



STATE OF DELAWARE  
STATE COUNCIL FOR PERSONS WITH DISABILITIES  
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MEMORANDUM

DATE: January 28, 2013

TO: Ms. Lisa Ogden, Director  
Victims Compensation Assistance Program

FROM: Daniese McMullin-Powell, Chairperson  
State Council for Persons with Disabilities

RE: 16 Reg. 719 [VCAP Proposed Funeral & Burial Award Cap Regulation]

The State Council for Persons with Disabilities (SCPD) has reviewed the proposal by the Department of Justice's Victims Compensation Assistance Program (VCAP) to reduce the cap on funeral and burial compensation from \$8500 to \$5000. The proposed regulation was published as 16 DE Reg. 719 in the January 1, 2013 issue of the Register of Regulations. SCPD endorses the proposed regulation and has the following observations.

As background, VCAP uses a combination of federal and State funds to offset "hardships imposed upon the innocent victims of certain crimes and the families and dependents of those victims." See Title 11 Del.C. §9001. Compensation is generally limited to victims of "violent" crimes, including domestic violence and DUI. The VCAP statute includes caps on certain forms of compensation (e.g. crime scene cleanup - \$1,000; temporary housing - "\$1,500; moving expenses - \$1,000). See Title 11 Del.C. §9002(9). The VCAP is authorized to cover funeral/burial costs:

(2) In the event of a death caused by a crime of violence, any person who legally or voluntarily assumes the obligation to pay the medical or burial expenses incurred as a direct result of such injury and death shall be eligible to file a claim with the Agency. The provision for payment in case of death shall not apply to any insurer or public entity.

Title 11 Del.C. §9009(2). There is no statutory cap in this context. Instead, the current VCAP regulation [11 DE Admin Code 301, §25.0] establishes an \$8,500 cap:

25.0 Burial Awards

The aggregate award for funeral and burial shall not exceed \$8,500.

As noted above, the VCAP proposes to reduce the \$8,500 cap to \$5,000. The VCAP Advisory Council supported this initiative for a variety of reasons.

First, on an annualized basis, VCAP claims are exceeding projected income for the VCAP. The VCAP therefore must prioritize resources or risk inability to pay claims. See, e.g., attached December 10, 2012 News Journal article.

Second, consistent with the attached research compilation, Delaware's \$8,500 cap is higher than every state in the Nation with the exception of West Virginia. The most common cap (adopted by 24 states, including Pennsylvania and N.J.) is \$5,000.

Third, in practice, claims for funeral/burial expenses were predominantly close to the \$8,500 cap, suggesting little restraint.

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our position or observations on the proposed regulation.

cc: Mr. Brian Hartman, Esq.  
Governor's Advisory Council for Exceptional Citizens  
Developmental Disabilities Council

16reg719 vcap-funeral award cap 1-25-13

## Cuts mulled for victims' burials

Written by Doug Deulison The News Journal  
Dec. 10

delawareonline.com

Starting next year, families of victims killed in connection with violent crimes in Delaware may receive less compensation from the criminal justice system for funeral and burial expenses.

The board in charge of Delaware's Victims' Compensation Assistance Program wants to make its limited annual funds go further, starting with a plan to lower the cap on funeral benefits from \$8,500 to \$5,000.

Funeral directors say the change will add to the hardship of families already in the throes of tragedy, and burden them with additional expenses.

Justen Wright, a Wilmington councilman and president of the Delaware State Funeral Directors Association, spoke out against the proposal. He said \$5,000 is not enough to pay for a full-service funeral.

"How would you even have flowers, a program to pass out?" said Wright, who is vice president of The House of Wright Mortuary & Cremation Services in Wilmington.

Lisa Ogden, VCAP director, said her agency is facing a decline in the funding it receives mostly from an 18-percent surcharge added to criminal fines imposed by the courts. Crime rates are down overall in Delaware, Ogden said, but VCAP has broadened its outreach efforts and is compensating more victims and families every year for medical care, lost wages, crime scene cleanup and other costs incurred as a result of crimes.

Ogden said her agency made more than \$3.4 million in payments to more than 1,200 victims and families last fiscal year, nearly double the number served in fiscal year 2009. Each month, VCAP disburses an average of \$306,000, but only takes in an average of \$166,000 in revenue, according to Ogden.

"There's a concern we will not be able to be here for victims going forward, and that's just simply unacceptable," Ogden said. "This is part of a top-down review and close examination of all of our benefits, to look at ways to reduce costs but provide assistance to all victims."

Funeral and burial payments are one of the few VCAP compensation categories with a hard cap listed in state regulations, and Ogden said reducing the cap is the first in what is expected to be a larger slate of reforms that will reduce the amount of money paid to individual victims and families.

Ogden said her agency looked at funeral allowances established by similar entities in other states, including Pennsylvania and Maryland, where the figure is \$5,000.

The National Funeral Directors Association reports the average cost of a non-cremation funeral was \$6,500 in 2009.

The funeral and burial funds from VCAP were not necessarily meant to cover the costs of a full-service funeral, said Jason Miller, spokesman for the Department of Justice, which oversees VCAP.

"Five thousand may not, depending on the individual choices the family makes, cover all the expenses. It certainly would defray the majority of expenses," he said. "This is a matter of resources we have."

Reporter Andrew Staub contributed to this story.

## Funeral/Burial Expenses: State Compensation Programs

Alaska	7,000
Arizona	5,000
Arkansas	7,500
California	7,500
Colorado	---
Connecticut	5,000
Delaware	8,500
D.C.	6,000
Florida	5,000
Georgia	3,000
Hawaii	4,000
Idaho	5,000
Illinois	5,000
Indiana	5,000
Iowa	7,500
Kansas	5,000
Kentucky	5,000
Louisiana	5,000
Maine	5,000
Maryland	5,000
Massachusetts	4,000
Michigan	5,000
Minnesota	6,500
Mississippi	6,500 + 800 in travel costs to arrange funeral
Missouri	5,000
Montana	3,500
Nebraska	5,000
Nevada	5,000
New Hampshire	5,500
New Jersey	5,000
New Mexico	6,000
New York	6,000
North Carolina	5,000
North Dakota	5,000
Ohio	7,500
Oklahoma	6,000
Oregon	5,000
Pennsylvania	5,000
Puerto Rico	3,000
Rhode Island	5,000
South Carolina	4,000
South Dakota	6,500
Tennessee	6,000

Texas	4,500
Utah	7,000
Vermont	7,000
Virgin Islands	2,500
Virginia	5,000
Washington	7,454
West Virginia	10,000
Wisconsin	2,000
Wyoming	5,000

*\*no state-wide limit; Colorado district compensation programs determine limit*

### ***RANGE of Maximums***

*(number of states at these maximums)*

2,000:	1
2,500:	1
3,000:	2
3,500:	1
4,000:	3
4,500:	1
5,000:	24
5,500:	1
6,000:	5
6,500:	3
7,000:	3
7,500:	5
8,500:	1
10,000:	1

***Median = \$5,000***