



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
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MEMORANDUM

DATE: March 12, 2010

TO: Ms. Barbara Brown, Executive Director
Victims' Compensation Assistance Program

FROM: Daniese McMullin-Powell, ^(DM/P/K/12) Chairperson
State Council for Persons with Disabilities

RE: 13 DE Reg. 1213 [DOJ Final Victims' Compensation Assistance Program Regulation]

The State Council for Persons with Disabilities (SCPD) has reviewed the Victims' Compensation Assistance Program final regulations published as 13 DE Reg. 1213 in the March 1, 2010 issue of the Register of Regulations. As background, SCPD realizes that the Governor signed legislation in August, 2009 overhauling the enabling legislation for the Violent Crimes Compensation Board and establishing a Victims' Compensation Assistance Program (VCAP). The legislation also established the VCAP Advisory Council. The Council is given the authority to "adopt, promulgate, amend and rescind such rules and regulations as are required to carry out [the] chapter." Title 11 Del.C. §9004. The DOJ has determined that the regulation is exempt from public comment under the APA since the amendments are designed to "make them consistent with changes in basic law" pursuant to Title 29 Del.C. §10113. Although the agency is not soliciting comments, SCPD has the following minor observations and recommendations.

First, in §1.1, delete the comma after "hereby".

Second, the agency may wish to consider deletion of §4.1.2.

Third, the agency may wish to consider amending §13.1 to read as follows:

(I)n the event that cooperation is refused or denied, VCAP may deny a claim, in whole or part, for lack of cooperation.

This would comport with §21.0. There are circumstances in which the lack of cooperation may

relate to only one aspect of a claim. For example, a victim may decline to provide information about mental health treatment but provide information justifying changing a lock. The amendment would clarify that the VCAP's discretion is flexible and not limited to an "all or none" award based on lack of cooperation.

Fourth, there is a "typo" in §13.3 - "physicians's" should be "physician's".

Fifth, the agency may wish to consider whether §17.10 merits revision. For example, §13.4 appears to authorize exceptions to the bar to reopening a case after expiration of 2 years from a final adjudication.

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

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

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