

March 16, 2009

Barbara Brown, Executive Director
Violent Crimes Compensation Board
240 N. James Street, Suite 203
Wilmington, DE 19804

RE: VCCB Prop. Mental Health & Funeral/Burial Reg. [12 DE Reg. 1150 (March 1, 2009)]

Dear Ms. Brown,

The Developmental Disabilities Council understands that the Violent Crimes Compensation Board proposes to adopt new regulations covering mental health services and funeral/burial expenses.

The DD Council offers the following observations.

First, the numbering of the new regulation is inconsistent with the numbering of final regulations adopted in the March issue of the Registry of Regulations, 12 DE Reg. 1193. The latter regulations include a §26.0 which covers burial awards. The proposed regulation does not repeal the existing §26.0 but creates a new §26.0 covering mental health counseling.

Second, in §26.1.2, the word “affect” should be “effect”.

Third, §26.1.1 imposes a cap on mental health counseling of \$7,500. Moreover, §26.1.4 recites that the “Board pays mental health provider claims at 80% of charges.” There is arguably some “tension” between these limitation and the enabling statutes.

A. Title 11 Del.C. §9002(7) defines “pecuniary loss” as “expenses actually and necessarily incurred”, not 50%, 60% or 80% of the actual expenses. Moreover, to the extent that an “80%” limit is not applied to “physical health” claims, the regulation may violate the ADA and Section 504 of the Rehabilitation Act.

B. The Board can establish a maximum cap on mental health expenses pursuant to Title 11 Del.C. §9020 for children. Apart from the general \$25,000 and \$50,000 caps in Title 11 Del. 9007, there is no explicit authorization to impose a cap on mental health services for adults. Indeed, the absence of a cap in Title 11 Del.C. §9002(7) suggests that the Legislature envisioned no cap on mental health services other than the overall \$25,000 and \$50,000 caps. See also Title 11 Del.C. §9002(7)f which explicitly excludes “counseling” from a \$1,000 cap on reasonable expenses for

secondary victims.

Fourth, §26.2.1 is misnumbered as “23.2.1. It contains a definition of “victim”. We recommend deletion since §2.0 already contains a definition of “victim” applicable to the entire Part 301 regulation. Moreover, the definition in §23.2.1 is not co-terminus with the definition in §2.0. The former section defines a victim as someone injured or killed during the commission of any crime while §2.0 and Title 11 Del.C. §9002(10) limit a “victim” to someone injured or killed by a crime “as defined in this chapter”.

Fifth, §26.2.2 contains a definition of “secondary victim”. We recommend deletion since §2.0 already contains a definition of “secondary victim” applicable to the entire Part 301 regulation and the definition in §26.2.2 is not co-terminus with the definition in §2.0. The former section includes a “latch-key child” which is omitted from the latter section and Title 11 Del.C. §9002(9).

Sixth, §26.2.3 contains a definition of “child”. It should be deleted since §2.0 already contains a definition of “child” applicable to the entire Part 301 regulation. See also §26.4.1 which cross references the definition of “child” in §2.0.

Seventh, in §26.3.2, substitute “its” for “their” to correct use of a plural pronoun with a singular antecedent.

Eighth, in §26.6.4, second sentence, substitute “are” for “is”.

Ninth, §26.4 is inconsistent with §25.1 of the regulations adopted at 12 DE Reg. 1193 (March 1, 2009) since the latter omits “Licensed Mental Health Counselor”. The Board may wish to prospectively amend §25.1 to include a reference to “mental health counseling”.

Tenth, §29.1 imposes an \$8,500 cap on funeral and burial expenses. We question the Board’s authority to impose such a cap. The enabling statute [Title 11 Del.C. §9002(7)] defines pecuniary loss as including “funeral and burial expenses” and, while caps are legislatively imposed on certain expenses, they are not imposed on” funeral and burial expenses.” See Title 11 Del.C. §9002(7)a-I. The legislative intent is ostensibly to impose no arbitrary cap but only the general \$25,000 cap [Title 11 Del.C. §9007(d)].

Eleventh, §29.1.4.1 is odd. It suggests that mental health counseling is considered part of funeral/burial expenses for secondary victims. However, mental health counseling is not included in the list of “permitted expenses” in §29.1.2. Moreover, the enabling statute ostensibly rejects imposition of a cap on counseling services for secondary victims where the primary victim has been killed. See Title 11 Del.C. §9002(7)f. By including such expenses in §29, they would be subject to the \$8,500 cap imposed by §29.1.1.

The Developmental Disabilities Council thanks you in advance for your consideration of our remarks. Should you have any questions regarding these please contact our office at 739-3333.

Sincerely,

Diann Jones
Chair

cc. Victims Rights Task Force
Legislative Sunset Committee
Governor's Advisory Council for Exceptional Citizens
State Council for Persons with Disabilities

