

## **PART 2: COMPENSATION**

### **10.40.2.1 ISSUING AGENCY:**

Crime Victims Reparation Commission

[4/30/97; [10.40.2.1](#) NMAC - Rn, 10 NMAC 40.2.1, 08/31/06]

### **10.40.2.2 SCOPE:**

Provisions for Part 2 of Chapter 40 apply to the administration of the filing for reparation payments.

[4/30/97; [10.40.2.2](#) NMAC - Rn, 10 NMAC 40.2.2, 08/31/06]

### **10.40.2.3 STATUTORY AUTHORITY:**

Authority for Part 2 of Chapter 40 is the Crime Victims Reparation Act, Sections 31-22-1 through [31-22-24](#) NMSA 1978.

[4/30/97; [10.40.2.3](#) NMAC - Rn, 10 NMAC 40.2.3, 08/31/06]

### **10.40.2.4 DURATION:**

Permanent.

[4/30/97; [10.40.2.4](#) NMAC - Rn, 10 NMAC 40.2.4, 08/31/06]

### **10.40.2.5 EFFECTIVE DATE:**

March 14, 1998, unless a later date is cited at the end of a section..

[4/30/97, 3/14/98; [10.40.2.5](#) NMAC - Rn & A, 10 NMAC 40.2.5, 08/31/06]

### **10.40.2.6 OBJECTIVE:**

The objective of Part 2 of Chapter 40 is to establish clearly the application procedures, eligibility, and processing required for victims to receive compensation.

[4/30/97; [10.40.2.6](#) NMAC - Rn, 10 NMAC 40.2.6, 08/31/06]

### **10.40.2.7 DEFINITIONS:**

[RESERVED]

### **10.40.2.8 APPLICATIONS FOR REPARATION:**

A. Applications shall be filed on forms provided by the commission.

B. Application for reparation must be made to the crime victims reparation commission within two years of the date of the incident giving rise to the application. Filing of the application provided by the commission shall be considered received when the application is postmarked delivered or faxed within the two year time limit to the commission's offices. However, upon approval by the director, the director may find, in his discretion, that the application was received upon oral contact with the commission, or its employees, within two years of the date of the incident.

C. Application for reparation must be made directly to employees of the commission. Only the commission's employees are authorized to accept applications.

D. In no event shall reparation be given unless application has been made within two years after the injury or death except for minors as described in Subsection A of **10.40.2.9** NMAC of these regulations.

E. The word "eligible", as stated in Section 31-22-3 H (2) NMSA 1978, includes Victims of Crime Act eligible programs.

F. **[RESERVED]**

G. After receipt of the application, the commission's staff may request additional information or documentation. If the victim/claimant fails to respond to any request of the commission's staff for additional documents or information, the victim's application may be presented to the commission board for denial.

[1/20/89, 11/7/91; 3/14/98; **10.40.2.8** NMAC - Rn & A, 10 NMAC 40.2.8, 08/31/06]

#### **10.40.2.9 DATE OF INCIDENT:**

A. For all purposes of administering applications, the date of the injury or death shall be the date of incident. The only exception to this is when the victim is a minor and the application is for an alleged violation of Section **30-6-1** NMSA 1978, Abandonment or Abuse of a Child, Section **30-9-11** NMSA 1978, Criminal Sexual Penetration or Section **30-9-13** NMSA 1978, Criminal Sexual Contact of a Minor when the injury or death was reported to law enforcement after July 1, 1991. The date of incident for these violations shall be the first day the victim attains the age of eighteen or the date the violation is reported to a law enforcement agency, whichever occurs first. The victim must report the crime to a law enforcement agency within thirty days of attaining the age of eighteen. However, in cases of domestic violence or sexual assault, the victim must report to law enforcement within 180 days of occurrence of the crime or in the case of a victim who is a minor of criminal sexual penetration or criminal sexual contact of a minor, the victim must report to law enforcement within 180 days of their eighteenth birthday.

B. Effective date of statutes: The effective date of statute changes shall be that which is prescribed by the constitution of the state of New Mexico.

C. The date of incident as stated in Subsection A of **10.40.2.9** NMAC of these regulations shall determine which statutes govern administering and payment of the application. No changes in statute shall affect an application unless the date of incident occurs on or after the effective date of the statute.

[11/7/91, 3/14/98; 10.40.2.9 NMAC - Rn & A, 10 NMAC 40.2.9, 08/31/06]

#### **10.40.2.10 LIMITATIONS:**

A. If expenses incurred by any victim/claimant exceed the maximum amount allowed by statute on the date of incident, the commission board shall decide the most appropriate method of distribution of reparations awarded, pursuant to the following guidelines.

B. A victims/claimant may shall be compensated in full, to the greatest extent possible, for debts for which they have expended personal funds, and reasonable compensation for lost wages unless requested otherwise by the victim/claimant. Unpaid service providers may receive a pro-rata distribution of any funds remaining after victims/claimant have been compensated in full for personal expenditures. The commission board may in its sole discretion determine that fair reparation has been paid to any service provider.

C. All victims/claimants should provide all necessary documentation to commission staff for the verification of all reimbursable expenses. This documentation must provide the name of payee, the name of payer, the amount paid, date of services, and indicate what service was provided. This documentation may include invoices, receipts and canceled checks. Affidavits and letters shall not be considered proper documentation.

D. Restitution and civil judgments may be considered a collateral source only when there is verification of payment by the offender or responsible party.

E. The commission may award reparation for funeral related expenses occasioned by an act or omission which includes a crime enumerated in Section 31-22-8 A NMSA 1978. Awards for funeral expenses shall not exceed six thousand dollars (\$6,000.00). Items not to be included for reimbursement are: food, clothing, items of value such as jewelry, saddles, etc. At the board's discretion, a restricted item may be waived.

F. The commission may award reparation for the loss of eyeglasses or contact lenses damaged as a result of an act or omission which includes a crime enumerated in Section 31-22-8 A NMSA 1978. Awards for eyeglasses or contact lenses shall not exceed three hundred fifty dollars (\$350.00).

G. Loss of wages shall not be paid pursuant to this section unless the individual requesting loss of wages is employed at the time of the incident. A victim may be paid loss of wages for the time he/she is unable to work due to his/her injuries as certified by a licensed physician, psychologist, psychiatrist, dentist, master level therapist, nurse practitioner or physician's assistant. A victim or if the victim is a minor, loss of wages may be paid to a victim, parent, guardian, etc., who must take time off from their employment to transport himself or the victim to a physician, dentist, counselor or therapist or for investigative interviews and criminal justice proceedings. Loss of wages may be paid to the victim, claimant, and/or, in the case of a minor victim, guardian, for up to fourteen calendar days after the crime for a recovery period. Also, in the case of a deceased victim, up to fourteen calendar days will be allowed for the individual responsible for making funeral arrangements. No certification from a physician will be required for this period of time. Relatives, as defined in Section 31-22-3 G, of a homicide victim are eligible for loss of wages for a recovery period of up to fourteen calendar days following the date of incident. An individual who assumes the duties of providing home health care to the victim, when this care is required by physician order, may be considered for loss of wages. In all instances of payment of loss of wages, Paragraph (1) of Subsection G of 10.40.2.10 NMAC of these regulations must be

followed. The board may consider special circumstances when payment of loss of wages will be in the best interest of the victim and/or claimant. Loss of wages may also be considered for the parent or guardian or caregiver of a minor if the board determines that it is in the best interest of the victim. If loss of wages are claimed, the following must be submitted for verification.

(1) Except as indicated above, a copy of a doctor's statement certifying that the victim is unable to work; or a doctor's statement included in a medical document, or medical documentation showing the inability of the victim to work. Hospitalization shall constitute grounds for paying loss of wages.

(2) a statement from the employer providing:

(a) the dates of work missed due to the incident;

(b) hourly wage;

(c) the average number of hours worked weekly; and

(d) any type of compensation received, such as sick leave, annual leave, unemployment, etc.;

or

(3) if self-employed, or in the opinion of the commission staff, additional verification is required, the individual requesting loss of wages may sign a request for federal income tax account information to be sent directly to the agency; this request form will be provided by the crime victims reparation commission.

H. When any award of reparation is made by the commission, and said award is less than the maximum amount allowed by statute on the date of incident, the director may award additional reparation. Any additional reparation so awarded shall stem from the offense for which the original award was given. The commission board shall be informed of any additional reparation granted pursuant to this subsection at the next regular meeting.

I. Any victim/claimant that incurs expenses that are covered by a collateral source(s) as defined in Section 31-22-3 B NMSA 1978 including but not limited to automobile insurance, home owners/rental insurance, health insurance, indigent funds, medicaid, medicare or veterans administration shall submit covered expenses to the source(s) for payment. Only those expenses not covered by the collateral source(s) will be considered for reparation.

J. Mental health counseling and care means the assessment, diagnosis, and treatment of an individual's mental and emotional functioning that is actually and reasonably incurred as a result of the victim's injury or death. Evaluation and counseling shall be performed by a provider licensed in accordance with the New Mexico Counseling and Therapy Practice Act or licensed to practice in the state where treatment is being provided. Those providers awaiting licensure approval must be under the direct supervision of a licensed professional. This requirement may be waived at the discretion of the commission board. If it is apparent that treatment is addressing issues not related to the crime, the commission may pay for only that percentage of treatment which is addressing the victimization.

(1) All counselors shall provide the commission staff with the following:

(a) detailed patient evaluation describing the effect of the victimization;

(b) presentation of complaints: functional impairment, i.e., employment, school, interpersonal relationships, emotional/behavioral, etc.;

(c) pre-existing conditions: a diagnosis of any pre-existing conditions and their potential effect on the condition resulting from the incident;

(d) treatment goal (PLAN): describe in measurable behavioral terms the goals of treatment as they relate to the functional impairment of the victim; that is, describe the specific behavioral, emotional, and/or interpersonal changes to be achieved as the criteria for termination of treatment; note: treatment plans must be fully documented in a "problem" and "intervention" type of format; detail must be provided for both symptoms and intervention; incomplete treatment plans may delay review and payment until additional and/or correct information is received;

(e) method of accomplishing treatment goals: for each treatment goal, please explain the therapeutic approach(es) you anticipate using;

(f) medication prescribed and reason;

(g) treatment sessions: estimated length of treatment, (number, frequency and duration of treatment sessions to achieve treatment goals;

(h) explanation of what percentage of treatment is related to the victimization;

(i) itemized statement for services (including a copy of your agency's sliding fee scale evaluation);

(j) state license number;

(k) the commission may waive any of the above in the interest of the victim.

(2) When the victim is a minor, a therapist shall be prohibited from receiving reparation if entering into a dual relationship whereby they are providing treatment to the minor victim as well as to the offender.

(3) Inpatient hospitalization may be considered in life-threatening situations when the treatment has been recommended, in writing, by the victim's physician or mental health provider.

(4) The commission shall not consider payment to health providers for the following: missed appointments, report writing, telephone consultation, court appearance, therapist travel time costs, interest charged, telephone calls to the crime victims reparation commission office, or sessions which include the offender.

(5) At any time during treatment, the commission may require a follow-up report or prognosis notes from the provider detailing the results of the treatment and stating any need for additional therapy. The commission shall approve up to thirty sessions per person deemed eligible under the application submitted unless approval for additional therapy has been granted by the commission. The provider shall furnish the commission with a detailed report stating that continuing treatment is necessary due to problems created as a direct result of the victimization. The commission may at any time request an independent evaluation.

K. The commission may consider payment of Native American medicine man treatment fees.

(1) Since a reasonable and customary schedule of charges has not been established, the commission may require that the following be submitted:

(a) a written description of each procedure, function, and/or activity performed and its benefit to the victim;

(b) a written description of charges and dates for each procedure, function, and/or activity;

(c) the location that each procedure, function, and/or activity was performed;

(d) the time involved to perform such services;

(e) a summary outlining the qualifications and experiences which allows the service provider to perform the services of a medicine man;

(f) a detailed list of materials used in the ceremonies and an explanation as to the use of those materials.

(2) In all cases of medicine man care, the commission board shall only approve up to \$3,000.00 per application unless prior approval has been granted by the commission board for additional treatment.

L. The provisions of Section 31-22-10 A NMSA, 1978, prohibit reparation if the victim is a member of the offender's family relationship group where payment would unjustly enrich the offender. Unjust enrichment shall be when the offender benefits from payments by either personally receiving compensation or by having compensation reduce the offender's financial obligation of medical payment, funeral expense, or other expenses incurred as a result of the crime. Payments to victims which benefits offenders in only a minimal or inconsequential manner would not be considered unjust enrichment. The victim and/or claimant must cooperate with law enforcement in the prosecution of the offender.

M. Gas expenses to transport the victim to a health provider may be considered if the travel is over thirty miles one way from the victim's residence. This travel shall be verified by the health provider's billing and reports for the travel requested. The gas will be reimbursed at the rate of twenty cents per mile.

N. Gas expenses to transport the victim to a law enforcement agency for the purpose of official business relating to the incident for which the application is filed may be considered. The distance traveled shall be more than thirty miles one way from the victim's residence and the gas will be reimbursed at the rate of twenty cents per mile.

O. The commission board may consider travel expenses related to the identification of the deceased victim by an individual who has assumed responsibility for making arrangements for the deceased.

P. The following expenses shall not be considered for reimbursement:

(1) phone bills;

(2) copying fees;

(3) postage costs.

Q. If a victim is transported to a medical facility due to the severity of the victim's injuries, gas expenses may be considered for reimbursement at the rate of twenty cents per mile for relatives, a member of the victim's family relationship group, or a dependent of the victim. Lodging and meal expenses for these individuals may also be considered at the reimbursement rate consistent with DFA rules in effect at the time of the travel. A car rental at a reasonable rate may also be considered for reimbursement. These expenses shall only be considered while the victim is at a medical facility and the distance must be more than fifty miles one way from the victim's residence.

[11/7/91, 3/14/98; 10.40.2.10 NMAC - Rn & A, 10 NMAC 40.2.10, 08/31/06]

### 10.40.2.11 REDUCTIONS AND DENIALS:

A. The commission board shall consider that the purpose of the New Mexico Crime Victims Reparation Act, as stated in Section 31-22-2 NMSA 1978, is to promote cooperation with law enforcement efforts and promote the public health, welfare, and safety of the citizens of New Mexico. In accordance with Section 31-22-7 C NMSA 1978, the commission board in determining whether to make an award may consider any circumstances it determines to be relevant.

(1) Also, as required by the statute, the commission board shall consider the behavior of the victim. This shall be applied equally and consistently to all persons. In considering the behavior of the victim, the commission board may reduce or deny an application under any relevant circumstances, including, but not limited to the following:

(a) knowing or willing involvement in the commission of a crime as defined in Section 30-1-4 NMSA 1978 at the time of incident;

(b) behavior constituting provocation or incitement;

(c) illegal drug use;

(d) gang-related crime or activity;

(e) knowingly or willingly riding in a vehicle operated by a person who is under the influence of alcohol or a controlled substance;

(f) operating a vehicle while legally intoxicated;

(g) failure to wear a seat belt as required by statute;

(h) victim/claimant knowingly falsifying application;

(i) intoxication where the judgment of a person would be impaired; or

(j) knowingly engaging in a physical altercation.

(2) In cases where the victim is under eighteen years of age or the victim is mentally or physically incapable of adhering to these requirements, the commission board may waive the above. In addition, the board may waive any of the above in the case of intimidation.

B. In accordance with the Crime Victims Reparation Act, Section 31-22-7 D (3) NMSA 1978, the commission, upon finding that a claimant or victim has not cooperated with law enforcement agencies or with investigators, agents, or representatives of the commission, may deny reparation.

(1) The claimant or victim may be considered uncooperative based on, but not limited to, the following acts:

(a) refusal to discuss the crime with the investigating police agencies;

(b) refusal to respond to questions posed by the investigating police agency regarding the crime on which the application is based;

(c) withholding or secreting information from the agency investigating the crime regarding the description, the identity, or the whereabouts of the offender; or refusal to act as a witness before a court with respect to the crime on which the application is based;

(d) refusal to prosecute the alleged suspect or pursue charges against the suspect of the crime on which the application is based;

(e) refusal or neglect to provide the information required by the commission to determine the validity of an application;

(f) impeding the progress of a criminal investigation of the crime on which the application is based; or

(g) advising other persons to refuse to cooperate with law enforcement agencies or with the commission in the conduct of their investigations.

(2) In cases where the victim is under eighteen years of age or the victim is mentally or physically incapable of adhering to these requirements, the commission board may waive the above.

C. Any application that has been denied by the commission may be reopened at the discretion of the commission.

[11/7/91, 3/14/98; **10.40.2.11** NMAC - Rn & A, 10 NMAC 40.2.11, 08/31/06]

#### **10.40.2.12 APPEAL PROCEDURE:**

If a victim/claimant feels that the commission board's decision on their application is incorrect, they may file an appeal with the agency. The appeal procedure is as follows:

A. The victim/claimant shall write a letter to the director requesting the director to review the commission board's decision. Any new or additional relevant information should be provided at this time. The director shall review the application file and additional information submitted and make a determination as to whether or not reconsideration of the original decision by the commission board is warranted. If the director feels the commission board should reconsider, the director shall present the application to the commission board and request a review of the decision. If the director concurs with the commission board, the director shall notify the victim/claimant of the decision.

B. The victim/claimant may request in writing a meeting between the victim/claimant and the



director, staff to whom the application is assigned, and an independent victim advocate to discuss the issues. The director, staff to whom the application is assigned, and advocate shall then make a recommendation to the commission board.

C. If the victim/claimant disagrees with the results of steps one and two of the appeal procedure, then he/she may request in writing an appearance before the commission board. The director shall schedule the appearance before the commission board for the appeal. The victim/claimant may present any information he/she thinks is relevant. The commission board shall review the information presented and make a determination on the application. The decision of the commission board is final.

[11/7/91; 11/7/97; 3/14/98; **10.40.2.12** NMAC - Rn & A, 10 NMAC 40.2.12, 08/31/06]

#### **10.40.2.13 SECURITY OF APPLICATION FILES:**

A. After office hours, all application files shall be secured in a locked area.

B. A sign out sheet in the crime victims reparation commission office will be maintained for all files leaving the crime victims reparation commission office. No application files will be signed out unless adequate security for those files can be guaranteed.

[3/14/98; **10.40.2.13** NMAC - Rn, 10 NMAC 40.2.13, 08/31/06]

#### **10.40.2.14 CONFIDENTIALITY:**

Application files which contain confidential medical and police records shall be considered confidential. No public disclosure of the information contained within shall be made. All commission board members and staff shall be responsible to maintain this confidentiality.

[3/14/98; **10.40.2.14** NMAC - Rn, 10 NMAC 40.2.14, 08/31/06]