

# Chapter 296-30 WAC

## RULES FOR THE ADMINISTRATION OF THE CRIME VICTIMS COMPENSATION PROGRAM

**WAC**

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**DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER**

- 296-30-025 Medical assistance eligibility. [Statutory Authority: RCW 7.68.030, 51.04.020(1) and 51.04.030, 95-15-004, § 296-30-025, filed 7/5/95, effective 8/5/95. Statutory Authority: RCW 7.68.030, 7.68.070 (12) and (16) and 51.04.030, 89-23-004, § 296-30-025, filed 11/3/89, effective 11/10/89.] Repealed by 99-07-004, filed 3/4/99, effective 4/4/99.
- 296-30-050 Distribution of third party recoveries. [Statutory Authority: Chapter 7.68 RCW, 94-02-015, § 296-30-050, filed 12/23/93, effective 1/24/94; 86-01-028 (Order 85-37), § 296-30-050, filed 12/11/85; 85-03-060 (Order 85-3), § 296-30-050, filed 1/15/85.] Repealed by 98-14-076, filed 6/30/98, effective 7/31/98. Statutory Authority: RCW 7.68.030.
- 296-30-130 How are death benefits paid to a survivor(s) receiving public or private death benefits? [Statutory Authority: RCW 7.68.030, 7.68.070, 7.68.130, 51.32.050, 00-10-003, § 296-30-130, filed 4/20/00, effective 5/22/00. Statutory Authority: Chapter 7.68 RCW, 94-02-015, § 296-30-130, filed 12/23/93, effective 1/24/94; 86-01-028 (Order 85-37), § 296-30-130, filed 12/11/85; 85-03-060 (Order 85-3), § 296-30-130, filed 1/15/85.] Repealed by 01-13-013, filed 6/11/01, effective 7/12/01. Statutory Authority: RCW 7.68.030, 7.68.070.

**WAC 296-30-010 Definitions.** The following definitions are used to administer the crime victims compensation program:

**Acceptance, accepted condition:** A determination by the department that the diagnosis of the claimant's medical or mental health condition is the result of the criminal act. The condition being accepted must be specified by one or more diagnostic codes from the current edition of the International Classification of Diseases, Clinically Modified (ICD-CM), or

the Diagnostic and Statistical Manual of Mental Disorders (DSM).

**Authorization:** Notification by a qualified representative of the department that specific treatment, services or equipment provided for the accepted condition is allowable under the claim. Providers must maintain records naming the claim manager who authorizes treatment, services or equipment.

**Bodily injury:** Any harmful or offensive touching, including severe emotional distress where no touching takes place when:

- (1) The victim **is not** the object of the criminal act and:
  - (a) The distress is intentionally or recklessly inflicted by extreme or outrageous conduct;
  - (b) Caused the victim to have a reasonable apprehension of imminent bodily harm; and
  - (c) The victim is in the immediate vicinity at the time of the criminal act.
- (2) The victim **is** the object of the criminal act and:
  - (a) The distress is intentionally or recklessly inflicted by extreme or outrageous conduct; and
  - (b) Caused the victim to have a reasonable apprehension of imminent bodily harm.

**Claimant:** A victim who submits an application for benefits, or on whose behalf an application is submitted.

**Consultation:** The services rendered by a health care provider whose opinion or advice is requested by the treating provider, or by the department, in the evaluation and/or treatment of a claimant. Case management or case staffing does not constitute a consultation.

**Criminal act:** An act defined in RCW 7.68.020, the occurrence of which can be verified by the department or which is reasonably credible. Physically impossible acts, highly improbable acts for which verification is not available, or unverified memories of acts occurring prior to the age of two will not be accepted as reasonably credible. In evaluating evidence to determine verification of claimed criminal acts, the department will give greater weight to the quality, than to the quantity, of evidence. Evidence that can be considered for verification of claimed criminal acts includes, but is not limited to, one or more of the following:

- (1) Police or other investigation reports.
- (2) Child protective services or other government agency reports.
- (3) Diaries or journals kept by victims and others.
- (4) Third party reports from school counselors, therapists and others.
- (5) Current medical examinations.
- (6) Medical or psychological forensic evaluations. In the absence of other adequate forensic evaluation reports, independent assessments per WAC 296-31-069 may be conducted when indicated.

(7) Legal and historical reports.

(8) Current and past medical and mental health records.

(9) Reports of interviews with the victim's family members, friends, acquaintances and others who may have knowledge of pertinent facts. When such interviews are necessary to determine eligibility, the victim will be given the choice of whether to allow the interviews to be conducted. The victim will also be given the understanding that eligibility may be denied if the interviews are not conducted. The department will act according to the victim's choice.

**Crisis intervention:** Therapy to alleviate the claimant's most pressing problems. The vital mental and safety functions of the claimant are stabilized by providing support, structure and, if necessary, restraint.

**Evidence-based and curative treatment:** Treatment practices, interventions and services that are supported by empirically based research and shown to produce consistent and effective outcomes.

**Family therapy:** Therapy involving one or more members of the claimant's family, excluding the perpetrator, which centers on issues resulting from the claimant's sexual assault pursuant to WAC 296-30-080.

**Group therapy:** Therapy involving the claimant, and one or more clients who are not related to the claimant, which includes issues related to the claimant's condition and pertinent to other group members.

**Immediate family members:** Any claimant's parents, spouse, child(ren), siblings, grandparents, and those members of the same household who have assumed the rights and duties commonly associated with a family unit.

**Individual therapy:** Therapy provided on a one-to-one basis between a provider and client.

**Lost wage certification:** Documentation from a treating provider based on objective medical evidence stating the claimant is not able to work based on the effects of the crime injury.

**Mental health provider:** Any person, firm, corporation, partnership, association, agency, institution, or other entity providing any kind of mental health services related to the treatment of a claimant. This includes, but is not limited to, hospitals, psychiatrists, psychologists, advanced registered nurse practitioners with a specialty in psychiatric and mental health nursing, registered and/or licensed master level counselors, and other qualified service providers licensed, registered and/or certified with the department of health and registered with the crime victims compensation program. (Refer to WAC 296-31-030 for specific details.)

**Payer of last resort:** The crime victims compensation program pays after all other public or private insurance programs, up to our fee schedule.

**Proper and necessary:** Proper and necessary services for the diagnosis or rehabilitative treatment of an accepted condition:

(1) Reflective of accepted standards of good practice within the scope of the provider's license, certification, or registration;

(2) Not delivered primarily for the convenience of the claimant, the claimant's attending provider, or another provider;

(3) Curative or rehabilitative care that produces long lasting changes which reduces the effects of the accepted condition;

(4) Provided at the least cost and in the least intensive setting of care consistent with the other provisions of this definition; and

(5) Concluded once a claimant has reached a state of maximum improvement. Maximum improvement occurs when no fundamental or marked change in an accepted condition can be expected with or without treatment. A claimant's condition may have reached maximum improvement though it might be expected to improve or deteriorate with the passage of time. Once a claimant's condition has reached maximum improvement, treatment that results only in temporary changes is not proper and necessary. Maximum improvement is equivalent to fixed and stable.

**Reasonable cooperation:** The victim is able to talk to the police and give information to help in the investigation and prosecution of the alleged offender. There may be circumstances in which the victim is not able to fully cooperate. In these instances, consideration is given to the needs of the victim. The department may consider the following issues. The list is not inclusive:

(1) There is fear of retribution from the offender;

(2) There is a mental or physical condition which inhibits cooperation;

(3) The victim is dependent upon the offender for support;

(4) The victim is a minor.

**Termination of treatment:** Treatment is concluded when it is no longer curative because the accepted condition for which the claim was allowed has become stable. The provider shall submit a report indicating the date the condition became stable to the department.

**The result of:** The test used to define "the result of" used in RCW 7.68.060 (2)(a) is two-pronged. First, it must be determined that cause in fact exists, and second, it must then be determined that proximate cause exists.

(1) Cause in fact exists if "but for" the acts of the victim the crime that produced the injury would not have occurred.

(2) Proximate cause exists if, once cause in fact is found, it is determined that the acts of the victim:

(a) Resulted in a foreseeable injury to the victim;

(b) Played a substantial role in the injury; and

(c) Were the direct cause of the injury.

**Treating provider:** A person licensed to practice one or more of the following professions: Medicine and surgery, osteopathic medicine and surgery, chiropractic naturopathic physician, podiatry, dentistry, optometry, advanced registered nurse practitioner (ARNP), mental health therapists, and certified medical physician assistants or osteopathic physician assistants. A treating provider actively treats an injured or ill claimant.

**Unjustly enriched:** It would not be fair or equitable justice to allow a person to obtain, or have control of, or access to benefits or compensation paid to a victim of crime.

[Statutory Authority: Chapter 7.68 RCW. 11-22-054, § 296-30-010, filed 10/31/11, effective 12/1/11. Statutory Authority: RCW 7.68.030. 01-22-105, § 296-30-010, filed 11/7/01, effective 12/8/01; 00-10-003, § 296-30-010, filed 4/20/00, effective 5/22/00. Statutory Authority: RCW 51.36.010, 7.68.030, 51.04.020 (1) and (4), 51.04.030, 7.68.080 and 7.68.120. 97-02-090, § 296-30-010, filed 12/31/96, effective 1/31/97. Statutory Authority:

Chapter 7.68 RCW. 94-02-015, § 296-30-010, filed 12/23/93, effective 1/24/94. Statutory Authority: RCW 7.68.030, 7.68.070 (12) and (16) and 51.04.030. 89-23-004, § 296-30-010, filed 11/3/89, effective 11/10/89. Statutory Authority: Chapter 7.68 RCW. 86-01-028 (Order 85-37), § 296-30-010, filed 12/11/85; 85-03-060 (Order 85-3), § 296-30-010, filed 1/15/85.]

**WAC 296-30-020 Who is covered when a motor vehicle crime occurs?** The Crime Victims Act covers injury or death in motor vehicle crimes covered by RCW 7.68.020 (2)(a). Anyone injured or killed in the accident is eligible for benefits.

[Statutory Authority: RCW 7.68.020 and 7.68.030. 99-07-004, § 296-30-020, filed 3/4/99, effective 4/4/99. Statutory Authority: Chapter 7.68 RCW. 94-02-015, § 296-30-020, filed 12/23/93, effective 1/24/94; 86-01-028 (Order 85-37), § 296-30-020, filed 12/11/85; 85-03-060 (Order 85-3), § 296-30-020, filed 1/15/85.]

**WAC 296-30-060 Who does a victim report the crime to in order to meet reporting requirements?** The crime can be reported to any of the following:

- (1) Local law enforcement (city, county or state police agencies);
- (2) Federal police;
- (3) Indian tribal police;
- (4) Military police; or
- (5) Child protective services (CPS) when they have reported to local police.

[Statutory Authority: RCW 7.68.060 (1)(b) and 7.68.030. 99-07-004, § 296-30-060, filed 3/4/99, effective 4/4/99. Statutory Authority: RCW 51.36.010, 7.68.030, 51.04.020 (1) and (4), 51.04.030, 7.68.080 and 7.68.120. 97-02-090, § 296-30-060, filed 12/31/96, effective 1/31/97. Statutory Authority: Chapter 7.68 RCW. 94-02-015, § 296-30-060, filed 12/23/93, effective 1/24/94; 86-01-028 (Order 85-37), § 296-30-060, filed 12/11/85; 85-03-060 (Order 85-3), § 296-30-060, filed 1/15/85.]

**WAC 296-30-080 Can family members of sexual assault victims receive counseling?** (1) Counseling for immediate family members of sexual assault victims is appropriate when:

- (a) The family member suffers psychological trauma as a result of the sexual assault; or
- (b) Counseling the family member will help the client's recovery.
- (2) Immediate family members are the client's parents, spouse, child(ren), siblings, grandparents, and those members of the same household who have assumed the rights and duties commonly associated with a family unit.
- (3) Counseling for immediate family members will be covered under the victim's sexual assault claim.

[Statutory Authority: RCW 7.68.030, 7.68.070(12). 00-03-056, § 296-30-080, filed 1/14/00, effective 2/14/00. Statutory Authority: Chapter 7.68 RCW. 94-02-015, § 296-30-080, filed 12/23/93, effective 1/24/94; 86-01-028 (Order 85-37), § 296-30-080, filed 12/11/85; 85-03-060 (Order 85-3), § 296-30-080, filed 1/15/85.]

**WAC 296-30-081 What are the general obligations of a provider who provides medical or mental health services to a crime victim?** (1) When treating a crime victim who comes under our jurisdiction, you agree to accept and comply with the department's rules and fees.

- (a) All providers must comply with this chapter and the department's medical aid rules and fee schedules.
- (b) Mental health providers must comply with this chapter, the department's medical aid rules and fee schedules, and

(10/31/11)

the *Crime Victims Compensation Programs Mental Health Treatment Rules and Fees*.

(2) You must inform the victim of his or her rights under the Crime Victims Act and give whatever assistance is necessary for the victim to apply for compensation and provide proof of other matters required by our rules. Providers may not charge the victim for these services.

(3) Providers are urged to bill on a monthly basis. In order to be considered for payment, bills must be submitted within one year from the date of service, or the date of claim allowance. If private or public insurance exists, bills must be received within one year of the primary insurer's payment decision. You must attach a copy of the primary insurer's explanation of benefits when submitting your bill for payment consideration.

[Statutory Authority: RCW 7.68.030. 04-14-069, § 296-30-081, filed 7/2/04, effective 8/2/04. Statutory Authority: RCW 7.68.030, 7.68.060, 7.68.080. 00-03-056, § 296-30-081, filed 1/14/00, effective 2/14/00. Statutory Authority: RCW 7.68.030, 7.68.080, 7.68.120, 51.36.010, 51.04.020 (1) and (4) and 51.04.030. 99-07-004, § 296-30-081, filed 3/4/99, effective 4/4/99. Statutory Authority: RCW 51.36.010, 7.68.030, 51.04.020 (1) and (4), 51.04.030, 7.68.080 and 7.68.120. 97-02-090, § 296-30-081, filed 12/31/96, effective 1/31/97. Statutory Authority: RCW 7.68.030, 51.04.020 (1) and 51.04.030. 95-15-004, § 296-30-081, filed 7/5/95, effective 8/5/95. Statutory Authority: Chapter 7.68 RCW. 94-02-015, § 296-30-081, filed 12/23/93, effective 1/24/94; 92-23-034, § 296-30-081, filed 11/13/92, effective 12/14/92; 92-16-033, § 296-30-081, filed 7/30/92, effective 8/30/92; 86-01-028 (Order 85-37), § 296-30-081, filed 12/11/85.]

**WAC 296-30-085 What is different about billing for a crime victim claimant?** (1) Providers must qualify as approved providers and register with the crime victims compensation program before they are authorized to provide treatment and receive payment. To register with the crime victims compensation program, you must send us:

- (a) A completed provider application and Form W-9.
- (b) A legible copy of your professional license, certification and/or registration.
- (c) Ph.D.s not licensed as psychologists and master level counselors must provide a legible copy of their degree.
- (2) Providers must determine if any public or private insurance benefits are available before billing the department. Public or private insurance must be billed first and a copy of the insurance explanation of benefits must be attached to billings submitted to the department. All copayments, deductibles or out-of-pocket expenses not covered by primary insurance should be included in your billings to the department.

(3) On claims closed over ninety days, and the maximum benefit has not been reached, we will pay up to the maximum benefit for completion of a reopening application, an office visit, and diagnostic studies necessary to complete the application. No other benefits will be paid until the reopening decision is made. If the reopening application is approved, we can pay benefits for a period not to exceed sixty days prior to the date the reopening application was received by us.

[Statutory Authority: Chapter 7.68 RCW. 11-22-054, § 296-30-085, filed 10/31/11, effective 12/1/11. Statutory Authority: RCW 7.68.030, 7.68.080, 7.68.130. 00-03-056, § 296-30-085, filed 1/14/00, effective 2/14/00.]

**WAC 296-30-087 Can a victim be billed for expenses related to their claim?** (1) If claim costs are under fifty thousand dollars, the claimant should not pay any expenses relat-

ing to an allowed claim. Providers must bill the claimant's public or private insurance first, and then bill the department.

**EXCEPTION:** A provider may require the claimant to pay for treatment if the claimant's eligibility is pending. If benefits are authorized, and payable by the department, the provider must refund the claimant in full.

(2) If claim costs exceed fifty thousand dollars, the claimant is responsible for expenses.

[Statutory Authority: Chapter 7.68 RCW. 11-22-054, § 296-30-087, filed 10/31/11, effective 12/1/11.]

**WAC 296-30-090 What are the maximum allowable fees?** (1) Maximum allowable fees for medical and mental health services, that are not hospital inpatient or outpatient services, are a percentage of those fees published in the medical aid rules and fee schedules, less any available benefits of public or private insurance.

**EXCEPTION:** If any of the percentage of the maximum allowable fees in the medical aid rules and fee schedules, are lower than the maximum allowable fees for those procedures established by the department of social and health services under Title 74 RCW, the Title 74 RCW fees are the maximum allowable fees for those procedures.

(2) The percent of allowed charges for authorized hospital inpatient and outpatient services billed by revenue codes are those rates established by the department. If the maximum allowable fees for hospital inpatient or outpatient services is lower than the maximum allowable fees for those procedures established under Title 74 RCW for the ratio of costs to charges (RCC) rate, the department will use the RCC rate as the percent of allowed charges for hospital inpatient and outpatient services, regardless of whether the hospital is diagnosis related group (DRG) exempt.

[Statutory Authority: Chapter 7.68 RCW. 11-22-054, § 296-30-090, filed 10/31/11, effective 12/1/11. Statutory Authority: RCW 7.68.030. 05-16-096, § 296-30-090, filed 8/2/05, effective 9/2/05. Statutory Authority: RCW 7.68.030, 7.68.080, 7.68.130. 00-03-056, § 296-30-090, filed 1/14/00, effective 2/14/00.]

**WAC 296-30-095 How do the rules and fees apply to out-of-state providers?** Rules and fees are the same for out-of-state providers as for in state providers.

**EXCEPTION:** Out-of-state independent medical or mental health examinations are reimbursed at the examiners usual and customary fee.

[Statutory Authority: RCW 7.68.030. 00-03-056, § 296-30-095, filed 1/14/00, effective 2/14/00.]

**WAC 296-30-100 Will the department notify providers if a fee schedule is amended or established?** Our web site will be updated at least thirty days in advance when we amend or establish a fee schedule.

[Statutory Authority: Chapter 7.68 RCW. 11-22-054, § 296-30-100, filed 10/31/11, effective 12/1/11. Statutory Authority: RCW 7.68.030. 00-03-056, § 296-30-100, filed 1/14/00, effective 2/14/00.]

**WAC 296-30-105 What protest or appeal rights are available?** If you or the client do not agree with our order, decision or award a written protest may be sent to the crime victims compensation program or appeal to the board of industrial insurance appeals. A protest or appeal to our order

or decision requiring repayment by a provider must be received within twenty days from receipt of the order or decision. A protest or appeal regarding other issues must be received within ninety days of receipt of the order or decision.

**Note:** Protest and appeal rights are governed under chapter 51.52 RCW and RCW 7.68.110.

[Statutory Authority: RCW 7.68.030, 7.68.110, 51.52.050, 51.52.060(1). 00-03-056, § 296-30-105, filed 1/14/00, effective 2/14/00.]

**WAC 296-30-120 May the department waive, modify or adjust the debt owed by a convicted offender?** Yes, the department may consider the following issues in the decision. The list is not inclusive.

- (1) Justice:
  - (a) Gravity of the criminal offense;
  - (b) History of criminal convictions;
  - (c) Type of crime;
  - (d) Circumstances surrounding the criminal act;
  - (e) Sentence imposed by the court.
- (2) Well-being of the victim:
  - (a) Extent of injury to victim;
  - (b) Safety of victim;
  - (c) Dependency of the victim on the offender;
  - (d) Recovery of victim.
- (3) Rehabilitation of the individual:
  - (a) Attempts at rehabilitation;
  - (b) Employment status;
  - (c) Ability to pay.

[Statutory Authority: RCW 7.68.030, 7.68.120. 00-03-056, § 296-30-120, filed 1/14/00, effective 2/14/00. Statutory Authority: RCW 51.36.010, 7.68.030, 51.04.020 (1) and (4), 51.04.030, 7.68.080 and 7.68.120. 97-02-090, § 296-30-120, filed 12/31/96, effective 1/31/97. Statutory Authority: Chapter 7.68 RCW. 86-01-028 (Order 85-37), § 296-30-120, filed 12/11/85.]

**WAC 296-30-170 Who is required to pay for sexual assault examinations?** When a sexual assault examination is performed for the purpose of gathering evidence for possible prosecution, the costs of the examination must be billed to the crime victims compensation program. We are the primary payer of this benefit. The client is not required to file an application with us to receive this benefit and may not be billed for these costs. If the examination includes treatment costs or the client will require follow-up treatment, an application for benefits must be filed with us for these services to be considered for payment.

[Statutory Authority: RCW 7.68.030, 7.68.170. 00-03-056, § 296-30-170, filed 1/14/00, effective 2/14/00. Statutory Authority: Chapter 7.68 RCW. 86-01-028 (Order 85-37), § 296-30-170, filed 12/11/85; 85-03-060 (Order 85-3), § 296-30-170, filed 1/15/85.]

**WAC 296-30-180 What protection is available to crime victims to prevent unjust enrichment to others from their benefits?** (1) The Crime Victims Act prohibits the department from paying benefits or compensation to a person:

- (a) Who caused the crime victim's injuries; or
  - (b) Any person who would be unjustly enriched by the victim's benefits (e.g., there is a danger the person may divert benefits intended for the victim to his or her own use).
- (2) To prevent unjust enrichment, the department, victim, or the victim's guardian may file a motion to:

(a) Request that the victim or other responsible adult establish:

(i) A trust account with a neutral third party as trustee; or  
 (ii) A savings or checking account with a neutral third party to cosign all withdrawals or checks.

(b) Crime victim compensation benefits will then be deposited in the established account.

(3) The department will continue to pay providers directly.

[Statutory Authority: RCW 7.68.030, 7.68.070(15), 7.68.120.00-03-056, § 296-30-180, filed 1/14/00, effective 2/14/00. Statutory Authority: RCW 51.36.010, 7.68.030, 51.04.020 (1) and (4), 51.04.030, 7.68.080 and 7.68.120.97-02-090, § 296-30-180, filed 12/31/96, effective 1/31/97. Statutory Authority: Chapter 7.68 RCW. 86-01-028 (Order 85-37), § 296-30-180, filed 12/11/85.]

**WAC 296-30-900 What law controls a claim if a statute is amended after the date of the criminal act?** The statute in effect when the criminal act occurred is the controlling law, except as provided in chapter 122, Laws of 2010 (E2SSB 6504). The act occurs when the perpetrator commits the criminal conduct.

For those crime victims who apply for benefits after April 1, 2010, the law in effect at the time the application is received by the department is the controlling law.

[Statutory Authority: RCW 7.68.030 and 2010 c 122. 10-19-111, § 296-30-900, filed 9/21/10, effective 10/22/10. Statutory Authority: RCW 7.68.030. 99-07-004, § 296-30-900, filed 3/4/99, effective 4/4/99. Statutory Authority: RCW 51.36.010, 7.68.030, 51.04.020 (1) and (4), 51.04.030, 7.68.080 and 7.68.120.97-02-090, § 296-30-900, filed 12/31/96, effective 1/31/97. Statutory Authority: Chapter 7.68 RCW. 85-03-060 (Order 85-3), § 296-30-900, filed 1/15/85.]