

940 CMR 14.00: COMPENSATION OF VICTIMS OF VIOLENT CRIMES

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14.01: Purpose

The Attorney General of Massachusetts promulgates 940 CMR 14.00 related to financial compensation for victims of violent crime pursuant to his or her authority under M.G.L. c. 12, § 11K and M.G.L. c. 258C, § 4.

14.02: Scope

940 CMR 14.00 applies only to claims for financial compensation filed under M.G.L. c. 258C.

14.03: Definitions

Catastrophic Injury: an injury that creates a permanent impairment for the victim, including:

- (a) spinal cord injury involving paralysis;
- (b) amputation of an arm, hand, foot or leg;
- (c) severe brain injury;
- (d) second or third degree burns on 25% or more of the total body surface or third degree burns on 5% or more of the face and hands;
- (e) total or functional loss of vision or hearing;
- (f) severe communication, sensory or motor disturbances; or
- (g) any other injury that would otherwise qualify pursuant to M.G.L. c.258C as determined by the Program Director.

Claim: an application for compensation under M.G.L. c. 258C.

Claimant: a person who files a claim for compensation under M.G.L. c. 258C. A claim may be filed by any person eligible for compensation as defined in 940 CMR 14.04, or by a parent or legal guardian of any such person. Where two or more persons are eligible for compensation for the same crime, their claims shall be joined under one master claim for compensation.

Crime: an act committed by a person which, if committed by a mentally competent, criminally responsible adult who has no legal exemption or defense, would constitute a crime; provided, however, that such act involves the application of force, intimidation or violence or the threat of force, intimidation or violence by the offender upon the victim. The word "crime" shall include any violation of any provision of M.G.L. c. 90, §§ 24 through 24O, or any conduct that would constitute a violation of M.G.L. c. 209A or M.G.L. c. 258E. The word "crime" shall apply to an act committed in the Commonwealth, including land subject to federal jurisdiction. The word "crime" shall also apply to an act which occurs against a resident of the Commonwealth in a state which does not have a crime victim compensation program for which a resident of the Commonwealth would be eligible.

Debt: money or its equivalent which is, or is alleged to be, more than 30 days past due and owing, unless a different period is agreed to by the debtor, under a single account whether or not the obligation has been reduced to judgment, as a result of a purchase, lease, or loan of goods, services, or real or personal property, for personal, family, or household purposes or as a result of a loan of money which is obtained for personal, family or household purposes.

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Debtor: a natural person or his or her guardian, administrator, or executor, who is present or residing in Massachusetts and who is allegedly liable for a debt.

Crime Scene Cleanup: The removal of, or the attempted removal of, blood or other stains that are the direct result of the commission of a crime or other dirt and debris caused by the processing of the crime scene; provided, however, that crime scene cleanup shall not include the replacement or repair of property damaged during the commission of the crime.

Department: the Department of the Attorney General.

Dependent: the victim's spouse, parent, spouse's parent, child, grandchild, sibling, niece or nephew, or other person who is wholly or partially dependent for support upon the victim at the time of his or her injury or death due to a crime alleged in a claim made pursuant to M.G.L. c. 258C.

Division: the Division of Victim Compensation and Assistance within the Department of the Attorney General.

Family: the victim's spouse, parent, spouse's parent, grandparent, stepparent, child, grandchild, or sibling, niece or nephew, or other person who is wholly or partially dependent for support upon the victim at the time of his or her injury or death due to a crime alleged in a claim made pursuant to M.G.L. c. 258C.

Health Care Provider: any doctor of medicine, osteopathy, or dental science, or a registered nurse, social worker, doctor of chiropractic, or psychologist or an intern, or a resident, fellow, or medical officer licensed or registered under M.G.L. c. 112 and its agents or successors in interest, or a hospital, clinic, or nursing home licensed under the provisions of M.G.L. c. 111 and its agents and employees, or a public hospital and its agents and employees.

Medical Care: medical, psychological, dental, optometric, hospital and nursing care provided to a victim including, but not limited to, medicines, medical, dental, optometric and surgical supplies, and prostheses. It includes rehabilitation therapy, and rehabilitation equipment reasonably necessary for basic self care and to enable the victim to obtain or continue employment. It also includes transportation costs incurred while obtaining medical care, as provided in 940 CMR 14.03: Medical Care.

Minor: a person younger than 18 years old.

Offender: an adult or juvenile who commits a crime for which a claimant seeks compensation.

Out-of-pocket Loss: unreimbursed or unreimbursable expense for services eligible for compensation pursuant to M.G.L. c. 258C.

Program Director: Program Director of the Division or such person as specially designated by the Program Director to issue on behalf of the Program Director, notices of award or denial pursuant to M.G.L. c. 258C, § 7, and decisions on reconsideration pursuant to M.G.L. c. 258C, § 8.

Security Measures: The replacement, repair or installation of locks, windows or other security devices deemed to be reasonably necessary for the promotion of the victim's safety by the Program Director after taking into consideration the nature of the crime.

State: a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico or any other possession or territory of the United States.

Verify: provide proof by means of supporting documentation and statements sworn under the pains and penalties of perjury.

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Victim: a victim is either:

- (a) a person who suffers personal physical or psychological injury or death as a direct result of:
 - 1. a crime committed against him or her; or
 - 2. attempting to assist a person during the commission of a crime against that person; or
 - 3. efforts to prevent a crime from occurring in his or her presence or to apprehend a person who committed a crime in his or her presence; or
- (b) a minor who suffers personal physical or psychological injury as a result of observing or perceiving the commission of a crime against a family member or against a person upon whom the minor is dependent. A minor who qualifies under 940 CMR 14.03: Victim(b) shall join in the claim filed by or on behalf of the family member or person upon whom the minor is dependent, but may not file a separate claim for compensation.

14.04: Persons Eligible for Compensation

- (1) Persons Eligible. The following persons are eligible for compensation:
 - (a) Victims as defined in 940 CMR 14.03;
 - (b) Dependents and family members of homicide victims;
 - (c) Persons who assume homemaker responsibilities as provided for in 940 CMR 14.06(7)(e);
 - (d) Persons who actually incur burial expenses directly related to the death of a victim in accordance with 940 CMR 14.06(2) or (3);
 - (e) Parent or legal guardian in accordance with 940 CMR 14.06(5);
 - (f) Persons who incur the costs of "Crime Scene Cleanup services" in accordance with 940 CMR 14.06(11); and
 - (g) Persons who incur the costs of "Security Measures" in accordance with 940 CMR 14.06(13).
- (2) Estates. The estate of a victim is not eligible for compensation.
- (3) Date of Crime. Claims for compensation shall be regulated as follows:
 - (a) Regardless of the victim's age on the date of the crime, claims shall be regulated as follows:
 - 1. 940 CMR 14.00 governs claims arising out of crimes occurring on or after July 1, 2013. However, 940 CMR 14.06(14): *Catastrophic Injury Loss*, shall govern all claims regardless of when the crime occurred or was reported;
 - 2. Claims arising out of crimes occurring on November 5, 2010, but before July 1, 2013, shall be governed by the previous version of 940 CMR 14.00, effective November 5, 2010.
 - (b) For victims younger than 18 years old at the time of the crime, 940 CMR 14.06(5): *Mental Health Counseling* will govern all claims regardless of when the crime was reported.

14.05: Eligibility Requirements

A person eligible for compensation must satisfy each of the following conditions:

- (1) Reporting of Crime to Law Enforcement Authorities. A claimant must demonstrate that the crime for which he or she seeks compensation was reported to police or other law enforcement authorities, or to an agency or entity obligated by law to report complaints of criminal misconduct to law enforcement authorities.
 - (a) Law enforcement authorities to whom a crime may be reported include: federal, state or local police; school, college or university police; housing authority police; or the M.B.T.A. police.

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(b) Crimes involving minor victims may be reported to the Department of Children and Families pursuant to the reporting requirements of M.G.L. c. 119, § 51A. Crimes involving elder victims may be reported to the Department of Elder Affairs pursuant to the reporting requirements of M.G.L. c. 19A, § 15. Crimes involving disabled victims may be reported to the Disabled Persons Protection Commission pursuant to M.G.L. c. 19C, § 4. Crimes occurring in correctional facilities may be reported to the superintendent of the correctional institution pursuant to M.G.L. c. 127, § 38C. All other crimes must be reported to law enforcement authorities specified in 940 CMR 14.05(1)(a), (c) or (d).

(c) The reporting of a crime to a court through a citizen application for a restraining order under M.G.L. c. 209A, and M.G.L. c. 258E, accompanied by an affidavit in support of the application for protection, or through a citizen application for a criminal complaint, shall constitute a report to law enforcement authorities.

(d) Reports to local law enforcement, via a Provider Sexual Crime Report (PSCR), after the performance of a Forensic Sexual Assault Exam in accordance with M.G.L. c. 112, § 12A½, shall constitute a report to law enforcement authorities.

(e) Reports to private security personnel, rape crisis centers, or the Division do not constitute reports to law enforcement authorities.

(2) Timeliness of Report. A claimant must demonstrate that the crime was reported within five days of its occurrence except where the Division finds good cause for delay.

(a) A crime is reported within five days of its occurrence if it is reported within five days of when the crime was discovered, or reasonably should have been discovered.

(b) Good cause for delay shall include delay caused by physical or psychological incapacity which prevented the making of a report; or by reasonable fear of retaliation by the offender or others.

(c) Delay resulting from a belief that law enforcement authorities will not investigate the crime, or delay resulting from lack of knowledge that an award under M.G.L. c. 258C is contingent upon reporting the crime to law enforcement authorities, does not constitute good cause for delay.

(d) A finding of good cause for delay does not excuse the reporting requirement which must be satisfied as a condition of receiving compensation.

(3) Cooperation with Law Enforcement. A claimant must cooperate in the investigation and prosecution of the crime, unless the Division finds the claimant had a reasonable excuse for failure to cooperate.

(a) Claimant's Obligation. Cooperation with law enforcement includes reporting the crime to law enforcement authorities; assisting in identifying the suspect; and complying with all reasonable requests of law enforcement officials for information and assistance. Cooperation with law enforcement may also include applying for the issuance of a criminal complaint in circumstances in which police did not witness the incident and have no right of arrest, provided that in such circumstance, police records clearly demonstrate that the victim was advised of his or her right to apply for the issuance of a criminal complaint.

(b) Reasonable Excuse. Reasonable excuse for failure to cooperate in the investigation or prosecution of the crime includes, but is not limited to, physical or psychological inability to cooperate or reasonable fear of retaliation by the offender or others. Where a claimant has failed to cooperate by failing to apply for the issuance of a criminal complaint in the circumstances described in 940 CMR 14.05(3)(a), reasonable excuse may also include physical inability to travel to court, or cultural or language barriers limiting access to the court system.

(4) Timely Filing of Claim. A claim for compensation must be filed within three years of the date of the crime. The filing period shall commence on the date the crime was committed, except in the following circumstances:

(a) If the victim was a minor when the crime was committed, the filing period shall not commence until the victim reaches the age of 18 provided, however, that this exception shall not apply to claims based on the death of a minor victim;

(b) If the victim was a minor when the crime was committed and the crime results in the issuance of a criminal complaint or indictment, the filing period shall not commence until the date of issuance of the criminal complaint or indictment provided, however, that this exception shall not apply to claims based on the death of a minor victim;

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(c) If the claimant did not discover the act which constitutes a crime until more than three years after the crime was committed, the filing period shall not commence until the claimant discovered, or reasonably should have discovered, the act which constitutes a crime; provided, however, that in such cases, the crime for which the claimant seeks compensation must have resulted in the issuance of a criminal complaint or indictment, or any other judicial or administrative determination of probable cause that an act constituting a crime has occurred.

If more than one of the exceptions described in 940 CMR 14.05(4) applies, the claim may be filed within the longest time period permitted by 940 CMR 14.05(4).

14.06: Compensable Expenses

The following expenses are compensable in accordance with the following requirements:

(1) Fund of Last Resort. A claimant must demonstrate that his compensable losses or legal liability exceed reimbursements or eligibility for reimbursement or compensation from any other source including all sources listed in 940 CMR 14.08(2)(e). Awards for compensation shall be reduced by all amounts reimbursed, reimbursable or otherwise compensable by any other source.

(2) Funeral and Burial Expenses. The maximum award for funeral and burial expenses incurred as a result of crimes occurring before November 5, 2010, shall be regulated by 940 CMR 14.00 effective on May 5, 1995. The maximum award for funeral and burial expenses incurred as a result of crimes occurring on or after November 5, 2010, shall be \$6,500. For crimes occurring on or after July 1, 2013, the maximum award for funeral and burial expenses shall be \$8,000. An award for funeral and burial expenses to be provided in the future may be based on a *bona fide* contract for services.

A legal guardian, dependent or other family member of the victim or a person who actually incurs funeral and burial expenses directly related to the death of a victim shall be eligible for compensation for such funeral and burial expenses.

(3) Ancillary Expenses. The maximum award or compensation for expenses other than funeral and burial expenses associated with the interment of a victim whose death is the direct result of a crime shall be \$800. For purposes of 940 CMR 14.06(3) compensable expenses shall include, but not be limited to:

- (a) transportation of the victim to the location of interment;
- (b) travel of a legal guardian or family member to accompany the victim to the location of interment;
- (c) memorial markers at the location of interment or other associated expenses as determined by the program director in accordance with 940 CMR 14.00.
- (d) in order to receive payment under 940 CMR 14.06(3) the claimant must submit receipts, cancelled checks, bills for products and services provided, or other proof of payment or liability for products or services. An award for expenses under this category may be based on a *bona fide* contract for services to be provided. It does not include compensation for public transportation, or for mileage or parking when private transportation is used.

(4) Medical Expenses. A victim shall be eligible for compensation for reasonable medical care obtained as a result of the crime.

- (a) Compensation for medical expenses is limited to services, supplies and equipment that are medically necessary as a direct result of the crime. Compensation shall not be awarded for unrelated conditions or services, or for preexisting conditions except to the extent they were exacerbated by the crime.
- (b) Compensation for transportation costs incurred while obtaining medical care is limited to costs incurred for emergency and non-emergency ambulance service, chair car service, dial-a-ride service or taxi service obtained when public transportation is unavailable or unsuitable for medical needs. It does not include compensation for public transportation, or mileage or parking when private transportation is used.
- (c) The claimant must demonstrate an out-of-pocket loss or legal liability for payment of compensable medical expenses which are not reimbursed or reimbursable by any other source. In order to make this demonstration, the claimant must:

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1. submit all bills to insurance providers;
 2. exhaust all other sources of public reimbursement including medicaid, medicare, workers compensation, social security, veterans benefits, and care funded by the Health Safety Net Trust Fund under M.G.L. c. 118G;
 3. comply with all reasonable requests by the Division to secure information and verifications necessary to investigate the claim.
- (d) Upon request by the Division, medical providers are required to:
1. verify that the services rendered are medically necessary as a direct result of the crime. Where medical services or therapy extend beyond six months or 30 sessions (whichever is greater), the Division may, as a condition of further payment, require current verification that the services are medically necessary as a direct result of the crime.
 2. provide current billing and balance information, including information about amounts covered by insurance, public benefits or other sources, and current information about any amounts paid and by whom;
 3. certify whether the services rendered are reimbursable by medicaid;
 4. in the case of hospitals, assist the claimant in applying for health insurance or care funded by the Health Safety Net Fund under M.G.L. c. 118G.
- (e) All medical providers must be licensed by the Massachusetts Board of Registration in Medicine or an equivalent state licensing authority, or must be certified by the recognized national certification body for that profession.
- (f) The Division may authorize an award for outstanding medical expenses payable directly to the medical provider, but only if the provider has fully cooperated with the Division in the investigation of the claim. Otherwise, awards shall be made payable solely to the claimant.
- (g) If an acute or non-acute hospital provides compensable medical services, any award made payable jointly to the claimant and the hospital shall be based on current payment rates established by the contract between the hospital and the Executive Office of Health and Human Services in accordance with M.G.L. c. 118E, § 12 and M.G.L. c. 118G, § 11. Amounts awarded for all other medical services shall be based on reasonable fees charged. If the provider employs a sliding scale fee structure for any category of patient or service, the award shall not exceed the amount the claimant would be charged if he or she qualified under the provider's sliding scale fee structure.
- (h) Any medical provider that receives payment from the Commonwealth for medical services, supplies or equipment pursuant to an award under M.G.L. c. 258C shall, as a condition of the receipt of such payment, accept such payment as discharging in full any and all obligations of the claimant to pay, reimburse or compensate the provider for medical services, supplies or equipment, that have been reimbursed under M.G.L. c. 258C.

(5) Mental Health Counseling. A victim, the dependents and family members of a homicide victim, or the parent or legal guardian of a victim who is a minor shall be eligible for compensation for reasonable mental health counseling expenses incurred as a direct result of the crime. Compensation shall not be awarded for treatment of unrelated conditions, or for preexisting conditions except to the extent they were exacerbated by the crime.

- (a) Upon request of the Division, the treating mental health provider must submit a mental health treatment plan on a form prescribed by the Division. If mental health treatment extends beyond six months or 30 sessions (whichever is greater), the Division may require, as a condition of further payment, the submission of a current mental health treatment plan by the treating mental health provider.
- (b) All mental health providers must be licensed by, or under the direct supervision of a person who is licensed by, either the Massachusetts Board of Registration in Medicine, the Massachusetts Board of Registration of Social Workers, the Massachusetts Board of Registration of Psychologists, the Massachusetts Board of Registration of Allied Mental Health Professionals or by an equivalent state licensing authority.
- (c) In making determinations regarding claims for mental health counseling, the Program Director may obtain an advisory opinion of a peer review panel consisting of volunteer members of the mental health provider community.
- (d) The Division shall compensate mental health counseling expenses based on reasonable rates charged by a mental health provider. If the mental health provider employs a sliding scale fee structure for any category of client, patient or service, the award shall not exceed the amount the claimant would be charged if he or she qualified under the provider's sliding scale fee structure.

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(e) Compensation for mental health counseling may be denied for expenses incurred in the following instances:

1. missed or cancelled appointments;
2. non-therapeutic testimonial court appearances by a mental health provider;
3. non-therapeutic investigatory consultations;
4. photocopying and report writing;
5. tele-therapy or dial-for-therapy services unconnected to any face-to-face consultation or diagnosis.

(f) The Division may authorize payment directly to a mental health provider, but only if the provider has fully cooperated with the Division in the investigation of the claim. Any mental health provider that receives payment from the Commonwealth pursuant to an award under M.G.L. c. 258C shall, as a condition of the receipt of such payment, accept such payment as discharging in full any and all obligations of the claimant to pay, reimburse or compensate the provider for services that have been reimbursed under M.G.L. c. 258C.

(6) Lost Wages. If, at the time of the crime, the victim was employed or had received a *bona fide* employment offer, or if the victim was a minor who will be disabled from working beyond the age of 18, he or she may be eligible for compensation for lost wages.

(a) In order to be eligible for lost wages, the victim must demonstrate that, as a direct result of injuries caused by the crime, he or she is medically disabled from working and, further, the period of time for which he or she will be disabled from working. Upon request by the Division, the victim must submit a disability letter from a treating physician or mental health provider demonstrating that the victim is disabled from working as a direct result of the crime and specifying when the victim is able to resume working.

(b) An award for lost wages shall be based on the victim's actual earnings at the time of the crime. If the victim was performing salaried employment at the time of the crime, the award shall be based on the victim's salary at the time of the crime. If the victim was performing seasonal, nonsalaried or intermittent work at the time of the crime, the Division may look to the victim's earnings history and the value of the victim's contractual work obligations in order to determine the victim's lost wages.

(c) If the victim was not employed at the time of the crime but had received a *bona fide* offer of salaried employment, the award shall be based on the victim's net starting salary. If the victim was not working at the time of the crime but had received a *bona fide* offer of seasonal, nonsalaried or intermittent employment, the Division may look to the victim's earnings history and the value of the victim's contractual work obligations and offers of employment in order to determine the victim's lost wages.

(d) If the victim was a minor at the time of the crime and was not employed, he or she shall be eligible for compensation for lost wages after the age of 18 if he or she provides a disability letter from a treating physician or mental health provider demonstrating that he or she will be disabled from working after the age of 18 as a direct result of the crime and specifying when, if ever, he or she will be able to commence working. An award for lost wages issued under 940 CMR 14.06(6)(d) shall be based on the prevailing minimum wage.

(e) If, at the time of the crime, the victim was not employed or had not received a *bona fide* employment offer, or if the victim was not a minor who will be disabled from working beyond the age of 18, the Division shall not make an award for lost wages.

(f) Upon request by the Division, the claimant must provide:

1. verification from his or her employer (or, if self-employed, from his or her own records) that he or she was employed at the time of the crime; and of the dates he or she was absent from work, his or her net weekly earnings at the time of the crime, and any sick and vacation benefits used in his or her absence;
2. verification from his or her prospective employer of when the offer of employment was made, when the employment was to begin, net weekly starting salary, and sick and vacation benefits to which he or she would have been entitled;
3. proof of employment and earnings history for one year preceding the crime.

(g) An award for lost wages shall be based on loss of reported income. Unreported income may not form the basis of an award for lost wages.

(h) An award for lost wages shall be based on net (after tax) earnings. Any compensation awarded shall be reduced by any money received or receivable from any other public or private source including workers compensation benefits, social security benefits, disability benefits, and sick and vacation benefits.

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(i) Failure to provide proof of lost wages, or failure to provide proof of medical disability, may result in denial of a claim for lost wages.

(7) Homemaker Services. If the sole occupation of the victim at the time of the crime, and for one year preceding the crime, was limited to performing the duties and responsibilities of a homemaker, and if, as a direct result of injuries from the crime, the victim is disabled from continuing to provide some or all of the duties and responsibilities of a homemaker, the Division may award reimbursement for the reasonable costs of maintaining such services.

(a) Homemaker services include housekeeping, shopping, errands, meal preparation, laundry and supervision of children.

(b) In order to demonstrate the victim's occupation at the time of the crime, and for the year preceding the crime, the claimant must submit copies of the victim's tax returns, and such other information and verifications as the Division requires.

(c) Except in the case of homicide, the claimant must submit a disability letter from a treating physician or mental health provider demonstrating that, as a direct result of injuries from the crime, the victim is disabled from performing some or all of the duties and responsibilities of a homemaker, and specifying the duties and responsibilities the victim is unable to perform. The letter must also specify when the victim is able to resume the duties and responsibilities of a homemaker.

(d) Upon request by the Division, the claimant must submit verification that replacement homemaker services were obtained as a direct result of the victim's inability to perform such homemaker services as a direct result of injuries due to the crime.

(e) Except as provided in 940 CMR 14.06(7)(f), reimbursement for replacement homemaker services is limited to reasonable out-of-pocket losses or liability for payment of such services. In order to receive reimbursement for homemaker services, the claimant must submit either:

1. receipts, cancelled checks, bills for services provided, or other proof of payment or liability for such services; or
2. where the claimant demonstrates that he or she is unable to purchase homemaker services prior to receipt of an award for compensation, a *bona fide* contract for services to be provided. In this circumstance, the initial award shall be made payable to the claimant but shall not exceed \$200. In order to be eligible for a supplemental award under 940 CMR 14.06(7)(e), the claimant must demonstrate that compensation already received was actually expended for the purchase of homemaker services.

(f) When a victim's family member or a person on whom the victim is dependent ceases or reduces paid employment in order to assume the homemaker responsibilities the victim is disabled from performing as a direct result of the crime, the Division may reimburse the claimant for actual losses resulting from the assumption of homemaker responsibilities. In order to qualify for compensation under 940 CMR 14.06(7)(f), the claimant must demonstrate that:

1. the victim qualifies as an eligible homemaker under 940 CMR 14.06(7)(a) through (c);
2. the claimant was employed at the time of the crime, and ceased or reduced paid employment as a direct result of the victim's inability to continue to perform the duties and responsibilities of a homemaker; and
3. the claimant has assumed homemaker duties and responsibilities that were previously performed by the victim.

Reimbursement under 940 CMR 14.06(7)(f) is limited to lost earnings directly attributable to the assumption of replacement homemaker services. Reimbursement shall be based on the claimant's net lost earnings but shall not exceed a maximum rate of \$15.00 per hour.

(8) Eligibility for Compensation for Loss of Financial Support. Dependents of homicide victims shall be eligible for loss of the victim's financial support in accordance with the following requirements:

(a) A dependent who is not a minor child of the victim must demonstrate that he was living with the victim at the time of the crime.

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(b) In order to demonstrate that he or she was living with the victim at the time of the crime, a claimant must demonstrate that, at the time of the crime, he and the victim shared the same primary residence as shown by tax returns, utility bills, voting lists, school records, residential leases, property deeds or other such documents evidencing primary residence. Proof of frequent visitation does not constitute proof that the claimant was living with the victim at the time of the crime.

(c) In order to be eligible for loss of financial support, the claimant must demonstrate that, at the time of the crime, he or she was wholly or partially dependent on the victim for financial support. A claimant shall be presumed wholly financially dependent on the victim if he or she demonstrates that:

1. he or she is a minor child of the victim who was living with the victim at the time of the crime and receiving financial support from the victim; or
2. at the time of the crime, was living with the victim and the victim's income constituted his or her primary source of financial support.

(d) A claimant may establish that he or she was partially financially dependent on the victim by demonstrating that:

1. he or she is a minor child of the victim who, at the time of the crime, was not living with the victim but was either:
 - a. receiving financial support directly from the victim; or
 - b. the beneficiary of a court order or judicially enforceable agreement entitling him or her to receive financial support directly from the victim; or
2. at the time of the crime, he or she was living with the victim and dependent on financial support received directly from the victim as shown by joint loan agreements, bank accounts or other documents evidencing financial dependence.

(e) A mutual living arrangement does not, in itself, establish financial dependency. A claimant shall not be eligible for compensation for loss of the victim's rent payments, or room and board payments, to the claimant.

(9) Calculation of Award for Loss of Financial Support. A loss of support award shall be calculated based on the annual financial support provided by the victim to the claimant, multiplied by the number of years for which the claimant would have remained financially dependent on the victim.

(a) If the claimant was wholly dependent on the victim for financial support, the determination of annual financial support shall be based on the victim's earnings. The determination of the victim's earnings shall be based on the victim's net earnings at the time of the crime or the victim's average net earnings for one year preceding the crime, whichever is greater.

(b) If the claimant was partially dependent on the victim for financial support, the determination of annual financial support shall be based on:

1. the actual amount of financial support received directly from the victim at the time of the crime; or
2. if the claimant is a minor child of the victim, the greater of:
 - a. the actual amount of financial support received directly from the victim at the time of the crime; or
 - b. the amount the claimant was entitled to receive from the victim as a result of a court order or judicially enforceable agreement.

(c) The claimant must demonstrate the number of years for which he would have remained financially dependent on the victim. In making this determination, the following limitations shall apply:

1. if the claimant is a minor, the period of dependency shall continue until the claimant reaches the age of 18 or until such time as the claimant was legally entitled to receive support from the victim as a result of a court order or judicially enforceable agreement, whichever is greater.
2. the period of dependency shall not exceed the life expectancy of either the victim or the claimant, whichever is sooner.

(d) If two or more claimants seek compensation for loss of financial support from the same victim, the award shall be apportioned based on each claimant's loss of financial support from the victim.

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(e) As a condition of making an award to a minor dependent of a crime victim, the Division may require that such funds be placed in a trust account for the benefit of the minor dependent. If, at the time of the award, a permanent guardian has not been appointed for the minor dependent, the Division may defer issuance of all or part of the award until such time as a permanent guardian has been appointed, or until the dependent reaches the age of 18, whichever is sooner.

(10) Attorneys' Fees. If the claimant is represented by an attorney in the filing of a claim for compensation, the Division may make an award of attorneys' fees. An attorney's fee award shall be deducted from, and not in addition to, the total award for compensation.

- (a) In order to be eligible for an attorney's fee award, the following conditions must apply:
1. the attorney must fully cooperate with the Division in the investigation of the claim, including fully and promptly responding to all requests for information and verification; and
 2. the attorney must submit an affidavit which sets forth hours worked and services rendered for representing the claimant in the claim for compensation.
- (b) In determining the amount of an attorney's fee award, the Program Director shall make a determination, based on the attorney affidavit and a review of the file, of a reasonable amount of time spent representing the claimant in the claim for compensation. Attorneys shall be compensated at a rate of no more than \$75 per hour. In no event shall an attorney's fee award exceed 15% of the total award for compensation.

(11) Professional Crime Scene Clean Up Services. Expenses incurred for professional crime scene clean up services necessary as the direct result of the commission of a crime at a private residence or in a motor vehicle that is owned or leased by a victim, family member, or other dependent shall be compensable.

- (a) In order to be eligible for reimbursement under 940 CMR 14.06(11)(a) claimants must provide documentation demonstrating the residence or motor vehicle was owned or leased by the victim, family member, or other dependent. Acceptable methods of proof include, but are not limited to, purchase and sale agreements, lease or rental contracts, law enforcement reports or correspondence, or other methods at the discretion of the Division.
- (b) In order to be eligible for reimbursement under 940 CMR 14.06(11), "professional crime scene clean up services" providers must act in compliance with 105 CMR 480.000: *Minimum Requirements for the Management of Medical or Biological Waste (State Sanitary Code Chapter VIII)*. Additionally, providers must act in compliance with applicable standards of 29 CFR 1910 including but not limited to Bloodborne Pathogen Standard 1910.1030, Personal Protective Equipment 1910.132, and Hazard Communication 1910.1200, which can be found at www.osha.gov. Providers must provide verification of adherence to each of these standards to the Division.
- (c) In order to receive payment the victim must submit receipts, cancelled checks, bills for services provided, or other proof of payment or liability for services. An award for crime scene cleanup may be based on a *bona fide* contract for services.
- (d) No compensation under 940 CMR 14.06(11) will be paid for the replacement or repair, of property damaged as a result of the crime or follow up investigation.
- (e) The maximum compensation amount under 940 CMR 14.06(11) shall not exceed \$1,500.

(12) Replacement of Clothing and Bedding. A victim shall be eligible for compensation for the reasonable replacement costs of clothing and bedding seized as evidence or rendered unusable as the result of a criminal investigation that is the direct result of a crime provided that:

- (a) The claimant can demonstrate by way of police reports, law enforcement correspondence, or other case related documentation, at the discretion of the division that
1. the clothing/bedding was in their possession at the time of the crime;
 2. the items were seized by law enforcement officials or rendered unusable as a result of the criminal investigation.
- (b) In order to receive payment, the victim must submit receipts, cancelled checks, bills or other proof of payment or liability for replacement of the items seized or rendered unusable.
- (c) The maximum compensable amount under 940 CMR 14.06(12) shall not exceed \$250.

14.06: continued

(13) Security Measures. A victim, or a family member residing with the victim at the time a crime is committed, shall be eligible for compensation for the costs associated with the implementation of security measures.

(a) In order to be eligible for compensation under 940 CMR 14.06(13), the victim, or family member residing with the victim at the time of the crime, must demonstrate that, as a result of a crime or, in conjunction with the circumstances surrounding a crime, the implementation of security measures would reasonably address their safety concerns. In determining eligibility under 940 CMR 14.06(13)(a), the Division shall consider factors including but not limited to the location of the crime, the relationship of the offender to the victim, and access of the offender to the claimant or the residence

(b) Security measures may include but are not limited to, external and internal doors and locks, exterior windows and locks, security systems, and reprogramming security codes.

(c) In order to receive payment the claimant must submit receipts, cancelled checks, bills for products and services provided, or other proof of payment or liability for products or services. Determination of allowable expenses may be based on a *bona fide* contract for services.

(d) The maximum compensable amount under 940 CMR 14.06(13) shall not exceed \$500.

(14) Catastrophic Injury Loss. Expenses incurred for treatment and services related to an injury that creates a permanent impairment for the victim, as defined pursuant to M.G.L. c. 258C, including medically necessary expenses, crime related expenses, medical, hospital, mental health counseling, or any other service or treatment that would otherwise qualify pursuant to M.G.L. c. 258C as determined by the Program Director up to the maximum amount defined in M.G.L. c. 258C.

(a) Compensation for "Catastrophic Injury" is limited to those expenses incurred and allowable pursuant to 940 CMR 14.06.

(b) Compensation for catastrophic injury expenses is limited to services, supplies and equipment that are medically necessary as a direct result of the crime. Compensation shall not be awarded for unrelated conditions or services or for preexisting conditions except to the extent they were exacerbated by the crime.

(c) Upon request of the Division, the treating medical provider must submit verification of the catastrophic injury and resulting permanent disability of the claimant on a form prescribed by the Division.

(d) The claimant must demonstrate an out-of-pocket loss or legal liability for payment of compensable catastrophic injury expenses that are not reimbursed or reimbursable by any other source. In order to make this demonstration, the claimant must:

1. submit all bills to insurance providers;
2. exhaust all other sources of public reimbursement including Medicaid, Medicare, workers compensation, social security, veterans benefits, and care funded by the Health Safety Net Trust Fund under M.G.L. c.118G;
3. comply with all reasonable requests by the Division to secure information and verifications necessary to investigate the claim.
4. provide current billing and balance information, including information about amounts covered by insurance, public benefits or other sources, and current information about any amounts paid and by whom;
5. certify whether the services rendered are reimbursable by Medicaid;
6. in the case of hospitals, assist the claimant in applying for health insurance or care funded by the Health Safety Net Fund under M.G.L. c.118G.

(e) All medical providers must be licensed by the Massachusetts Board of registration in Medicine or an equivalent state licensing authority or must be certified by the recognized national certification body for that profession.

(f) The Division may authorize an award for outstanding medical expenses payable directly to the medical provider, but only if the provider has fully cooperated with the Division in the investigation of the claim. Otherwise, awards shall be made payable solely to the claimant.

(g) If an acute or non-acute hospital provides compensable medical services, any award made payable jointly to the claimant and the hospital shall be based on payment rates established by the contract between the hospital and the Executive Office of Health and Human Services in accordance with M.G.L. c. 118E, § 12 and c. 118G, § 11 at the time the claim is filed. Amounts awarded for all other medical services shall be based on reasonable fees charged. If the provider employs a sliding scale fee structure for any category of patient or service, the award shall not exceed the amount the claimant would be charged if he qualified under the provider's sliding scale fee structure.

14.06: continued

(h) Any medical provider that receives payment from the Commonwealth for medical services, supplies, or equipment pursuant to an award under M.G.L. c. 258C shall, as a condition of the receipt of such payment, accept such payment as discharging in full any and all obligations of the claimant to pay, reimburse, or compensate the provider for medical services, supplies, or equipment, that have been reimbursed under M.G.L. c. 258C.

(i) In making determinations regarding claims for catastrophic injury, the Program Director may obtain an advisory opinion of a peer review panel consisting of volunteer experts in the medical, rehabilitative, communities or those who specialize in working with people with disabilities.

(15) Maximum Award. The maximum award for compensation to a claimant is defined by M.G.L. c.258C.

14.07: Limitations on Compensation

(1) Contribution. To the extent the victim's acts or conduct provoked or contributed to the victim's injuries, the Division shall reduce or deny the award to the claimant or claimants.

(a) Definition of Contributory Conduct. Contributory conduct is intentional conduct, willingly and knowingly engaged in by the victim, that is both a direct cause, and a proximate cause, of the victim's injuries.

(b) Circumstances that, in general, do not warrant the denial or reduction of an award based on contributory conduct include:

1. acts of negligence or poor judgment such as entering a motor vehicle operated by an intoxicated person;
2. crimes in which the victim is a victim of sexual assault;
3. acts of self defense or defense of others;
4. acts attributable to reasonable efforts by the victim to aid a crime victim, to prevent a crime from occurring in his presence, or to apprehend a person who has committed a crime in his or her presence.

(c) Circumstances that may warrant a reduction or denial of an award based on contributory conduct include:

1. crimes in which the victim deliberately provoked the offender by means of fighting words, racial or other bias-motivated taunting, or by threats coupled with overt actions indicating the victim's intent to carry out the threat;
2. crimes in which the victim initiated or significantly escalated a physical altercation with the offender;
3. crimes constituting acts of retaliation or retribution for a crime or crimes previously committed by the victim;
4. crimes in which the victim acted as an accomplice to the offender;
5. crimes committed during the course of an illegal drug transaction in which the victim was a knowing and willing participant;
6. crimes in which the victim's felony criminal record, coupled with the circumstances of the crime, lead to the reasonable inference that the crime for which the claimant seeks compensation was directly caused or provoked by the victim's criminal history.

(d) If the Division finds that a victim knowingly and willingly engaged in intentional conduct that was a direct cause of his or her injuries, the Division shall determine the proximate cause of the victim's injuries and may deny, reduce or allow the award as follows:

1. if it was reasonably foreseeable that the victim's contributory actions would result in injuries of the type and nature he or she sustained, the claim shall be denied (*e.g.* an implicit or explicit agreement to fight, in which a physical altercation ensued resulting in mutual injuries).
2. if it was reasonably foreseeable that the victim's contributory conduct would result in injuries to the victim, but it was not reasonably foreseeable that his or her actions would result in injuries of the nature and type sustained by the victim, the award may be reduced by 50% (*e.g.* victim was stabbed or shot in response to punching the offender).
3. if the victim's injuries were not reasonably foreseeable, the award shall not be reduced or denied even though the victim's actions were an actual and direct cause of his or her injuries (*e.g.* victim was stabbed or shot in response to verbal provocation of the offender).

14.07: continued

(2) Unjust Enrichment.

- (a) A claimant shall not be eligible for compensation if such compensation would unjustly benefit the offender.
- (b) In no event shall a claimant be denied compensation solely because of the claimant's or the victim's familial relationship with the offender or because of the sharing of a residence by the victim or claimant and the offender.

14.08: Obligations of the Claimant

(1) Claimant's Obligations. A claimant shall have the following obligations with respect to a claim for compensation:

- (a) The claim must be made on an application form provided by the Division;
- (b) The claim must be signed by the claimant under the pains and penalties of perjury;
- (c) The claim must be accompanied by copies of bills and other supporting documentation necessary to verify the claim; and
- (d) The claim must contain a release of information necessary to investigate the claim.

(2) Continuing Obligations. A claimant shall have a continuing obligation to:

- (a) provide the Division with current information relating to the claim;
- (b) cooperate with the Division in the investigation of the claim including responding promptly to all requests for further information and verifications, and responding promptly to all requests to exhaust other sources of reimbursement;
- (c) notify the Division of any change in address;
- (d) provide information to the Division about any civil action anticipated or filed in connection with the crime;
- (e) exhaust all other sources of payment or reimbursement for compensable expenses, and promptly notify the Division of any order for payment or eligibility for payment from any other source including:
 - 1. life insurance, homeowner's insurance, renter's insurance, automobile insurance, health insurance, disability insurance or any other private or public insurance program;
 - 2. workers compensation, social security benefits, veterans benefits, retirement benefits or other private or public benefit program;
 - 3. Medicaid, Medicare, care funded by the Health Safety Net Trust Fund, or any other form of public assistance including aid to families with dependent children and assistance to the aged and disabled or any successor;
 - 4. restitution in the criminal action;
 - 5. proceeds from a civil suit; or
 - 6. institutional gifts.
- (f) promptly reimburse the Commonwealth, to the extent of compensation actually paid, for payments received from any other source that exceed the actual losses to the victim.

(3) Burden of Proof. The claimant has the burden of demonstrating his or her eligibility for compensation, and his or her compensable expenses, by a preponderance of the evidence.

(4) Failure to Comply. A claimant's failure to comply with any obligation set forth in 940 CMR 14.00 may result in denial of the claim for compensation.

14.09: Confidentiality of Records

All information received, obtained or maintained by the Division in connection with any claim for compensation shall be maintained as confidential investigative material, and shall not be released or disclosed to any person or entity whatsoever, except authorized by the claimant or as otherwise provided by law.

14.10: Debt Collection Protections

No health care provider, as defined in 940 CMR 14.03, that has been given notice of the claim shall conduct any debt collection activities relating to medical or dental treatment received by the person in connection with a claim filed pursuant to M.G.L. c. 258C until an award has been made on the claim or until the claim has been denied.

14.10: continued

- (a) The applicant shall receive a written notice promulgated by the Division for notification to medical or dental service providers giving them notice that the applicant has applied for compensation pursuant to M.G.L. c. 258C.
- (b) The period during which the health care provider shall be prohibited from conducting debt collection activities pursuant to 940 CMR 14.10 shall be excluded in determining the applicable limitations period for commencing an action to collect the debt.
- (c) Such protections shall remain in effect until the claim or expense has been denied eligibility through the program and all appeals are exhausted.

REGULATORY AUTHORITY

940 CMR 14.00: M.G.L. c. 12, § 11K and c. 258C, § 4.