

## **R270. Crime Victim Reparations, Administration.**

### **R270-1. Award and Reparation Standards.**

#### **R270-1-1. Authority and Purpose.**

As provided in Subsection 63M-7-506(1)(c) the purpose of this rule is to provide interpretation and standards for the administration of crime victim reparations.

#### **R270-1-2. Definitions.**

- (1) Terms used in this rule are found in Section 63M-7-502.
- (2) In addition:
  - (a) "APRN" means Advanced Practice Registered Nurse;
  - (b) "DOPL" means Utah Department of Commerce, Division of Professional and Occupational Licensing;
  - (c) "medical forensic sexual assault examination" means a medical and forensic examination of a victim to provide medical care and collect forensic evidence in a sexual assault investigation or prosecution;
  - (d)(1) "medical services" means medical treatment or services, described in Subsection 63M-7-511(4)(b), performed at an inpatient or outpatient medical facility by a licensed medical provider;
  - (d)(2) medical services include dental services;
  - (d)(3) medical services do not include sexual assault forensic examinations or mental health therapy;
  - (e) "PEHP" means the Public Employees' Benefit and Insurance Program created in Section 49-20-103;
  - (f) "primary victim" means a victim who has been directly injured by criminal conduct;
  - (g) "program" means the Victim Services Grant Program, authorized under Subsection 63M-7-506(1)(i), which allocates money for other victim services once a sufficient reserve has been established for reparations claims; and
  - (h) "secondary victim" means a victim who is not a primary victim but who has a relationship with the victim and was traumatically affected by the criminally injurious conduct that occurred to the victim, including an immediate family member of a victim such as a spouse, father, mother, stepparents, grandparents, child, brother, sister, stepchild, stepbrother, stepsister, or legal guardian or other person who the reparations officer reasonably determines bears an equally significant relationship to the primary victim.

#### **R270-1-3. Funeral and Burial Reparations Award.**

- (1) Pursuant to Subsection 63M-7-511(4)(f), a reparations award for funeral and burial expenses may not exceed \$7,000 for any reasonable and necessary charges incurred directly relating to the funeral and burial of a victim. This amount includes transportation of the deceased. Allowable expenses in this category may include the emergency acquisition of a burial plot for victims who did not previously possess or have available to them a plot for burial.
- (2) Transportation of secondary victims to attend a funeral and burial service shall be considered as an allowable expense in addition to the \$7,000.
- (3) Loss of earnings for secondary victims to attend a funeral and burial service shall be allowed as follows:
  - (a) Three days in-state
  - (b) Five days out-of-state
- (4) When a victim dies leaving no identifying information, reparations claims made by a provider cannot be considered.

#### **R270-1-4. Reparations Claims Involving Negligent Homicide and Hit and Run.**

- (1) Negligent homicide shall be considered criminally injurious conduct as defined in Subsection 63M-7-502(9).
- (2) Pursuant to Subsection 63M-7-502(7), criminally injurious conduct may not include a hit and run.

#### **R270-1-5. Counseling Awards.**

- (1) Pursuant to Subsections 63M-7-502(19) and 63M-7-511(4)(c), reparations awards for outpatient mental health counseling are subject to limitations as follows:
  - (a) The reparation officer shall approve a standardized treatment plan.
  - (b) The cost of initial evaluation and testing may not exceed \$300 and shall be part of the maximum allowed for counseling. For purposes herein, an evaluation shall be defined as diagnostic interview examination including history, mental status, or disposition, to determine a plan of mental health treatment.
  - (c)(i) Primary victims of a crime shall be eligible for the lesser of 25 aggregate individual or group counseling sessions or \$2,500 maximum mental health counseling award.
  - (ii) Parents, children, spouses and siblings of homicide victims shall be considered at the same rate as primary victims for inpatient and outpatient counseling.
  - (d) Secondary victims of a crime shall be eligible for the lesser of 15 aggregate individual or group counseling sessions or \$1,250 maximum mental health counseling award.
  - (e) Extenuating circumstances warranting consideration of counseling beyond the maximum may be submitted by the mental health provider when it appears likely that the maximum award will be reached.
  - (f) Counseling costs will not be paid in advance but will be paid on an ongoing basis as victim is being billed.
- (2) Inpatient hospitalization shall only be considered for primary victims when the treatment has been recommended by a licensed therapist in life-threatening situations. Acute Inpatient hospitalization shall not exceed \$600 per day, which includes ancillary expenses, and will be considered payment in full to the provider. Inpatient psychiatric visits will be limited to one visit

per day with payment for the visit made to the institution at the highest rate of the individuals providing therapy as set by rule. Reimbursement for testing costs may also be allowed. Parents, children, spouses and siblings of homicide victims shall be considered at the same rate as primary victims for inpatient hospitalization. Secondary victims of other crime types are excluded.

(3) Residential and day treatment shall only be considered for primary victims when the treatment has been recommended by a licensed therapist to stabilize the victim's behavior and symptoms. Only facilities with 24 hour nursing care or 24 hour on call nursing care will be compensated for residential and day treatment. Residential and day treatment shall not be used for extended care of dysfunctional families and containment placements. Residential treatment shall not exceed \$300 per day and will be considered payment in full to the provider. Residential treatment shall be limited to 30 days, unless there are extenuating circumstances requiring extended care. Residential clients shall receive routine assessments from a psychiatrist or APRN at least once a week for medication management. Day treatment shall not exceed \$200 per day and will be capped at \$10,000. These charges will be considered payment in full to the provider. Parents, children, spouses and siblings of homicide victims shall be considered at the same rate as primary victims for residential and day treatment. Secondary victims of other crime types are excluded.

(4) Wilderness programs shall not be covered as an appropriate treatment modality when considering inpatient hospitalization, residential or day treatment.

(5) The office shall not pay for treatment for an offender related to the perpetration of the criminally injurious conduct. Reparations officers shall establish a reasonable percentage regarding victimization treatment for outpatient, inpatient, residential and day treatment on a case by case basis upon review of the mental health treatment plan and treatment records.

(6) Payment for mental health counseling shall only be made to licensed therapists; or to individuals working towards a license that provide certified verification of satisfactory completion of an education and earned degree as required by the DOPL, working under the supervision of a supervisor approved by the DOPL. Student interns otherwise eligible under Subsection 58-1-307(1)(b) Exceptions from licensure, or the institution, facility or agency responsible for the supervision of the student, shall not be eligible for payment under this rule for counseling services provided by the student.

(7) Payment of hypnotherapy shall only be considered when treatment is performed by a licensed mental health therapist based upon an approved Treatment Plan.

(8) The following maximum amounts shall be payable for mental health counseling:

(a) up to \$130 per hour for individual and family therapy performed by licensed psychiatrists, and up to \$65 per hour for group therapy;

(b) up to \$90 per hour for individual and family therapy performed by licensed psychologists and up to \$45 per hour for group therapy;

(c) up to \$70 per hour for individual and family therapy performed by a licensed master's level therapist or an APRN, and up to \$35 per hour for group therapy. These rates shall also apply to therapists working towards a license and supervised by a licensed therapist;

(d) The rates established in this section shall apply to individuals performing treatment, and not those supervising treatment.

(9) Chemical dependency specific treatment will not be compensated unless the reparations officer determines that it is directly related to the crime. The board may review extenuating circumstance cases.

#### **R270-1-6. Attorney Fees.**

Pursuant to Subsection 63M-7-524(2) attorney fees shall be made within the reparation award and not in addition to the award. If an award is paid in a lump sum, the attorney's fee shall not exceed 15% of the total award; if payments are awarded on an ongoing basis, attorney fees will be paid when warrants are generated but not to exceed 15%. When award denials are overturned, attorney fees shall be calculated only on the appealed reparation issue.

#### **R270-1-7. Reparations Awards.**

Pursuant to Section 63M-7-503, reparations awards can be made to victims of violent crime where restitution has been ordered by the court but appears unlikely the restitution can be paid within a reasonable time period. However, notification of the award will be sent to the courts, prosecuting attorneys, Board of Pardons or probation and parole counselors indicating any restitution monies collected up to the amount of the award will be forwarded to the fund.

#### **R270-1-8. Abortion.**

Expenses for an abortion that is permitted pursuant to Title 76, Chapter 7, Part 3, Abortion shall be eligible for a reparation award as long as all the requirements of Section 63M-7-511 have been met.

#### **R270-1-9. Emergency Reparations Awards.**

Pursuant to Section 63M-7-522, The office may make emergency reparations awards up to \$1,000. No time limit is required for filing an emergency reparations claim. Processing of emergency reparations claims is three to five days.

#### **R270-1-10. Loss of Earnings.**

(1) Pursuant to Subsection 63M-7-511(4)(d), the 66-2/3% of the person's weekly salary or wages is calculated on gross earnings.

(2) Loss of earnings for primary and secondary victims may be reimbursed for up to a maximum of 12 weeks work loss, at an amount not to exceed the maximum allowed per week by Worker's Compensation guidelines in effect at the time of work loss. The board may review extenuating circumstances on reparations claims involving loss of earnings for consideration and authorization of extensions beyond set limits.

**R270-1-11. Moving, Transportation Expenses.**

(1) Pursuant to Subsection 63M-7-511(4)(a), victims of violent crime who suffer a traumatic experience or threat of bodily harm are allowed moving expenses up to \$1,000. Board approval is needed where extenuating circumstances exist.

(2) Transportation expenses up to \$1,000 are allowed for crime-related travel including, participation in court hearings and parole hearings as well as medical or mental health visits for primary and secondary victims. The board may approve travel expenses in excess of \$1,000 where extenuating circumstances exist.

**R270-1-12. Collateral Source.**

(1) Money from the fund shall be used before State Social Services contract monies when considering out-of-pocket expenses in child sexual abuse cases if the individuals qualify as victims. If the victim qualifies for Medicaid, the contract monies should be used first.

(2) Money from the fund shall be used before money from the Utah Medical Assistance Program, established in Section 26-18-10, when considering allowable benefits for victims of violent crime.

**R270-1-13. Record Retention.**

(1) Retention of the UOVC annual report and crime victim case files shall be as follows:

(2) Annual reports and other statistical information shall be retained in office for a period of three years and then transferred to State Archives.

(3) Crime victim case files shall be retained in office as needed for administrative use. After closure or denial of a case file, case file shall be retained in office for one year and then transferred to the Utah Department of Administrative Services, Division of Archives and Records Service. Case files will be retained in the State Records Center for 99 years and then destroyed.

**R270-1-14. Reparations Awards.**

(1) Pursuant to Section 63M-7-521, when billing from the providers exceeds the maximum allowed, the reparations officer shall pay the bills by the date of service. The reparations officer shall solicit input from the victim when making this determination. When the services and the billings have occurred at the same time, the reparations officer shall determine payment on a percentage basis.

(2) Reparations awards may only be granted for costs the reparations officer determines are directly related to or resulting from criminally injurious conduct.

**R270-1-15. Essential Personal Property.**

(1) Pursuant to Subsection 63M-7-511(4)(h), essential personal property covers all personal articles necessary and essential for the health and safety of the victim.

(2) The reparations officer may allow up to \$5,000 for medically necessary items such as eyeglasses, hearing aids, and wheelchairs. The board may approve expenses for medically necessary items in excess of \$5,000 where extenuating circumstances exist.

(3) The reparations officer may allow up to \$1,500 for other essential personal property such as burglar alarms, door locks, crime scene cleanup, repair of walls and broken windows. The board may approve expenses for essential personal property in excess of \$1,500 where extenuating circumstances exist.

**R270-1-16. Subrogation.**

(1) Pursuant to Section 63M-7-519, money collected through subrogation will be placed in the fund and will not be credited toward a particular victim or claimant award amount.

(2) Pursuant to Subsection 63M-7-519(2), in such instances where a settlement against a collateral source appears imminent, the director may reduce by up to 33% the lesser of; (a) the amount paid by the state; or (b) the amount of the settlement. Reduction in excess of 33% shall be determined by the board with the concurrence of the director.

**R270-1-17. Unjust Enrichment.**

Pursuant to Subsection 63M-7-510(1)(d), the following criteria shall be used when considering reparations claims involving possible unjust enrichment of an offender:

(1) Unjust enrichment determination shall not be based solely on the presence of the offender in the household at the time of the award.

(2) Reparations awards shall not be denied on the basis that the offender would be unjustly enriched, if the victim cooperates with investigation and prosecution of the crime and does what is possible to prevent access by the offender to substantial compensation.

(3) Payment to third party providers shall be made to prevent monies intended for victim expenses be used by or on behalf of the offender.

(4) Collateral resources such as court-ordered restitution and medical insurance that are available to the victim from the offender shall be examined. However, the victim shall not be penalized for failure of an offender to meet legal obligations to pay for the cost of the victim's recovery.

(5) Factors to be considered in determining whether enrichment is substantial or inconsequential include the amount of the award and whether a substantial portion of the compensation award will be used directly by or on behalf of the offender. If the offender has direct access to a cash award or if a substantial portion of it will be used to pay for the offender's living expenses, that portion of the award that will substantially benefit the offender may be reduced or denied. When enrichment is inconsequential or minimal, the award shall not be reduced or denied.

#### **R270-1-18. Prescription or Over-the-Counter Medications.**

(1) Reimbursement of prescription or over-the-counter medications or medication management services used in conjunction with mental health therapy shall be considered only for the duration of an approved Treatment Plan.

(2) Reimbursement of prescription or over-the-counter medications used in conjunction with medical treatment shall be considered only during the course of treatment by the physician.

(3) Medication management rates shall be limited to a maximum of \$62.50 per 30 minute session.

(4)(a) The office shall pay the amount that would be paid by PEHP for prescription medications dispensed by a pharmacy, not including those included in R270-1-23.

(b) If PEHP does not have a fee schedule, the office will pay the amount the victim is obligated to pay that is not reimbursed by insurance.

#### **R270-1-19. Peer Review Committee.**

A volunteer Peer Review Committee may be established to review issues or provide input to office staff on reparations claims involving outpatient mental health counseling. The composition, duties, and responsibilities of this Committee shall be defined by the board by written internal policy and procedure.

#### **R270-1-20. Medical Services.**

Pursuant to Subsection 63M-7-511(4), if the victim does not have any collateral source to pay for medical services the office may pay:

(1) the rate established by the PEHP fee schedule for medical services; or

(2) 50% of the billed charges for medical services if PEHP does not have a fee schedule established for a medical service.

#### **R270-1-21. Misconduct.**

Pursuant to Subsections 63M-7-502(20) and 63M-7-512(1)(b) misconduct shall be considered conduct which contributed to the victim's injury or death or conduct which the victim could have reasonably foreseen could lead to injury or death. In determining whether the victim engaged in misconduct, the reparations officers shall consider any behavior of the victim that may have directly or indirectly contributed to the victim's injury or death including consent, provocation, verbal utterance, gesture, incitement, prior conduct of the victim or the ability of the victim to have reasonably avoided the incident upon which the reparations claim is based. Reparations officers shall not consider any behavior or action of any victim that is committed by the victim while under the duress or experience of threat, exploitation, coercion or any circumstance absent the victim's own willful desire to participate or any behavior or action committed or perceived to have been committed by the victim of any sex crime when determining whether the victim engaged in misconduct.

#### **R270-1-22. Three Year Limitation.**

Pursuant to Subsections 63M-7-506(1)(c) and 63M-7-525(2) a reparations claim for benefits expires and no further payments will be made with regard to the reparations claim after three years have elapsed from the date of application with the office. Reparations officers may extend reparations claims that have been closed because of the Three Year Limitation rule if extenuating circumstances exist.

#### **R270-1-23. Sexual Assault Forensic Examinations.**

(1) The office may pay a medical service provider who performs a medical forensic sexual assault examination;

(a) up to \$750. for a complete medical forensic sexual assault examination with photo documentation; and

(b) the full cost of any medications the medical service provider gives directly to a victim during a medical forensic sexual assault examination such as;

(i) the morning after pill or high dose oral contraceptives for the prevention of pregnancy; and

(ii) medication for the treatment and prevention of sexually transmitted diseases.

(2) The office may pay a medical facility where a medical forensic sexual assault examination is performed:

(a) 50% of the fee for the use of an examination room to perform a medical forensic sexual assault examination up to a maximum payment of \$350. and

(b) the PEHP rate if one has been established or 50% of the fee for:

(i) a history and physical;

(ii) the collection of specimens and wet mount for sperm;

(iii) testing for gonorrhea, chlamydia, trichomonas, and other sexually transmitted disease;

- (iv) a serum blood test for pregnancy; and
- (v) the testing and treatment of sexually transmitted diseases.
- (3) To be eligible for reimbursement of a medical forensic sexual assault examination the medical service provider who performed the sexual assault forensic examination shall:
  - (a) report the medical forensic sexual assault examination to law enforcement; and
  - (b) only collect evidence with the permission of the victim or the legal guardian of the victim.
- (4) A request for reimbursement of medical forensic sexual assault examination shall include:
  - (a) the victim's name, date of birth, or facility patient number;
  - (b) a description of what services were provided; and
  - (c) an itemization of the services provided; and
  - (d) either:
    - (i) the signature of a law enforcement officer, victim advocate or service provider; or
    - (ii) the law enforcement case number; and
- (5) The request for reimbursement shall be submitted to the office within one year form the date the medical forensic sexual assault examination was performed.
- (6) A victim may not be:
  - (a) charged for a medical forensic sexual assault examination; or
  - (b) required to participate in the criminal justice system or cooperate with law enforcement or prosecuting attorneys as a condition of being provided a medical forensic sexual assault examination.
- (7)(a) The office may not provide any reimbursement for any costs associated with an over-the counter sexual assault evidence kit which is made available to the public for at home collection of evidence.
- (b) This subsection prohibits reimbursement for the cost of the kit and the cost of any testing performed on the kit.

#### **R270-1-24. Loss of Support.**

- (1) Pursuant to Subsection 63M-7-511(4)(g), reparations awards for loss of support shall only be covered on reparations claims involving death.
- (2) Except as provided in R270-1-24(3), reparations awards for loss of support are available only to minor children of the deceased victim. Payment of the award may be made to the parent or guardian of the minor child on behalf of the minor child.
- (3) The board may approve reparations awards for loss of support to persons who are not minor children, but were physically and financially dependent on the deceased victim.

#### **R270-1-25. Victim Services.**

- (1) Pursuant to Subsection 63M-7-506(1)(i), the board may authorize the program when there is a surplus of money in the fund in addition to what is necessary to pay reparations awards and associated administrative costs for the upcoming year.
- (2) When the program is authorized, the board:
  - (a) shall determine the amount available for the program for that year;
  - (b) shall announce the availability of program funds through a request for proposals or other similar competitive process approved by the board; and
  - (c) may establish funding priorities and shall include any priorities in the announcement of funds.
- (3) Requests for funding shall be submitted on a form approved by the board.
- (4) The board shall establish a process to review requests for funding and shall make final decisions regarding the approval, modification, or denial of requests for funding. The board may award less than the amount determined in R270-1-25(2)(a). The decisions of the board may not be appealed.
- (5) An award by the board shall not constitute a commitment for funding in future years. The board may limit funding for ongoing projects.
- (6) Award recipients shall submit quarterly reports to the board on forms established by the director. The office staff shall monitor victim services grants and provide regular reports to the board.

#### **R270-1-26. Cultural Services.**

Cultural services rendered in accordance with recognized spiritual or religious methods of healing, legally available in Utah, may be considered for payment. The claimant shall submit a written itemized description of each procedure, function and activity performed; the benefit to the victim; the location and time involved to perform such services; and the qualifications and experience which allows the service provider to perform the services. Services shall be reimbursed in lieu of traditional treatment methods. Reparations awards for cultural services shall be deducted from the claimant's allowed limits. The fund will not pay for intoxicating or psychotropic substances unless prescribed by a medical practitioner licensed to do so.

#### **R270-1-27. Requirements for Payment.**

- (1) Payments made by the office shall be directly related to the victimization.
- (2) Services paid by the office shall be rendered and billed in the usual and customary course of business.
- (3) The office reserves the right to audit the records of medical facilities and medical service providers who request reimbursement from the office.
- (4) The office may not pay:

- (a) interest, finance, or collection fees; or
  - (b) any costs associated with the collection and testing of evidence unless the collection is performed by a medical service provider and tested at a licensed medical facility.
- (5)(a) If a victim has medical insurance or another collateral source to pay for services, the office may only pay up to the remaining portion of the bill that the victim is obligated to pay after all other collateral sources have paid.
- (b) A reparations officer may waive the requirement in Subsection (5)(a) if:
    - (i) it appears likely that compliance would compromise a victim's:
      - (A) safety;
      - (B) quality or continuation of care; or
      - (C) access to services due to distance, lack of transportation or other relevant circumstances; or
    - (ii) there are financial or practical circumstances which constitute a reasonable basis for a waiver.

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