this event will have enough impact to capture the audience it wishes to reach in a cost-effective manner. Once the program has made these decisions, it must determine the type of event it will have, who it will invite, whether to charge admission, etc. The event should be evaluated afterward to determine how many of its invitees accepted and showed, or, in an open event, how many of the public took part. Costs for printing, displays, advertising, transportation, and staff time should be totalled to develop a cost per person reached. The event's cost can be compared to the costs for advertising, direct mail, networking, and any other public awareness programs to determine whether it will be useful to participate in another such event. Remember, its cost per person will go down if the same event is repeated another year, because it's always easier to do the same thing again. If its cost effectiveness is marginal the first year, it may still be worth repeating in the future.

A word of warning on special events: Be especially careful to consider all details or contingencies. Having an outdoor event? Schedule an alternate date in case of bad weather. Secure or weight down displays and materials to prevent wind damage. If a musical group or deejay is involved, find out early about payment, since most such talent wants its check on the spot. If a meal is served, consider special requests for kosher or health-conscious food.

PUBLIC SPEAKING

A Speaker's Bureau is one of the least expensive, easiest to implement, and most desired public awareness options available. All that must be done to start a Speaker's Bureau is to decide that some program staff person is available to speak to the public. The only cost involved is the time of the speaker, and program staff is being paid for already. Sometimes the cost of transportation and a meal is paid by the audience group. And groups like the Lions and Kiwanis Clubs, Rotarians, Women's League of Voters, church groups, and countless others are hungry for speakers. Most meet monthly at least nine months a year, and all of them need something to do at each one of those meetings.

It's easy to let the groups know the program is available. The program should make an effort to find out about other groups in existence, and send them a letter. Write to all the Chambers of Commerce in its state; not only do the chambers need speakers, but they'll make the information available to their members. And program staff will find that when they go on speaking engagements, they'll learn about more groups looking for a guest speaker.

EVALUATION

The program should carefully evaluate the cost and effectiveness of its public relations efforts. Generally speaking, the costs of the components discussed above can be ranked in order from least to most expensive. Media relations is cheapest and easiest to implement, since it simply involves writing and mailing a news release. Next is public speaking, because of the relatively greater amount of time involved. Networking comes next, followed

by printed materials, special events and, finally, advertising.

Cost must be related to effect, of course, and these components will have either immediate or long-term effects, or both. How can the program determine effectiveness? One way may be to follow any increase in claim filings. If crime has gone up and claims filings increase, it will be uncertain what caused the increase in claims. But if the crime rate stays level or dips, and claims increase, outreach efforts are probably having some impact.

The program should also evaluate how long it takes eligible victims to file their claims, i.e., whether they're filing in the first month after the crime, or some time down the road. This may be a measure of whether victims are being reached when they actually need the information.

Evaluating victims not as members of a single group, but in terms of the kinds of victimization suffered, also is instructive. The program may discover that some categories of victims are not filing in significant numbers, while others are. It can then target audiences for more intensive efforts. Finally, a region-by-region comparison may tell the program whether its efforts are uniformly fruitful statewide, or whether some victims are getting the word and others are not. Again, this will help the program adjust its efforts.

Ohio is one state that evaluated its public awareness campaign in the ways described above. First, it determined what percent of eligible victims actually filed a claim. It looked at the crime rates in the two most recent available years, 1986 and 1987, and after some adjustments found that for 1986, approximately 6% of those eligible had actually filed a claim. In 1987, this figure went up to 6.7%, while the number of eligible crimes was reduced. A .7% increase may not seem like much, but it amounted to almost 300 more claims in one year, during which time $3 million more was awarded than the previous year: an increase from $4.6 million in 1986 to $7.6 million in 1987.

Next, Ohio looked at how soon after the crime the claims were being filed, and it discovered that more victims were filing in the first month, and fewer were waiting more than six months to file. So the program was not only reaching people, it was also reaching them in the crucial time soon after the crime, when they might need the most assistance.

In breaking down data by type of crime, Ohio found that victims of rape and robbery were not filing in as great numbers as victims of other crimes. So the program knew that it had to increase its efforts for these victims. The program also learned that medical expenses and work loss were the two greatest needs of its victims. Finally, regional comparisons provided interesting information about where the compensation message was getting through the loudest, and the program could shift its time and money on advertising to those areas that needed more exposure.

Ohio's evaluation process, therefore, told it not only whether its public awareness campaign was increasing claims, it also made clear which types of crime victims and in what areas needed to get more information. This information was invaluable to the program in targeting its resources to get the best results.

Not so incidentally, it was also interesting and important to discover that Ohio's public awareness program resulted in greater productivity from its own staff. According to program management, the campaign generated increasingly positive feelings toward the compensation program on the part of eligible victims, and this in turn engendered greater employee pride and satisfaction. The staff resolved 3,281 cases in 1987 and 4,064 cases in 1988--a nearly 24% increase.

CONCLUSION

Programs have a responsibility to engage in outreach efforts, and as the foregoing discussion indicates, there are a wide variety of ways to "get the word out." Particularly important are efforts to train police, victim service providers, and others directly involved with victims. These people must know about compensation, since they may be the victim's only source for that information. Programs also have a number of methods available to reach other groups, including media, advertising, speaker's bureaus, and special events. The involvement of the program in a "network" of concerned organizations and individuals also will do a great deal toward making compensation a visible and valuable public service program.

Victims of Crime Program

Date
For Immediate Release

Contact:
Name
Phone #

HEADLINE

Section XII

AUTOMATION

Programs must approach automation carefully, to obtain the best results; comparing other states' approaches should be helpful

An automated claims management system can significantly help a program in its ability to handle individual claims, manage caseloads, maintain files and statistics, and perform other tasks. A number of programs that have moved from manual to automated operations report dramatic improvements in their ability to process claims efficiently and generate necessary reports.

Many programs make effective use of computers to facilitate the work they do, and while there is no one best automation design that all states can use, some programs exhibit remarkably similar approaches. Comparing how computers are presently being used should be useful to states both in designing new systems or refining existing ones. Examples of how computers work in several states are provided later in this chapter.

To design an effective automation system, a program should first evaluate its own work flow, to determine how it operates in processing claims. It can then define its objectives, in terms of what computers may be able to do to improve program efficiency. The automation proposal the program develops should define its needs clearly so that the hardware and software purchased will be appropriate in meeting program goals. These steps will be examined more fully below.

EVALUATING PROGRAM OPERATIONS: THE WORKFLOW CHART

Long before shopping for computer equipment, program directors should take time to carefully review office procedures and develop a work flow chart that traces each function and activity essential to program operation. This review is essential, regardless of program size or claims volume, since each program maintains some type of systematic procedure for processing claims and paying providers. It matters not whether a compensation staff consists of two or two hundred people; it still has a process through which work "flows" through the office, from receipt of claim through final adjudication.

As an example, a "Claims Adjudication Flowchart" from the Washington state compensation program follows this section. As the illustration demonstrates, process flow charts offer a comprehensive look at a program's functional procedures, whether it be claims processing, payment of awards, record-keeping, or fund recovery.

The first step in drafting processing flowcharts might be to enlist program staff to identify, step-by-step, their respective tasks. Staff descriptions can then be collected and evaluated within each area. Throughout the evaluation, program directors should critically examine all policies and procedures in an attempt to pinpoint where backlogs occur and, if possible, their respective causes. Productive evaluations of such procedures require close scrutiny of both written policies and actual program practices.

Work flow analysis may reveal inefficiencies as well as untapped potential in existing program procedures. Obviously, a program would not want to automate an existing inefficient or unnecessary operations.

Critical evaluations require tremendous objectivity on the part of the reviewer, as well as a willingness to let go of old patterns that are no longer constructive. Once a program has identified processes which can be improved or replaced through automation, the next step is to establish clear and realistic objectives for the modifications.

SETTING OBJECTIVES

To effectively address program needs, objectives for automation should be defined in terms of strategies for confronting inefficiencies, processes that unnecessarily consume major amounts of time, and other operational concerns identified in the

work flow analysis. It should be remembered, however, that while the advantages of automation are numerous, program directors should take care in setting realistic and attainable goals for their program.

As an example, in an effort to redesign an existing automation system, the New York compensation program adopted the following general objectives:

- Facilitate data entry while keeping manual intervention to a minimum;
- Maximize current personnel and other resources not only in the claims intake system but also the claims examination and investigation phases;
- Enhance the overall quality of the production and claims tracking data generated from the system; and
- Provide necessary linkages that enhance service delivery to crime victims who file compensation claims.

These objectives address key components of a compensation program's operations, and should be concerns of every program. Clearly stating these objectives provides definite goals for the automated system, and directs efforts for more specific and concrete efforts.

DEVELOPMENT OF A PROPOSAL

Once general objectives are formulated, the program must convert its requirements into a workable proposal that sets forth specific criteria for its automation system. The proposal should delineate the functions, processes and activities necessary to efficiently execute program objectives. Ideally, the plan will confront the problems identified in the analysis and set forth a logical approach towards resolution.

For example, the program might develop a proposal that directs that its system automatically generate routine correspondence; establish internal controls to prevent users from entering claims that are already entered; maintain appropriate payment records on each claim; and compile statistics by location, type of crime, age of victim, etc.

It is important for programs to keep in mind that design proposals, like the objectives, should be clearly stated. Of greatest importance is relevance to the program's overall needs. Once a comprehensive plan has been developed, the program is likely to have to turn to some expert assistance to design software, purchase hardware, and get the automation system up and running. In some states, this expertise may be found within the program's department or is available through some other state agency. For many programs, it may be helpful to engage an outside software consultant (known in the field as a systems integrator) to assist in transforming the proposal into a usable system. Qualified consultants should be able to review your needs as set forth in your proposal, clarify any inconsistences, and describe a software program which could be written to correspond with your requirements.

Above all, it is important that the program itself control the development of the type of automated system it will eventually have to use. To the extent possible, program managers need to be free to identify their specific needs and work toward appropriate automated solutions, rather than having an unsuitable system forced upon them.

AUTOMATION APPROACHES

It is hoped that the following illustrations of state design concepts will provide useful information for programs considering automating for the first time or enhancing their existing system. Any or all of the examples provided may be used as a guide in documenting design details to include in compensation-program software systems. With slight modifications, functions and activities may be duplicated in accordance with an individual program's staffing and administrative specifications.

Program directors are encouraged to contact the program directors of any of the states described for additional information. Contact names and telephone numbers will be provided at the close of each example.

Iowa

The Iowa compensation program reported a significant reduction in processing time following implementation of an improved automated claims system. The Iowa system, described by program staff as "user friendly," practically guides the staff person by the hand through its menu-driven database.

The Iowa program currently makes use of four IBM-compatible computer terminals connected by a local area network system.

The system incorporates both word and data processing capabilities and allows for unique design and production of extensive program reports. The word processor permits generation, storage and immediate retrieval of routine correspondence to claimants, providers and law enforcement. Additionally, standardized letters and forms are easily revised and edited.

The database manages files of information and can provide any part of the information in a variety of formats. For example, the program director may wish to quickly scan the names of claimants filing applications on a particular date. By indicating the date and the requested information under the "search" command, all applications received on the specified date will appear on the screen in a table format.

The Iowa database consists of two primary files and several other smaller information or contact files. New files can be designed and added to the database with relative ease. The primary files are "Claims" and "Pay."

- Claims File. The claims file contains most of the information provided on individual application forms. A "search and update" feature in the system allow program investigators to update information as necessary. Once an application is received, a claim number is assigned and relevant information is entered into the claims file. Claimant acknowledgment letters, requests for law enforcement reports, and county attorney notices are generated for each application entered on a particular day, by simply pulling up the appropriate letter(s) and merging the application information. At the conclusion of an investigation, an approved or denied notation is entered into the claims file along with the date of the decision. This notation enables the program director to monitor the processing time from the date of receipt of an application to final disposition of the claim. Average processing time can also be calculated on a routine basis.

- Pay File. Award payments are entered in the "pay" file according to claim number. After the claim number has been entered, an internal look-up feature retrieves the claimant's name and address from the claims file, which are then included in the payment record. Service provider information is also included by entering the provider's federal or tax identification number (generally supplied with initial verification forms). Again, an internal look-up feature pulls relevant information, such as provider name and address from a separate contact file. Finally, the payment amount is entered into a "type of payment" field, e.g, dental or counseling. If the payment is made directly to a claimant, the record in the pay file will reflect the respective award amounts for each payment category.

Once all payments for a particular claim have been entered, a "Summary of the Award" report/-statement is generated. The summary report serves three very important purposes. A copy of the statement is retained in the file for staff reference, one is sent to the claimant to advise them of the various payments included in their award, and a copy is also forwarded to the appropriate county attorney or correctional jurisdiction for recovery purposes.

Countless reports can be generated from any of the database files. The system allows authorized staff to design reports by setting retrieval specifications, including the particular file and type of data requested. For example, the Iowa program director is able to monitor claim processing time by generating a monthly "Aging Report". The report provides a current listing of all pending claims in order of the date received as well as the investigator assigned to the claim. Just a few of the other reports generated by Iowa's system include the following:

- Claims filed by county, by referral source, by crime type and by age of victim
- Payment type by provider, by crime and by expense
- Total amount awarded each month, year, etc.
- Total claims approved or denied
- Total applications filed.

Reports can be generated from information contained in one or more files by indicating in the report design the type of information desired and where the information can be "looked-up".

At present Iowa's compensation program runs on a Lantastic network. The database was customized using Q & A software as a basis. Iowa's computer hardware consists of a AST 386 Mz server with a 70 mg hard drive. All four work stations are IBM AT compatible.

If you would like further information, contact the Iowa Compensation Program Director, Kelly Brodie at (515) 281-5044.

Utah

The Utah Office of Crime Victim Reparations has experienced tremendous growth since its inception in 1986. Notwithstanding this growth, staff have been able to consistently make determinations on most claims within 30 working days. Like Iowa, the Utah program attributes much of its success in expeditious claim processing to an effective automation system.

The claim system operates under a menu-driven database consisting of several different screens for entry of crime and victim data; entry of payment data; data editing; access to reports; data inquiry and look-up. Other databases available are a Payments (Warrant Requests) Database, and a Service Database for data entry & inquiry of all victim-related service organizations in the state. A new database is currently being designed for tracking restitution payments.

Each of the program's eight computers are connected by a local area network and link into the file "server" or main computer, where data resides. Once joined with the network, the user is required to enter an assigned password to access the various databases. A main menu is provided with the following options:

1) Victims Database System
2) Services Database System
3) Warrant Requests
4) Statistics Reports
5) Officer Database System
6) Officer Summary Reports
7) Browse Records
8) ISTA Warrants
9) Exit

The following is a brief description of the options available in the Victims Database.

- **Add/Edit Victim/Claimant Information**. Information contained on the application for all new claims is entered on this screen. Information can be routinely updated or edited under a separate "Edit" screen. Screens have been designed to include fields for entry of all information that will be required for agency or federal statistics. A claim number will automatically be assigned to each claim being entered. Claimant information, if different from the victim, can also be entered on this screen. After entry on this screen, the system will retrieve a "crime" screen for data entry.

- **Add Crime Information**. Crime-specific information provided in the application and subsequent details provided in the law enforcement report are entered on the screen. A status information section enables staff to indicate whether the claim is pending, in process, awarded, denied or closed. A narrative line is also available for any notes regarding the claim status.

- **Payment Information**. After a claim has been approved for payment, staff can access a payment screen for entry of payments. This screen indicates to whom payment is made, the amount billed, the amount of any collateral source payment, and the final amount payable to the provider. There is a "loss type" code that must be entered to identify type of payment (medical, funeral, dental, loss of wages, etc.) After payment data is entered, files are passed to a data terminal operator who will access the warrant program and prepare the payment request. This process will be summarized below.

- **Edit Victim/Claimant Information**. This option is used for changing any previously entered data, or for adding additional information.

- **Report Menu**. A number of different reports are available by accessing the report menu, including:
  - Claims in Process by Officer (lists only those claims for a particular officer which are still in process and require attention.)
  - Claims by Officer (provides a complete list of all claims assigned to a particular officer, indicating claim status, victim and claimant names, claim number, date of receipt, etc.)
  - Payment Totals (summary)
  - Payment Totals (detail)
  - Claims by Victim Name
  - Activity by Status
  - Activity by Payment Type
  - Activity by Crime Type

- **Inquiry Menu**. This very useful feature of the Utah database allows staff to organize records by selected criteria, such as claims by victim or claimant name, claims by claim number, etc.

- **Lookup Menu**. This feature allows staff to retrieve a complete record by victim name, claimant name or by claim number.

- **Letter Menu**. Standardized letters can be sent to print by accessing this menu. Data is automatically retrieved from the database, including such things as victim/claimant name and address,

claim number, total amount of award paid, and name of payee and amount being paid to that provider. The following letters are available:

- Acknowledgement letter (sent on all new claims the same day claim is received)
- Request for police report (retrieves data from the crime screen, including perpetrator name, victim name, location of crime, police case number, type of crime, etc.
- Notice of Approval (letter mailed to all approved victims informing them of all types of expenses that can be considered for reimbursement)
- Notice of Payment
- Notice of Additional Payment
- Notice of Closure
- Notice of Denial
- Letter to Attorney (mailed to any attorney retained by a victim to pursue a civil suit, informing the attorney of the compensation program's subrogation rights)
- Restitution/Subrogation Letter (sent to the courts or appropriate parole office informing them of payments made on behalf of a victim and the agency's subrogation rights to restitution received from the perpetrator).

If you are interested in learning more about Utah's system, contact Judy Di Renzo or Dan Davis at (801) 538-8883.

Wisconsin

Wisconsin's Crime Victim Information System is a menu-driven database written in the "ADS" development language. The system's programs fall into three general categories:

- Data entry/inquiry;
- Reports; and
- Forms used for data entry on the auxiliary files.

There is a data entry "form" in the system menu for each type of information stored.

As part of the design and development of the data system a variety of significant data integrity supports were implemented. These supports were designed to reduce the risk of user errors. The range of supports runs from notices on the screen to actual user restrictions. For example, if an application has not previously been entered, the system will reject an attempt to enter any other type of record for that claim.

The first system category includes the "Application Information" data entry form for new applications. If information about the crime was provided by the victim, "Crime" and possibly "Offender" information forms can be completed. In the event that additional information is required, supplemental information forms can be completed for each additional request made.

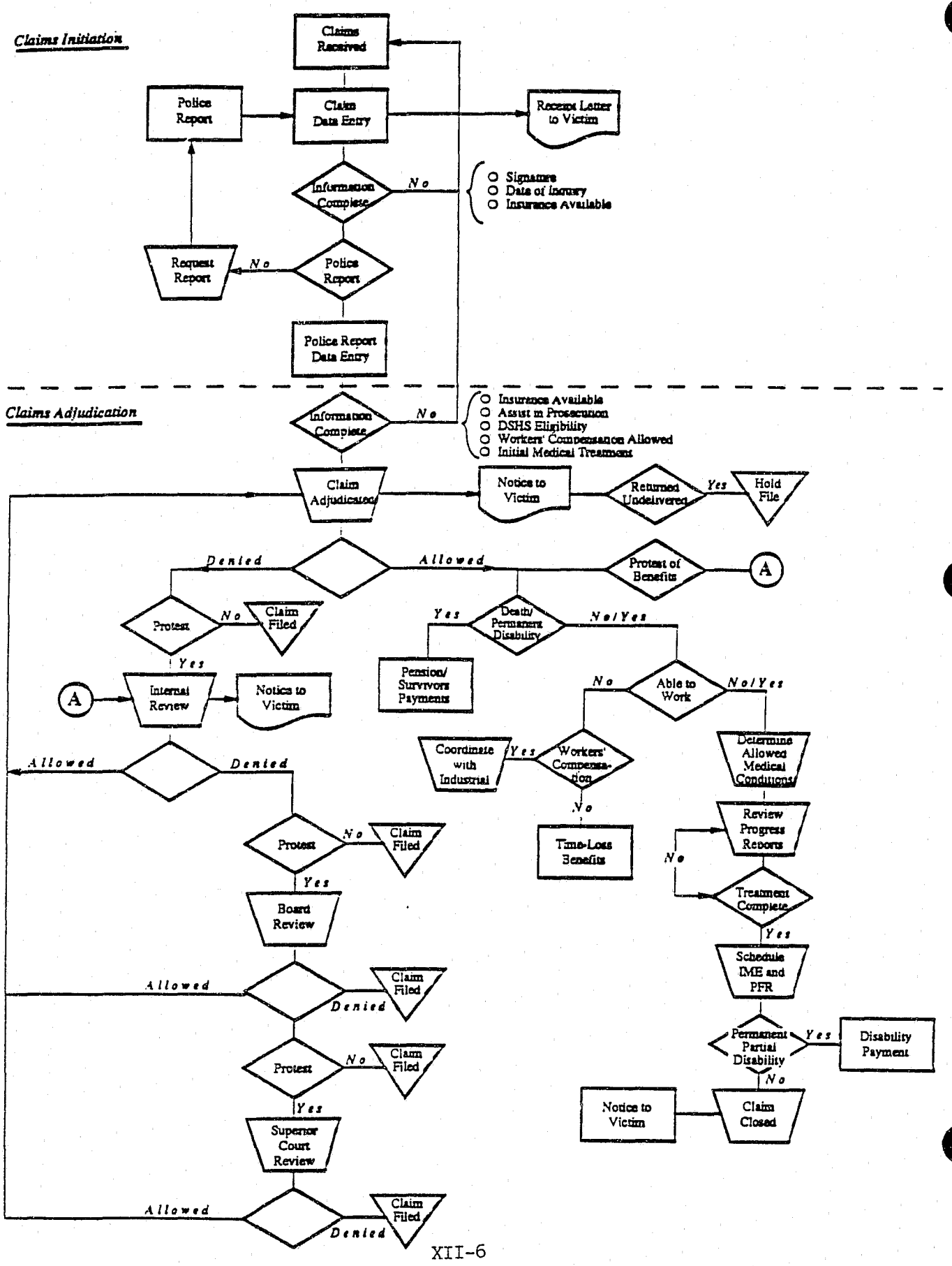
Claims which require further investigation are documented by completing an "Investigation Information" form. Once additional information is received, the "Crime Information" form is updated. If offender information becomes known the appropriate modification forms are updated. Crimes involving multiple offenders require separate forms for each offender.

At the close of an investigation, "Eligibility Determination Forms" are completed. Claims that are denied and appealed are documented on the "Appeal Information" form. Approved claims are reviewed for payments and each payment request is recorded on a "Payment Information" form.

The second classification of forms reports results. Report information can be sent to the screen or directly to the printer. Unique and comprehensive reports can be generated from each form screen.

Program directors wishing additional information on the Wisconsin Crime Victim Information System should contact the Executive Director Carol Latham at (608) 266-6470.

STATE OF WASHINGTON
Department of Labor and Industries
Crime Victims Compensation Program
Claim Adjudication Flowchart



Section XIII

SPECIAL VICTIMS

Some types of victims--children and the elderly, rape victims, and homicide survivors--may require special consideration from programs

To perform their functions effectively and sensitively, program staff should understand the specific ways in which victims often react in the wake of crimes of personal violence. They also should be aware that some types of victims may have special characteristics or needs that may require special consideration and flexibility by compensation programs, if possible under state law.

Children, the elderly, victims of sexual violence, and surviving family members of homicide victims are among those who, because of the nature of the crimes perpetrated against them, may suffer particularly severe reactions, or may have difficulty meeting stringent requirements. Specifically, these victims may need to receive special consideration with regard to the following:

- Reporting and filing requirements;
- Requirements to cooperate with law enforcement;
- Evaluating the nature of the injury and appropriate treatment, particularly mental health counseling; and
- Communicating sensitively in writing and phone contacts.

Whether programs can extend special consideration may depend on specific statutory provisions specifically providing for exceptions for certain victims, or on clauses authorizing the program to exercise discretion when appropriate.

Mental health counseling and communicating with victims are two subjects covered in depth elsewhere in this handbook. Discussion here will focus more on other aspects of program response to "special victims."

CHILDREN AND THE ELDERLY

The consequences of a crime committed against a child are monumentally different than those for an adult victim. Similarly, the elderly may face a host of different problems in the aftermath of their victimization that other adult victims may not. While victims of widely differing ages will have different experiences, some of the factors that must be considered in handling claims from child victims will also apply to elderly victims, particularly when they suffer from diminished mental and physical capacities. The dynamics of domestic violence perpetrated against children and the elderly can be remarkably similar, and create analogous problems for programs in evaluating their claims.

In general, from the report of the crime onward, claims for child victims should be considered in light of the developmental needs, capabilities, and limitations presented in childhood. Elderly victims also require special consideration, particularly because the trauma to them may be unexpectedly intense, or because their response to a particular crime may seem disproportionate. In both populations, the source of the victimization, domestic or non-domestic, will be a factor, both in the victim's ability to report to police and to cooperate with law enforcement, as well as their compensation needs. Programs will inevitably confront a maelstrom of preexisting or aggravating conditions that may pose difficulty in attributing causality to the crime itself.

Reporting and Filing Requirements

Many states operate compensation programs with fairly strict crime-reporting and claim-filing requirements. Typically a victim must report a crime to police within a few days of its occurrence, and must file a compensation claim within one year of the incident date.

The nature of both domestic and sexual crime against children and the elderly may work against these regulations. For many such victims, immediately reporting the crime may be difficult or

impossible, since they may be under the physical or mental control of abusing family members. Victims may be threatened against reporting, and may fear further abuse if they do report. Feelings of shame may also work toward preventing prompt reporting and filing by young and old victims.

The failure of a child or infirm adult to report a crime is usually not a deliberate or informed omission. Violence, threats and pressure from the offender, as well as fear of family and social disapprobation, are integral parts of the insidious nature of child victimization and elder abuse. Given these facts, programs should consider exhibiting flexibility toward child and elderly victims with regard to reporting and filing requirements, if their laws allow. Compliance with these conditions should be measured according to the victim's age, level of development or degree of infirmity, relationship to the offender, and the extent of trauma suffered. A majority of the programs are authorized by law to waive their reporting and filing requirements for "good cause" or "in the interest of justice" and many will do so in appropriate cases involving children and the elderly.

There are a growing number of states that have amended their statutes of limitations in crimes involving children. In Minnesota and Michigan, for example, a victim of criminal sexual conduct who is eighteen years of age has until the first year after the report of the crime, rather than its occurrence, to file a claim, so long as the report is made before the victim reaches the age of 19. States may also wish to consider amending their statutes to specifically exempt elderly victims from their reporting and filing limitations.

Cooperation With Law Enforcement

Retraction of an allegation is not unusual for a child victim, who may be under substantial pressure to recant or to claim that charges were fabricated. This should be considered when evaluating whether a child has the capacity to "fully cooperate" with law enforcement. Some children are too traumatized, fearful, or simply developmentally impeded to cooperate through multiple interviews or court hearings. Mentally infirm adults may face similar obstacles. Consultation with prosecutors and police should help to determine whether flexibility regarding cooperation requirements should be extended.

Evaluating Injury and Treatment

Most states require that victims prove that the injury for which they seek compensation is directly related to the crime. While it may be relatively simple to show that a physical injury resulted from a specific crime, mental "injuries" may not be so easy to pinpoint. Programs must constantly attempt to sort out the causality of psychological or emotional trauma in mental health claims, regardless of the age of the victim. Abused children may pose special problems, however, since they often come from multi-problem or dysfunctional families, where criminal abuse may be only one factor in creating mental health problems. Similarly, the level of emotional trauma or injury elderly victims experience may seem disproportionate to a specific criminal act, leading to a supposition that a preexisting condition may have been aggravated.

More perhaps than any other area, the mental health treatment considerations of children and the elderly require specialized knowledge and expertise in the particular developmental needs of these two groups. Programs should provide training and information to board members, administrators, and program staff to help them in determining both appropriateness and reasonableness of treatment. Training on child and elderly abuse may be readily available from a number of sources. The more that program staff and decision makers understand about the dynamics of victimization for children and the elderly, the more informed their analysis and decisions will be. Programs also may consider the use of professional advice in reviewing counseling claims to address questions regarding causality of injury and appropriateness and duration of treatment.

[For a full discussion of mental health issues, please refer to the appropriate section of this handbook.]

SEXUAL ASSAULT

Excluding homicide, there is no greater personal violation than rape and sexual assault. Rape victims are known to suffer the greatest degree of post-traumatic stress disorder (PTSD), and may experience severe disturbances in the their ability to function and in their perceptions of relationships and their personal security in the world. The fact that many rape victims feel constrained to hide

their identities, and that a large number will not report the crime, go to show that this is a crime involving enormous personal sensitivities and social ambiguities.

It is critical for a fair and impartial review of compensation claims filed by victims of sexual assault that decision makers be cognizant of the profusion of myths surrounding this highly personal crime. Among these myths are the following: Women want to be raped; dress can provoke rape; rape is primarily sexual in nature, rather than a crime of extreme personal violence; most rape is by strangers; any person can stop a sexual assault if she/he wants to. It is widely recognized today that these myths have no basis in fact, yet it is important that every individual involved in the handling of these claims should examine and be aware of his or her own personal assumptions, fears and biases, as well as how those beliefs may prejudice recommendations or decisions.

It also should be remembered that fear for personal safety is an especially important concern for many rape victims. If the assault has occurred in the victim's home, or was committed by an acquaintance, there may be a realistic threat that the crime could be repeated unless the offender is incarcerated.

Reporting and Cooperation

The psychological aftermath of sexual assault for many victims entails a predictable response pattern known as post-traumatic stress disorder (PTSD). The initial "impact" stage is often characterized by intense feelings of shock, disbelief and guilt. Some researchers have described this initial response as "frozen fright," a horrifying recognition that one's sense of self has been shattered. This reaction may affect a victim's ability or judgment regarding reporting to police. In addition, some victims will have internalized persistent myths that emphasize the notion that women are to blame for having been assaulted, or fear the reaction of family, friends, and the public at large, and these factors may result in reluctance to contact law enforcement.

While society has come a long way in its attitude toward rape, some victims continue to feel revictimized by the reactions of family and friends, as well as the criminal justice system. Insensitive police and prosecutor treatment, stigmatization by loved ones and acquaintances, sensationalized media coverage, and other issues may complicate rape victims' reactions, recovery, and willingness to cooperate with "the system." Programs need to be aware of these issues when they evaluate rape-victim claims according to statutory requirements regarding reporting and filing periods, and cooperation with law enforcement.

Some states have enacted statutory provisions which specifically authorize extensions or waivers of reporting requirements for victims of sexual assault. For example, Minnesota provides that, "A victim of sexual conduct in the first, second, third, or fourth degrees who does not report the crime within five days of its occurrence is deemed to have been unable to report it within that period." Massachusetts also provides a specific exception for rape victims from its 48-hour reporting requirement. Other programs may consider use of general "good cause" waivers when circumstances justify a failure to report.

The victim's traumatic reaction also may pose a significant barrier to full cooperation and disclosure with legal authorities following an initial report. For example, it is not unusual for victims of rape to question their own judgment, and they may perceive that interrogators are judging them harshly as well. In addition, insensitive police treatment is often reported. Victims who are threatened as the investigation progresses also may have some hesitancy to continue cooperating.

While programs may not be able to excuse a failure to follow through with police and prosecutors, it is important that programs remain mindful of the nature of sexual assault and attempt to exercise as much flexibility as possible, under their laws and rules, in their expectations concerning "reasonable cooperation."

Injury and Treatment

The extent and nature of harm suffered by sexual assault victims varies greatly. Each victim is unique, of course, and there are a host of individual factors that can affect the victim's reaction and recovery: pre-existing conditions, victimizations, and problems; the support, or lack thereof, of spouses, families and friends; the victim's relative security vis-a-vis the specific offender. Some victims may recover after a short period of appropriate therapy; others may require much longer periods of treat-

ment. Prior problems may be exacerbated and require treatment as well, complicating compensation programs' assessments of the relation of the treatment to the crime-caused condition.

While programs must insist that statutory requirements regarding crime-related injury and treatment, as well as the reasonableness of its cost, are met, programs also may have to show some flexibility regarding counseling claims from rape victims. In dealing with the emotional and psychological aftermath of sexual assault, therapists prefer to allow the victim's definitions and understanding of their problems to influence the course of therapy. While efforts should be made by compensation programs to ferret out those portions of the therapeutic treatment that can be attributed to the victimization, programs may recognize the difficulty of questioning the professional judgment of therapists regarding the highly complicated nature of therapy.

In determining reasonableness of treatment, programs also should consider seeking assistance from expert consultants. Some programs have secured the support of experts in review of treatment plans, records and tests submitted by providers, and even in examining claimants if necessary and appropriate.

It also should be noted that some victims may not suffer a severe psychological reaction to crime until long after the crime's occurrence. These victims may even repress memory of the event. Researchers have documented this phenomenon, called "silent rape reaction," in which unresolved feelings from an assault surface years after the trauma and cause the victim to experience intense anxiety and/or depression. Most programs' reporting and filing deadlines may not enable them to consider claims long after the crime, but some programs that relate such periods to the concept of "discoverable injury" may be able to compensate for treatment in these cases. Programs may want to consider outreach efforts that advise sexual assault centers to encourage eligible victims to file for compensation even if they are not certain they will be seeking mental health counseling services in the future.

HOMICIDE SURVIVORS

The family members and loved ones of a person whose life has been recklessly or intentionally taken by another individual are frequently described as "homicide survivors." It is not hard to imagine how difficult it must be for these survivors to carry on with their lives after such sudden and intensely personal loss, which also may carry grave implications for the future economic prospects of the victim's family.

Many survivors find that the anguish attributable to the murder is magnified by a myriad of ensuing demands and stressors. Awareness of some of the common burdens facing survivors will enable compensation programs to more sensitively and effectively respond to the unique needs of these victims.

Initially one or more of the victim's survivors will face the responsibility of making funeral arrangements, handling medical bills, dealing with veterans or Social Security death benefits, filing insurance claims and so on. To insure that survivors are aware of the possible availability of compensation benefits, programs should provide applications, brochures and program information to hospitals, funeral homes and directors.

Untimely death often precipitates financial pressures, especially when the victim was the sole or primary source of income for the family. Assistance from compensation programs can, and often does play a pivotal role in assuaging the sometimes overwhelming financial pressures facing survivors.

Applications and Communications

The task of completing forms, filing applications and responding to correspondence may often seem arduous for survivors in turmoil. Any special assistance the program can offer families in completing the application form typically will be well received and deeply appreciated. Programs should also carefully review policies concerning requisite information. For example, is it absolutely necessary for survivors to submit official death certifications? Such a request adds to the list of distasteful chores survivors must accomplish and may be superfluous. Most homicide investigative reports include some form of official pronouncement of death or provide sufficient documentation.

Additionally, compensation programs would be wise to give thoughtful consideration to the language used in all correspondence directed to homicide survivors. Seemingly innocuous references in form letters and official notices can trigger anger

and grief immediately following the death of a loved one. Unless absolutely necessary, programs should avoid making specific reference to details of the crime. This is particularly true when the murder was precipitated by a crime such as a sexual assault, of which the family may not be aware.

Mental Health Counseling

About half the states now provide mental health counseling benefits for homicide survivors, including the victim's spouse, children, parents, siblings, or in some states "persons cohabiting with or related by blood or affinity to the victim." The statutes authorizing this coverage recognize that the impact of homicide may require professional care for victims who suffer a debilitating sense of sorrow and loss.

Most advocates agree that survivors should be encouraged to seek emotional support through group or individual counseling. Programs should bear in mind, however, that many survivors may not be ready for counseling services until well after the death of their loved one. For example, anniversary dates, such as the date of the murder or of a wedding, as well as birthdays and holidays, may trigger intense post-traumatic stress reactions. Consideration should be given to showing flexibility in applying rules governing time limits for supplemental claims when reviewing requests for counseling benefits from survivors.

In Connecticut, the Commission on Victim Services implements a counseling program for homicide survivors that provides up to six free counseling session for any family member of a homicide victim. The program contacts the family members to offer the service, and does not require the filing of a regular compensation claim. The free sessions need not be continuous; they may be accessed at various intervals after the crime. If the survivor needs more treatment after the six sessions are complete, the survivor may file a regular claim for further coverage.

Providing appropriate referrals is another significant type of assistance which programs can offer survivors. There are a number of national organizations devoted to assisting families of homicide victims, and many have local chapters that may offer the most comforting support that a survivor can receive--from other survivors who have lived through similar pain. Programs may consider contacting any of the following to find out if there is a chapter nearby:

* Parents of Murdered Children (POMC)
National Headquarters
1739 Bella Vista
Cincinnati, Ohio 45237

* The Compassionate Friends, Inc.
National Headquarters
P.O. Box 1347
Oak Brook, Illinois 60521

* Mothers Against Drunk Driving (MADD)
660 Airport Freeway, Suite 310
Hurst, Texas 76053

CONCLUSION

While programs must enforce statutory requirements for all victims, it is important for all staff to be aware that some victimizations are different, and those dissimilarities may affect the both the response to criminal trauma and the ability of individual victims to comply with certain rules. Certain special victims also may have special needs that programs may or may not be able to meet, depending on their statutory authorization and the discretion accorded to them.

Section XIV

DOMESTIC VIOLENCE

When offender and victim are related or living together, special issues may arise regarding evaluation and payment of compensation claims

The criminal justice system as a whole has demonstrated certain inadequacies in dealing with domestic violence. Problems include inappropriate police response; failure to prosecute fully, when warranted; failure to order and enforce restitution; and failure to protect victims who are at risk of repeated violence. As initially enacted, compensation statutes in most states also were deficient in responding to the needs of domestic violence victims, in that they precluded awards to family and/or household members except "when the interest of justice" required. Recent legislative revisions have removed these exclusions, however, and compensation programs are now able to play a crucial role in assisting in the recovery of domestic violence victims.

Claims for domestic violence claims may pose special problems for compensation programs. Domestic violence is unique: it usually involves not one incident, but a repeated pattern of abuse; the violence may result in a widely recognized victimization response that may make it difficult for the victim to escape the abusive situation; the victim and the offender usually live together, may be related by marriage or blood, and frequently will have some relationship after the crime; and the victim and the victim's children may be dependent economically on the offender. All or some of these factors may make claim evaluation and payment complex in individual cases.

A thorough discussion of the dynamics of domestic violence is not possible here. It is extremely important, however, to provide adequate training on these issues to Board members, administrators, and claims analysts. Programs should recognize that most people do not understand fully the special nature of domestic violence, and they should not assume that staff and decision makers are knowledgeable enough to overcome personal biases and beliefs. Such questions as "Why does she stay?" or "Why does she let him come back home?", while natural, do not often lend themselves to easy answers in the context of an ongoing abusive relationship. The control exercised by the abuser in a cycle of violence followed by entreaties for forgiveness, coupled with economic dependency, social/religious pressure, concern for children, and other factors, make issues regarding domestic victimization extremely problematic, and compensation program personnel must know enough about these matters to avoid simplistic and faulty judgments.

Programs also should consider consulting with representatives of domestic violence groups to gain information about the special needs of domestic violence victims and to discuss effective response. Such consultation also can help domestic violence advocates understand the requirements of the programs.

ELIGIBILITY CONCERNS

Domestic violence claims may raise issues regarding unjust enrichment of offenders, since the offender and the victim have been involved in an ongoing relationship that may or may not terminate as a result of the crime. Domestic violence victims also may be less likely to report crimes or to cooperate fully in their investigation and prosecution. For these and other reasons, programs must struggle with issues that usually do not arise in other kinds of claims.

The dilemma faced by programs in preventing unjust enrichment is whether in doing so they will fail to meet the needs of the victim. While programs may be statutorily required to prevent compensation from reaching the hands of offenders, programs are also mandated to assist victims in need. It should be the goal of every program, therefore, to strive to prevent unjust enrichment without penalizing innocent victims.

As a general rule, programs are urged to treat claims from domestic violence victims in a similar

fashion to the analysis accorded claims from other victims. But programs also must recognize that there may be special circumstances surrounding domestic violence claims, and they must devise strategies and procedures to ensure that the claims are evaluated fairly.

In appropriate cases, and within the limits authorized by law, programs should show flexibility with regard to reporting and filing requirements, as well as requirements that the victim cooperate in prosecution. There may be valid reasons why a victim is unable to report a crime promptly to law enforcement. The victim may be under the direct physical control of the offender, or may have legitimate fears for the safety of the victim or the victim's children. The victim may be financially dependent upon the offender, or emotionally unable to report immediately. The victim may be under social or religious pressure to maintain the relationship, or the victim may believe that continuing the relationship is best for the children. For these reasons, programs should consider waiving reporting and filing requirements when appropriate and authorized under the statute. For similar reasons, the victim may be unwilling to prosecute the offender. While programs must encourage cooperation with prosecutors, programs should consult with the prosecutors assigned to particular cases to determine whether reasonable grounds exist for a victim's failure to cooperate, such as serious threats against the victim, and a lack of protection for the victim.

COMPENSABLE EXPENSES

A program is limited by statute in what costs may be considered as compensable. But domestic violence victims who are attempting to escape from an abusive or life-threatening situation may face a number of costs that other victims may not. These are among the specific needs or losses these victims may have:

- Loss of support for victim and/or child
- Medical costs for injuries
- Counseling for victim an/or child
- Relocation expenses: first month's rent, deposits for utilities
- Cash
- Personal property, like clothes
- Battered women's shelter costs
- Transportation to shelter, court, or doctors.

Even if a program cannot meet these needs, under its statute, it should attempt to direct the victim to other social service programs that may be able to help. In addition, when the victim is a low-functioning or vulnerable adult, the system may seek to bring to bear other components of the social services system in an effort to assist the victim.

Emergency awards also may be especially important to domestic violence victims trying to build new lives as quickly as possible. Programs should make every effort to expedite appropriate claims.

VOCA REQUIREMENTS

The Office for Victims of Crime requires that all compensation programs that have the authority to deny claims on the basis that an award would unjustly enrich the offender must develop and implement rules to guide their decision-making with regard to unjust enrichment issues. This requirement applies whether program authority to make unjust enrichment determinations derives from statute, administrative rule, precedent, or practice, and whether the program exercises the authority or not. The requirement results from eligibility requirements in the Victims of Crime Act of 1984, as reauthorized in 1988, which dictate that each program "offers compensation to victims and survivors of victims of criminal violence, including drunk driving and domestic violence" (section 1403(b)(1)) and "does not, except pursuant to rules issued by the program to prevent unjust enrichment of the offender, deny compensation to any victim because of that victim's familial relationship to the offender, or because of the sharing of a residence by the victim and the offender" (section 1403(b)(6).

OVC interprets "rules" to mean either written policies or directives developed by the compensation program, or rules adopted by legislative or administrative bodies to govern the program's operation.

UNJUST ENRICHMENT

The Association's Technical Assistance Committee, in consultation with compensation programs and OVC, has developed a set of recommended

rules that programs may wish to consider in formulating their rules. In general, while the rules emphasize the importance of the victim's role in cooperating with the investigation and prosecution of the case and in preventing access by the offender to any cash award to the victim, they also acknowledge that domestic violence is unique and may need special consideration in certain respects.

The TAC believes that it is essential that domestic violence be treated as a crime and that the system be given the opportunity hold the offender accountable. Pursuant to the VOCA statute and OVC guidelines, sharing a residence or continuing a relationship cannot be the sole basis for a denial, and programs should not attempt to make value judgments concerning domestic arrangements. Further in keeping with OVC guidelines, awards should be denied only when unjust enrichment would be substantial, rather than inconsequential. A program may look at the total amount going into the household and conclude that a small award mitigates against unjust enrichment; the program may also make an effort to determine what proportion of the award is likely to pay for the offender's living expenses. Programs are encouraged to balance the needs of innocent victims against the objective of preventing unjust enrichment. With regard to collateral resources, the TAC believes that compensation programs should not penalize domestic violence victims for the failure of an abuser to pay restitution or provide available resources, just as programs would not penalize victims in like circumstances in non-domestic cases. Child victims in particular should not be penalized for the unwillingness of parents to provide resources. Payments to third-party providers may go far to prevent unjust enrichment. The TAC also came to the conclusion that repeat claims from the same victim/offender situation should not pose a problem, so long as the victim is cooperating to hold the offender accountable, and each claim is scrutinized according to these rules.

RECOMMENDED RULES

1. In determining whether a compensation award can be made without unjustly enriching an offender, the program shall evaluate whether the victim has reported the crime and is cooperating with the criminal justice system in the investigation and prosecution of the crime, and whether the victim will do what is possible to prevent access by the offender to compensation paid to the victim. If the victim is cooperating fully, and if the offender will not benefit from or have access to a substantial portion of any cash award made by the program to the victim, then the award shall not be denied on the basis that the offender would be unjustly enriched.

2. An unjust enrichment determination shall not be based solely on the presence of the offender in the household at the time of the award. The presence of the offender in the household is only one factor to be considered in determining unjust enrichment, and it is necessary to make a case-by-case determination of whether the offender will be unjustly enriched, according to the facts of each situation.

3. In determining whether enrichment is substantial or inconsequential, factors to be considered include the amount of the award and whether a substantial portion of the compensation award will be used directly by or on behalf of the offender. If the offender has direct access to a cash award and/or if a substantial portion of it will be used to pay for his living expenses, that portion of the award that will substantially benefit the offender may be reduced or denied. When enrichment is inconsequential or minimal, the award shall not be reduced or denied. It should be remembered, however, that a portion of an award that may pay for some of the offender's living expenses, such as rent, may also be paying for the same essential needs of the victim and the victim's dependents.

4. Collateral resources available to the victim from the offender shall be examined. Collateral resources may include court-ordered restitution, an offending spouse's medical insurance, or other resources of the offender available to cover the victim's expenses. In evaluating the availability of collateral resources, a determination shall be made first as to whether the offender has a legal responsibility to pay; second, whether the offender has resources to pay; and third, whether payment is likely. The victim shall not be penalized for the failure of an offender to meet legal obligations to pay for the costs of the victim's recovery. If the offender fails to meet legal responsibilities to pay restitution or provide for the medical and support needs of a spouse or child, or if the offender impedes payment of insurance that may be available

to cover a spouse's or child's expenses, the program should attempt to meet the victim's needs to the extent allowed, and the program may pursue whatever actions are appropriate to seek reimbursement from the offender. The program also should ensure that the program is subrogated to any restitution the offender may owe to the victim.

5. Payments to third-party providers shall be made to prevent cash intended to pay for the victim's expenses to be used by or on behalf of the offender.

6. With regard to claims from or on behalf of abused children, the program shall not penalize child victims by denying or delaying payment when offender or collateral resources are not forthcoming. Third-party payments should be used whenever possible to prevent or minimize unjust enrichment of offenders living with abused children. The program may also consider establishment of a trust arrangement to guarantee that the award is used for the purposes it is intended, such as payment of mental health counseling.

Section XV

DRUNK DRIVING

Drunk-driving claims may involve collateral resources and contributory-conduct issues not present in other types of cases

As a result of amendments to the Victims of Crime Act (VOCA) in 1988, all VOCA-eligible programs must now provide compensation to victims of drunk driving or driving under the influence of alcohol (DUI). With tens of thousands of Americans killed and severely injured in drunk-driving collisions each year, this coverage potentially has grave implications for the financial resources of victim compensation programs.

Yet programs have not reported that drunk driving victims form a significant portion of their claim loads. In recent years, claims from these victims have comprised less than 5% of total claims, though awards tend to be about 50% higher than for other victims. The prevalence of automobile and medical insurance and uninsured motorist funds serves to provide sizable collateral resources for DUI victims. As a result, relatively few DUI victims must depend on crime victim compensation as the primary source of coverage.

In addition, a large number of drunk driving victims were also drinking and driving at the time they were injured or killed, and their claims may be subject to denial or reduction on contributory conduct grounds. (The National Highway Traffic and Safety Administration estimates that more than half of the individuals killed in drunk driving crashes were also drinking.) Contributory conduct decisions could also involve whether the victim was a willing passenger in a car driven by an individual who was drinking, or whether the victim was not wearing a seat belt, in violation of state law, and thus suffered injuries that may not otherwise have occurred. Drunk driving claims thus may raise a number of issues that pose special challenges.

AUTOMOBILE INSURANCE

As mentioned above, the experience of most state programs would suggest that the reason relatively few claims for compensation are filed is the availability of collateral resources, such as the offender's or the victim's automobile insurance, uninsured motorists funds, medical insurance and life insurance. A number of different types of benefits may be available through auto insurance policies. These benefits could be available through either or both the offender's or the victim's policy. If the victim doesn't have medical or auto insurance sufficient to cover the victim's losses, the offender's insurance could pay the expenses. If the offender has no insurance, the victim may.

The following is a list of some of the automobile insurance benefits that may be part of victims' or offenders' policies:

- **Bodily Injury Liability**: If the owner of the vehicle "at fault" has this coverage, it pays for injury to others causes by collision or accident. It covers passengers of the "at-fault" driver/vehicle and any other persons injured in the collision.
- **Medical Benefits Coverage**: If the owner of the vehicle has this coverage, it pays (regardless of fault) for medical expenses resulting from physical injury due to collision. Funeral expenses may also be covered. Total coverage goes to the insured. Medical benefits coverage may pay up to the policy maximum regardless of other reimbursements available. Therefore, the victim will receive reimbursements from this coverage even if the victim's losses were covered by some other health insurance.

  Example: A victim has a $4,000 medical loss and recovers 80% ($3,200) from group health insurance. The victim also has a $2,000 maximum coverage from the medical benefits portion of his auto insurance policy and receives this amount. The total reimbursement received by the victim is $5,200.

- **Major Medical Benefits Coverage:** This may apply after the standard benefits have been exhausted.

- **Uninsured Motorists Coverage:** This coverage pays due to injury or death resulting from a collision or accident caused by an uninsured motorist.
- **Death Indemnity:** This coverage pays upon the death of the insured due to an auto accident.
- **Dismemberment or Loss of Sight:** This coverage pays for dismemberment or loss of sight as a result of an auto accident.
- **Disability:** This coverage pays in the event of total disability from bodily injuries sustained in an automobile accident.

Possible Recovery Sources

Depending on the circumstances of the crime there may be several possible recovery sources for insurance benefits. The following list is not intended to be exhaustive but should provide a valuable overview.

- Drunk driver's auto insurance
- Owner of drunk driver's vehicle's auto insurance
- Adult passenger's auto insurance
- Parent's auto insurance, if victim is a minor
- Driver of the vehicle in which the victim was a passenger
- Owner of the vehicle in which the victim was a passenger
- Hit-and-run driver's auto insurance
- Owner of hit-and-run driver's vehicle.

Programs would be wise to train staff sufficiently so that they are aware of all of these potential sources of insurance. All claims should be examined in light of all the collateral resources that may be available to reduce the compensation program's award.

CONTRIBUTORY CONDUCT

General contributory conduct provisions in compensation statutes require denial or reduction of an award when the actions of the victim result in the victim's injury. Some states have no special contribution provisions in their laws or rules relating to drunk driving, and will simply apply these general provisions as appropriate to DUI claims. Other programs may have specific clauses in statutes or regulations that single out contribution that could only involve DUI victims.

In applying either general or specific provisions in drunk driving cases, programs may ask the following questions:

- If the victim was a driver, was the victim also drunk?
- If the victim was a passenger, did the victim knowingly consent to ride with an intoxicated driver?
- Was the victim not wearing a seat belt, in violation of state law?

It is not the intent of this handbook to answer these questions for programs, but rather to point out how some states may consider them. Tennessee law, for example, states that "No willing passenger in a motor vehicle of which the operator is legally intoxicated shall be eligible for compensation." While few states have such a provision in their statutes, a number report that the victim's state of intoxication, particularly if it could have had some effect on the nature of the collision, will be a substantial factor in the decision.

With regard to "knowing consent" by the victim in getting into a car driven by a drunk driver, a number of programs indicate that this could be contributory conduct, since the victim assumed the risk that the driver could fail to operate the vehicle safely. The programs reason that the fact that drunk drivers are dangerous is widely known, and those who know someone is drunk should exhibit due care by refusing to drive with that person. A number of programs also say that the relationship of the passenger to the driver could affect their decision, for example, if the passenger was a minor, especially if the passenger was a child of the driver, or if there was substantial pressure on the passenger to get into the car. In some of these instances, the passenger may not truly have been able to "consent" to getting in the car, and should not be penalized.

The Kansas program, which operates under a general contributory conduct provision to diminish awards, makes a distinction between "mere knowledge" that the offender was drinking and "reckless disregard" of the victim's own safety, relying on the following Attorney General's Opinion (1/6/88):

> Mere knowledge that the driver had been drinking would not be sufficient to diminish claimant's award. The Board may diminish the award if claimant's actions were in "reckless

disregard of his own safety, rising to the level of 'wanton or willful' conduct."

An example given of reckless disregard is if the passenger should have considered it unsafe to ride with a drunk driver.

Seat Belt Laws

Many states have laws requiring drivers and passengers to wear seat belts. These laws are intended to reduce the severity of physical injury suffered by those involved in collisions, and to therefore lower the economic cost to individuals, families, and society at large.

When a victim of drunk driving was not wearing a seat belt, in violation of state law, some programs will take this into account in reducing the award to the victim. The rationale used is that had the victim been wearing the seat belt, the collision might have resulted in less extensive injuries, and therefore the cost of medical treatment or lost wages or support would not have been so high. If the victim's failure to wear a seat belt contributed substantially to those injuries, then the victim bears some responsibility for them and is not deserving of a full award, according to some programs' analysis.

Obviously, a determination of the precise extent that the injuries were increased by failure to wear a seat belt is extremely difficult. Rather than attempt to make a definitive effort to assess the increased injury in any particular case, at least one state simply provides that failure to wear a seat belt will result in an award reduction of 25%. Other states will consider failure to wear a seat belt simply as a violation of law that precludes any award at all.

CONCLUSION

State programs should recognize that drunk driving victims <u>are</u> victims of violent crime; in fact, drunk driving is one of the most prevalent and deadly crimes in America. Nevertheless, experience shows that programs have not been overwhelmed by claims from drunk driving victims, because of the widespread availability of motor vehicle insurance and other coverage that may be accessible through either the offender and the victim. It is crucial that program staff be aware of the many types of insurance benefits that could come into play in DUI cases.

Programs also need to examine carefully their contributory conduct statutes and rules in light of the special circumstances that may exist in drunk driving cases.

Section XVI

NATIVE AMERICANS

Programs serving Native Americans must make special efforts to meet cultural and jurisdictional challenges

Under compensation statutes in most states, Native Americans are eligible to apply for victim compensation whether the crimes that resulted in their victimization fall under state, federal, or tribal jurisdiction. But the geographic remoteness of many reservations, differences in language and culture, and the need to deal with a wide variety of tribal, federal, and state law enforcement personnel and service providers have made it difficult for compensation programs to provide information and assistance to Indian victims.

New opportunities for compensation programs now exist, however, through the scores of newly developed victim service programs in Indian country funded through grants from the Office for Victims of Crime. OVC now supports over 50 victim assistance programs in 15 states, and all of these programs are required to provide information and assistance on victim compensation to the victims they serve.

The Association created the Native American Advisory Committee in 1988, to assist states in meeting the special challenges they encounter in providing compensation to Indian victims. The committee, which has included several Indians as well as representatives from a U.S. Attorney's Office, has developed the recommendations that appear herein. The recommendations focus on outreach activities and some of the issues that programs may encounter in evaluating claims from Indian victims, such as traditional healing practices.

Specifically, the committee urges programs to learn what individuals and agencies on reservations can provide information and assistance to victims, and to work with them to ensure that Indian victims get the help they need in submitting applications. Again, contacting the OVC-funded victim service programs is an excellent way to find out how the compensation program can provide information. The committee also urges programs to consider fully claims involving traditional Native American medical and mental health treatments, which may be the most effective treatment of choice for some Indians. Programs also should be flexible with regard to filing and reporting deadlines and other requirements, and should consider payment for transportation required to seek appropriate medical assistance off the reservation.

The committee is fully aware that limited personnel and resources in many states may make it very difficult to engage in extensive outreach efforts. The committee emphasizes that much can be accomplished through telephone contact and correspondence, if on-site visits cannot be made.

RECOMMENDATIONS

1. The Program should engage in outreach efforts toward Native American populations to inform them of the benefits available from the Program. To the extent possible, Program representatives should make on-site visits to discuss the Program and learn more about how to improve Native American access to Program benefits. The Program should provide applications and written information about the Program and its procedures to appropriate officials, individuals and groups that may come into contact with Indian crime victims.

2. On a regular basis, the Program should update lists of contacts and resources on reservations, and should obtain crime statistics, demographics of victims needing services, and other important information.

3. The Program should understand what types of crimes are prosecuted at the federal, state, or tribal level, depending on the controlling laws of the jurisdiction, and ensure that police and prosecutors at each level cooperate in providing information and assistance to potential applicants for compensation, as well as to the Program itself in verifying claims.

4. The Program should show flexibility when appropriate and necessary to meet special challenges in providing compensation to Native Americans.

5. The Program should seek information about traditional Native American healing practices in the jurisdiction, and develop guidelines or policies regarding compensation for healing as an allowable expense. Similarly, the Program should allow costs for traditional Indian burial practices.

6. Because victims may have to travel considerable distances off the reservation to obtain necessary services, the Program should consider including the costs of transportation to obtain necessary services as an allowable expense.

7. Application forms should be simplified or adapted to the extent appropriate and necessary to avoid discouraging Native Americans (as well as other crime victims) from filing claims.

8. The Program should understand the kinds of collateral resources and benefits that may be available to Native American crime victims, and seek to fill gaps in existing benefit programs.

9. The Program should actively promote adequate funding to provide crime victim services on Indian reservations, utilizing people from the reservations or culturally sensitive staff.

Commentary

1. The Program should engage in outreach efforts toward Native American populations to inform them of the benefits available from the Program. To the extent possible, Program representatives should make on-site visits to discuss the Program and learn more about how to improve Native American access to Program benefits. The Program should provide applications and written information about the Program and its procedures to appropriate officials, individuals and groups that may come into contact with Indian crime victims.

It is obvious that Native Americans cannot access the Program if they have no information that the Program exists. The Program should engage in outreach efforts to appropriate individuals and agencies on reservations on an ongoing basis.

Personal contact is extremely important. To the extent that resources allow, representatives of the Program should schedule regular, on-site visits. In-person contact is much more effective in conveying information as well as the Program's sense of commitment.

Ongoing, in-person contact will be made more or less difficult in each state, depending on how many reservations there are, and how remote from major population centers they are located. The Program may have to work with a multitude of remote reservations and contact people involved in service provision who are independent of each other within states and across state boundaries. Time and transportation expenses may limit the ability of the Program to make on-site visits. At a minimum, however, the Program should be able to identify appropriate individuals and agencies to which they can provide written material and applications. The Program should maintain regular contact with these individuals and agencies through telephone and mail.

Efforts should be made to contact officials, direct service providers, and others who may have contact with Native American victims, or who can help make information more available. Compensation forms and brochures should be provided on a regular basis.

An effective way to make and maintain contact with service providers, law enforcement, and others is through the conferences, meetings, or other gatherings that they attend. The Program should make an effort to appear on the agenda of BIA, IHS, and other conferences that may be held periodically or as special trainings.

The following are among the individuals or agencies that should be contacted:

- Victim service agencies, especially those working under grants to tribes from the Office for Victims of Crime, and also including battered women shelters and other direct service providers
- Health service facilities and personnel, including those of the Indian Health Services (IHS) and IHS contract services, as well as hospitals, Public Health nurses, community health representatives, and WIC program
- Mental health counselors and services, from both IHS and the tribe
- Social service workers (from both the Bureau of Indian Affairs and the tribe)
- Child protection teams (usually composed of law enforcement, BIA social services, IHS, and tribal court officials, and set up to monitor child neglect and abuse and foster placement)
- Parent aides who work in troubled homes
- Victim/witness personnel in U.S. Attorney's offices
- Tribal legal aid services
- General assistance programs
- Tribal government officials
- Tribal courts
- Tribal police
- Local F.B.I. agents
- State police with jurisdiction over the reservation
- Urban American Indian Centers
- Intertribal consortia
- Radio, newspapers, and other media that reach reservations
- Schools.

While it is important for the Program to work closely with U.S. Attorney's offices, since most serious violent crime is prosecuted at the federal level, the Program must recognize that only a small minority of crimes are prosecuted, and that a large proportion of those are prosecuted at the tribal level. The Program must do more than depend on the U.S. Attorney's office for all its referrals from Indian country.

Of particular assistance may be the individuals working in providing victim services through grant money from the Office for Victims of Crime. These individuals will generally be from the tribe, and will have established a level of trust that will be valuable to the Program in reaching victims. These individuals also are required by federal regulation to provide information and assistance regarding victim compensation.

The Program may discover that the level of services provided on the reservation is minimal. If so, and if at all feasible, the Program should consider hiring or contracting with an individual on the reservation to provide ongoing information and assistance regarding compensation. This individual, who ideally would be a member of the tribe, would provide a level of understanding and immediate service that could not be achieved from a distant city.
Sensitivity toward the culture and values of the tribes within the Program's jurisdiction will be

extremely valuable when making contact with Native Americans.

2. On a regular basis, the Program should update lists of contacts and resources on reservations, crime statistics, demographics of victims needing services, and other important information.

Personnel changes occur regularly in law enforcement agencies, medical and social services, and other key contact positions on reservations (as they do off reservations). The Program may not be aware that such changes have been made unless efforts are made on an ongoing basis to keep current. When new personnel have assumed responsibilities, the Program must ensure that information and training have been provided.

While it is difficult to establish a standardized procedure with designated liaison contacts when such contacts may or may not continue in those key positions, the Program can, through regular updating of contact lists, provide some ongoing information and assistance.

3. The Program should understand what types of crimes are prosecuted at the federal, state, or tribal level, depending on the controlling laws of the jurisdiction, and advocate that police and prosecutors at each level cooperate in providing information and assistance to potential applicants for compensation, as well as to the Program itself in verifying claims.

The Program should be aware of which types of compensable crimes are prosecuted in federal, state, or tribal court. The Program should provide information and training to police, prosecutors, and other appropriate officials working within each of these criminal justice and social service systems, to ensure that all potentially eligible victims know about the Program and its procedures.

Equally important is the development of a working relationship with police and prosecutors in each system to ensure that the Program can obtain needed reports and verification. This may be particularly difficult regarding crimes falling under federal jurisdiction, since it may be the practice of the FBI or tribal police not to release investigative reports. The Program should explore with the FBI and tribal police the kinds of information that can be released, and should attempt to educate and sensitize them regarding how the information will be used to benefit victims.

Some programs have developed informal relationships with federal and tribal law enforcement to verify crimes without the necessity of receiving an official report. One alternative is for the Program to develop a verification form to be sent to law enforcement agencies investigating a particular crime. The form would seek a description of the crime and any other information pertinent to the evaluation of the victim's compensation claim.

[The federal privacy act should not preclude the FBI from making available some investigative information. Within the BIA, efforts are currently being made to develop a national policy that would allow necessary investigative reports to be released to compensation programs.]

4. The Program should show flexibility when appropriate and necessary to meet special challenges in providing compensation to Native Americans.

Dealing with the diverse and special needs of Native American, rural, and other special populations calls for a flexible approach to some rules and procedures. Investigators are encouraged to utilize discretion and creativity on a case-by-case basis, and to waive requirements if "good cause" exists or if necessary to serve the interest of justice. For example, notary publics are not common to Native American communities, and if a notarized application is required, alternatives should be developed so as not to hinder unduly Native Americans from making claims.

When appropriate, the Program should show some flexibility with regard to reporting and filing deadlines, given that it may be more difficult for isolated victims to seek and obtain assistance from police and medical services. This flexibility is appropriate not merely for Indians, but should be considered for all rural populations.

5. The Program should seek information about traditional Native American healing practices in the jurisdiction, and develop guidelines or policies regarding compensation for healing as an allowable expense. Similarly, the Program should allow costs for traditional Indian burial practices.

The Program must be sensitive to local tribal customs regarding healing practices and burial rituals. It is extremely important for the Program to seek information and input on these issues from the tribes within its jurisdiction. The Program should consider creating an advisory board or some other mechanism for receiving formal input from the tribes.

For many Indians, traditional Native American healing practices are an effective treatment of choice. The Program should recognize the legitimacy of traditional healing, and seek to understand local custom regarding who is qualified to provide such treatment, and at what cost. The Program should be aware that there may be no rigid rules regarding issues of qualifications or cost; it may not be possible to set fee schedules for particular healing practices or ceremonies. The Program is urged to respect local tradition and practice as much as feasible, rather than to impose rules and restrictions alien to the culture being served.

Native Americans also may incur funeral costs for items not normally associated with non-Indian burials. For example, a traditional costume, saddle, or blanket may be buried with the body, a feast may be held, or it may be vital for a medicine man to participate (as it would be for a priest to participate in a Catholic funeral). The Program should take into account these cultural differences, which often may result in no greater total cost than a modern urban funeral, and apply flexible guidelines and caps to promote reasonable expenditures to meet the needs of surviving family members.

6. Because victims may have to travel considerable distances off the reservation to obtain necessary services, the Program should consider including the costs of transportation to obtain necessary services as an allowable expense.

Public transportation and other services common to the urban setting are not readily available on reservations. Because of the great, unpopulated distances that often exist on reservations, the Program should establish guidelines for paying travel expenses for the Native American crime victim seeking services both on and off the reservation.

7. Application forms should be simplified or adapted to the extent appropriate and necessary to avoid discouraging Native Americans (as well as other crime victims) from filing claims.

Because of inherent cultural differences, as well as the fact that some Native Americans are not English-language speakers, the process of filing an application can be very difficult for some Indians. Printed forms should be simplified as much as possible, while keeping within statutory requirements, so that Native Americans are not discouraged from making claims. If a particular Indian language is in wide use, the Program should consider developing a form in that language. Such forms have been developed in Arizona, and are in use for Asian and Hispanic populations in other states.

Since English may not be an Indian victim's first language, it is crucial that assistance be available to the victim in filling out the application. This assistance may be provided through a variety of agencies and individuals if those agencies and individuals have been trained appropriately.

8. The Program should understand the kinds of collateral resources and benefits that may be available to Native American crime victims, and seek to fill gaps in existing financial assistance programs.

Native Americans may be eligible for free public medical assistance through Indian Health Services and other federal and state programs. Such medical assistance, particularly for mental health treatment suited to assisting crime victims, may not actually be available, however, and many Indian crime victims will have to seek treatment off the reservation. The Program should have a thorough understanding of the medical and counseling services that are in reality available to Native Americans, so that it can better evaluate the collateral resources that victims may access. While IHS may be a primary source of care for many Indians on reservations, the Program should work to fill the gaps in existing resources. For example, adequate mental health counseling may not be readily available through IHS for crime victims, particularly child victims. The Program should be prepared to assist in paying for competent treatment when it cannot be accessed through primary or collateral resources.

9. The Program should actively promote adequate funding to provide crime victim services on Indian reservations, utilizing people from the reservations or culturally sensitive staff.

Without adequate services on reservations, no amount of compensation can assist Native American crime victims in recovering from the effects of victimization. To the extent possible, the Program should promote the establishment and funding of adequate services on reservations that can meet the medical and mental health counseling needs of resident Indian populations. A study of crime rate statistics for reservations can help establish goals for the number of facilities and types of services needed at an optimum level.

Section XVII

MENTAL HEALTH COUNSELING

Programs should consider a number of different strategies to ensure that statutory requirements are met in the evaluation of counseling claims

The factors that may make mental health counseling claims more difficult to evaluate should justify programs in establishing appropriate policies and procedures to ensure that statutory requirements for payment are met. The approach a program takes may depend in part on its resources, both in terms of staff and funds available for awards; it also may depend on the relative volume and complexity of the mental health claims the program receives.

Each individual claim must be evaluated on its own merits, of course, to see whether it meets statutory requirements. In addition, though, programs may wish to establish standard expectations or set ranges or limits by which these individual claims can be assessed in comparison with other claims. Programs also may want to make use of the expertise of mental health professionals, individually and in advisory groups, to evaluate claims and help define appropriate standards.

Because of varying circumstances in different states, it would be impossible to recommend any one "best" strategy to employ in evaluating mental health counseling claims. Each program must develop for itself the policies and procedures that will enable it to meet its responsibilities. There are a number of means to facilitate claims evaluation that programs are currently using, however, and states may wish to consider them in fashioning their own approaches.

The Association's Mental Health Task Force has developed a detailed report covering numerous issues relating to the evaluation and payment of mental health counseling claims. This handbook will not dwell at length on many of the issues addressed in the Task Force report. Here, an effort will be made to highlight how programs may use a number of strategies to develop sound policies governing the evaluation of counseling claims.

The following are among the procedures that can be used to facilitate the evaluation of mental health counseling claims:

- Requiring documentation from therapists, in the form of treatment plans, progress reports, and/or session notes, to ensure that a compensable injury exists, that the injury was caused by the crime, and that treatment is geared to treating that injury.
- Establishing standard ranges or lengths of treatment within which either all or the majority of treatment should occur. These standards either may be flexible, allowing for exceptional cases to receive payment for treatment beyond the standard length, or they may be inflexible, admitting of no exception.
- Setting expense limits, either for hourly rates paid for certain types of therapists (counselors, psychologists, psychiatrists), or for total maximums allowable for mental health treatment.
- Obtaining review of complex or unusual cases by qualified consultants (other therapists) to determine the need for and efficacy of treatment, as well as its length and cost (peer review).
- Requiring preauthorization for unusual or extraordinary treatment, such as inpatient treatment.
- Consulting on a regular, formal basis with advisory committees composed of mental health experts, victim representatives, and other interested parties to gain input on technical and public-policy issues that affect the development of sound administrative policies and procedures in this area.

EVALUATING INDIVIDUAL CLAIMS

The types of documentation that programs can consider using to help ensure that mental health treatment providers are performing services that meet statutory provisions for payment include the following:

- **Treatment plan**: A comprehensive treatment plan describes in advance of treatment or shortly after its beginning the following: diagnosis of

victim's injury or disorders, and their causes; goals of treatment to deal with the specific diagnosis and presenting symptoms; the type of treatment that will be used to reach the goals set forth.

• Progress report: A progress report describes, at intervals, the recovery being made in therapy by the victim, and monitors progress toward goals set forth in the treatment plan. Remaining symptoms are identified, and the need for continued treatment is substantiated.

• Treatment session notes: These are notes, reports, and other work products made by the therapist during treatment that describe the sessions with the victim.

The above documentation can come from forms provided by the program, or through reports and records generated by the therapist. Some programs make use of a verification form that essentially serves the same purposes as treatment plans and progress reports, but its format may be somewhat different.

To the extent that treatment plans can be reviewed by the compensation program before therapy has progressed too far, victims and therapists are better served by knowing in advance how much treatment can be paid for. Many programs may lack the capability to review documentation early in treatment, however, and in such circumstances the claim evaluation may occur after the therapy is complete. The treatment plan can still be useful, however, because it details the types of conditions treated, and the effort to be expended on each.

One program has developed the following strategy for reviewing individual claims:

- Required submission of a treatment plan within 30 days of beginning therapy.
- Required submission of a progress report after 90 days of treatment.
- Submission of a new treatment plan if therapy has not been completed within six months. (The treating therapist also is required to consult with another therapist to discuss the need for further treatment.)

Victims and counselors, understandably enough, express great sensitivities and concerns regarding the confidentiality of notes or other written records detailing specifically the content of therapeutic sessions. Rather than discuss these legitimate concerns in detail here, it is simply emphasized that programs seeking such documents may expect to meet some resistance, and should be prepared to provide whatever assurances are possible that the notes will be kept confidential.

TREATMENT DURATION

The Association's Mental Health Task Force Report discusses in some detail the factors affecting length of treatment, the experience and expectations of some therapists and programs, and some of the ways programs can use caps or flexible ranges to control the amount of coverage provided for mental health counseling. While these issues will not be discussed in depth here, the various options programs have should be pointed out.

The options basically fall into three categories:

• **Setting maximum treatment-duration or cost caps.** These limits relieve program staff and decision makers from disputes with individual therapists over the need for extended treatment, since treatment beyond a certain length cannot be covered. The caps may follow the insurance industry model, or be based on the experience and expectations of therapists and programs for "average" recovery times. They may allow for more certainty in budgeting, though the number of claims received may always vary. By removing program discretion, however, legitimate exceptional needs cannot be met.

• **Establishing standard ranges, with discretion to allow exceptions.** A program may set an outside parameter of six months or 52 weeks, and require that coverage for any treatment beyond that length be justified by special need and appropriate documentation. While exceptional needs may be met, the program staff may feel unable itself to question the professional judgment of therapists who believe extraordinary treatment is called for. Programs can use outside reviewers, however, to evaluate any claim beyond the standard range.

• **Establishing expectations for treatment duration through special requirements for justifying extended treatment.** The program may not set any limit or standard range, but by requiring special procedures at set intervals, creates an awareness

that treatment beyond a certain length is regarded as out of the ordinary and will be scrutinized closely. Submission of a new treatment plan after six months, a required consultation with another therapist, or mandatory peer review are ways to ensure that requests for extended treatment are carefully evaluated.

This handbook neither recommends nor discourages the establishment of caps, limits, or standard ranges. Each program must evaluate its own approach to mental health counseling claims in light of its own circumstances and its own assessment of how it can best assist crime victims.

EXPENSE LIMITS

Maximum expense limits for counseling operate essentially in the same way as inflexible time limits, and often stem from the same assessment of standard treatment duration. Instead of setting an outside time limit based on some belief in the appropriate amount of counseling necessary in individual cases, the program estimates the cost of sessions that would effectuate sufficient recovery. For example, one program may set a limit of six months, while another may set a cap of $2,000 in expectation that the amount will pay for six months of treatment. The most significant difference is that dollar caps could allow for treatment to be provided in a non-continuous manner, which may be important in some cases where problems arise after the conclusion of an initial course of treatment, a not unusual circumstance in cases of child abuse.

A number of programs employ flat hourly rates for mental health services, usually scaled according to the therapist's training and/or licenses. These rates will necessarily vary from one region of the country to another, according to general economic conditions and salary levels, as well as local supply of and demand for therapists. It is thus impossible to suggest precisely what hourly fee limitations, if any, should be established by individual states. Programs must consider actual rates charged in the "open market," as well as those reimbursed by insurance companies and other third-party payers. Programs may set limits below fees customarily charged, but must remain cognizant that limits set too far below reasonable provider expectations may result in a refusal by some therapists to treat victims.

The following are offered as examples of fee limitations in recent use in some states:

- California: $90 per hour for licensed psychiatrists and psychologists; $70 per hour for licensed marriage, family and child counselors and licensed clinical social workers.

- Louisiana: $75 per hour for board-certified psychiatrists and psychologists; $60 per hour for board-certified holders of M.S. and M.A. degrees.

- New Jersey: $150 per hour for psychiatrists; $110 per hour for licensed psychologists and holders of Psy.D., Ph.D., and Ed.D. degrees; $90 per hour for licensed marriage and family therapists and holders of A.C.S.W. and Ed.S. qualifications; and $80 per hour for holders of M.S.W. and M.A. degrees.

PEER REVIEW

A concern frequently expressed by compensation programs is that they lack expertise to make determinations regarding claims involving complex, unusual, or extraordinarily lengthy treatment. This concern is understandable; few compensation programs employ trained mental health professionals as part of their permanent staff or decision-making boards. (At least one program has a practicing psychologist on its board, who reviews the merits of all mental health counseling claims. Several other programs employ nurses or other medical professionals that have some educational expertise to evaluate counseling as well as other medical services.)

This lack of expertise creates difficulties for programs who may question the need for or duration of counseling in individual cases. Essentially, they are questioning the professional opinion of the therapist, who presumably possesses the requisite educational background and licenses to provide appropriate care.

To improve their ability to make sound determinations on counseling claims, a number of programs make use of qualified consultants to review problematic cases. These peer-review systems may involve one mental health professional under contract to the program, or a number of such

individuals who are asked to review claims on a periodic basis. Review may consist only of an examination of treatment plans, notes, and records, or it may involve an independent examination of the victim.

The advantages of professional peer review are apparent. The program's expert is as fully qualified as the treating therapist to determine the need for treatment, its objectives, and the effectiveness of the modality being used. While the two therapists may not agree on these issues, the program can base its decision on a sound professional judgment.

Programs that use peer review must be careful, of course, that competent professionals are used. To a certain extent the program will feel obligated to accept the decisions of the reviewing therapist, although normally the program would have the freedom to reject the reviewer's opinion and make its own determination. Use of more than one reviewer aids in ensuring that a variety of professional perspectives and abilities are brought to bear on evaluation decisions.

Peer review need not be an expensive proposition. It normally can be accomplished through a review of records and documents, and often takes two hours or less. A fee of $50 per hour for this document review might be normal. Several programs, however, report that they have had a number of therapists volunteer to help the program without charge in reviewing difficult cases.

PREAUTHORIZATION OF TREATMENT

Victims and therapists probably are better off if they know in advance whether the compensation program will pay for treatment, and how much treatment will be covered. This is particularly true for treatment of extraordinary intensity or duration, such as hospitalization or treatment extending beyond normal ranges.

There are difficulties with preauthorization; requests for payment approval must be received before or shortly after treatment commences, and programs must make decisions promptly so as not to delay the progress of treatment. (Prompt treatment shortly after the crime may be crucial to the victim's speedy recovery, and may reduce costs overall.) Many programs, with staff already stretched to the limit, will be unable to turn around requests for preauthorization if there are many such requests.

Given the extremely high cost of inpatient care, programs should consider establishing requirements for preauthorization when hospitalization of the victim is involved. These cases should be extremely rare, and should not have significant impact on program staff time. Further, if the program has established ranges or limits for out-patient treatment, to which exceptions can be made, preauthorization can be a valuable means to maintain control over expenditures and to keep victims and therapists apprised of the availability of funds for the treatment.

Requiring documentation, in the form of treatment plans or other verification, shortly after the onset of treatment does not mean that the program has to make a decision authorizing the treatment in order for it to continue. Early documentation is also of value in ensuring that therapists are aware of the standards the program is enforcing for crime-relatedness of injury and treatment, and reasonableness of cost. The documentation is simply building the claim file, and will be available for prompt decision making when the claim is evaluated.

ADVISORY COMMITTEES

A number of programs seeking to develop approaches to evaluating mental health counseling claims have consulted extensively with therapists in their states to find mutually agreeable solutions. Through formal advisory committees that meet regularly to make recommendations and to review and comment upon proposed program policies and procedures, as well as through informal contacts, programs have gained important information on how therapy is provided in their jurisdiction, and have increased their ability to understand and respond to the needs of victims for treatment. In turn, the therapeutic community has learned more about the statutory directives and restrictions under which the program operates, and mistrust of the program's motives has been diminished. The good will created by such efforts has been extremely helpful in winning acceptance and cooperation by the mental health community in the smooth implementation of the policies and procedures developed.

While consultation with individual therapists is invaluable, the program may wish to establish a formal advisory committee that meets regularly to provide input on program policies, procedures, and

performance. Thoughtful consideration should be given to the composition of such a committee, and the program should be sure to include representatives of each therapeutic discipline. Psychiatrists, psychologists, and social workers all could be a part of the committee; the program may ask associations of those types of therapists to participate or name representatives. Programs also should consider inclusion of representatives of sexual assault and domestic violence coalitions, victims and victim service providers, and other concerned government agencies.

CONCLUSION

While each individual claim must be evaluated on its merits, programs can consider a number of strategies in establishing a cogent approach to covering mental health counseling. These strategies can include requirements for submission of treatment plans and progress reports; setting maximum caps, or establishing flexible ranges or expectations to which exceptions can be made; setting maximum reimbursable hourly rates for therapists; requiring preauthorization for extraordinary treatment; using peer review to scrutinize unusual cases; and working with formal committees of mental health professionals and other interested parties to develop and implement policies and procedures.

Each program is urged to work closely with the mental health community serving victims in its state to determine how statutory requirements can be assessed in individual cases involving mental health counseling.