

STATEMENT OF EMERGENCY
802 KAR 3:010E

This emergency administrative regulation is being promulgated pursuant to KRS 13A.190(1)(a)(1) in order to meet an imminent threat to the public health, safety, or welfare. This administrative regulation must be filed as soon as possible in order to comply with the provisions of Executive Order 2020-708, which abolished the Kentucky Claims Commission on September 1, 2020, and established the Office of Claims and Appeals and the Crime Victims Compensation Board in the Public Protection Cabinet. As a result, the Public Protection Cabinet must immediately implement new procedures and regulations for filing claims pursuant to the authority of this new office. An ordinary administrative regulation alone is not sufficient because the new office must be established to seamlessly continue service to crime victims who have incurred costs because of the crime, not impede current claims, or create a backlog. This emergency administrative regulation shall be replaced by an ordinary administrative regulation, which is being filed with the Regulations Complier along with this emergency administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor
KERRY B. HARVEY, Secretary

PUBLIC PROTECTION CABINET
(Emergency Amendment)

802 KAR 3:010. Crime victims compensation.

EFFECTIVE: September 2, 2020

RELATES TO: KRS 12.027, 49.260 - 49.490, 216B.015, 216B.400, EO 2020-708

STATUTORY AUTHORITY: KRS 49.020, 49.300(1)

NECESSITY, FUNCTION, AND CONFORMITY: Executive Order 2020-708 (“Order”) requires that the Kentucky Claims Commission be abolished and the Office of Claims and Appeals be established to include the Crime Victim’s Compensation Board. The Order also sets forth the powers and duties of the Crime Victims Compensation Board and authorizes the Board to promulgate regulations necessary to immediately carry out the provisions and purposes of the Order and the Board’s statutory authority. KRS 49.300(1) authorizes the Crime Victims Compensation Board [~~commission~~] to promulgate administrative regulations that are necessary to carry out the provisions of KRS 49.270 through 49.490. This administrative regulation establishes procedures for crime victims to file claims for compensation.

Section 1. Definition. “Board” means the Crime Victims Compensation Board.

Section 2[4]. Filing Claims. (1) A claim shall be:

- (a) Legibly written, typed, or printed on the Crime Victim Compensation Form;
- (b) Signed by the claimant and the counsel representing the claimant, if any.

(2) A claim shall be filed by:

- (a) In person or by private delivery to the Crime Victim’s Compensation Board, 500 Mero Street, 2 SC1, Frankfort, Kentucky 40601;
- (b) Mail to the address listed above; or

(c) Electronic mail to crimevictims@ky.gov, if the document can be sent in one (1) electronic message.]; and

~~(c) Filed by mail, electronic mail to crimevictims@ky.gov, or delivered in person to the commission].~~

(3) [(2)] If applying for lost wages or loss of support, a claim shall be supplemented by:

(a) A notarized Employment Verification form; and

(b) If requested by the Board [~~commission~~] staff:

1. A Physician Statement form; or

2. A Mental Health Counselor's Report form.

Section 3[2]. Kentucky Medical Assistance Program. (1) The Board [~~commission~~] shall cross-reference every claim with those claims that appear in the Kentucky Medical Assistance Program (KMAP) database maintained by the Cabinet for Health and Family Services.

(2) If a crime victim is covered by Medicare or Medicaid, the Board's [~~commission's~~] staff will provide the Board [~~commission~~] a list of:

(a) All itemized medical charges for which that victim seeks compensation; and

(b) The victim's services covered by medical assistance as reported in KMAP.

(3) Upon making an award to a Medicaid-eligible crime victim, the Board [~~commission~~] shall not consider any medical bills submitted by or on behalf of the victim for any KMAP-covered services.

(4) If the Board [~~commission~~] makes an award to a victim who received medical assistance for a KMAP-covered service, the KMAP as final payor shall not be responsible for the payment of any portion of that claim awarded by the Board [~~commission~~].

Section 4. Attorney's Fees. If a claimant is represented by an attorney and the attorney so requests, the board, may, as a part of any award or by separate order subsequent to the award, allow a reasonable attorney's fee for the filing of a claim and any subsequent proceedings. Such fee shall not exceed fifteen (15) percent of the amount of the award, and shall be paid out of the award and not in addition to the award. No attorney representing a claimant shall contract for or receive as a fee any sum larger than fifteen (15) percent of the amount of the award. Any fee contract in violation of this provision shall be void.

Section 5[3]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Crime Victim Compensation Form", August 2020 [~~February 2018~~];

(b) "Employment Verification", August 2020 [~~February 2018~~];

(c) "Physician Statement", August 2020 [~~February 2018~~]; and

(d) "Mental Health Counselor's Report", August 2020 [~~February 2018~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Claims and Appeals [~~Kentucky Claims Commission~~], 500 Mero St 2SC1, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. and is available online at <http://cvcb.ky.gov/Pages/default.aspx>.

KERRY B. HARVEY, Secretary

APPROVED BY AGENCY: September 2, 2020

FILED WITH LRC: September 2, 2020 at 3 p.m.

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Leah Cooper Boggs

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the procedures for crime victims wishing to file a claim for compensation.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with Governor's Executive Order 2020-708, which immediately abolishes the Kentucky Claims Commission and establishes Crime Victims Compensation Board and the Office of Claims and Appeals in the Public Protection Cabinet.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed regulatory language conforms with KRS 12.080 which authorizes the Governor to prescribe general rules for the conduct of departments; and KRS 49.020(5) which authorizes the promulgation of regulations to carry out the duties of the office.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed regulation removes references to the abolished Kentucky Claims Commission and inserts language regarding the Crime Victims Compensation Board and the new Office structure and processes.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: See (1)(d).

(b) The necessity of the amendment to this administrative regulation: See (1)(b)

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Public Protection Cabinet, the Office of Claims and Appeals, the Crime Victims Compensation Board, and any person or entity filing a claim with the Crime Victims Compensation Board and the Office of Claims and Appeals.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None known, beyond updating documentation to reflect the new Office structure and the Crime Victims Compensation Board.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no expected expenditures because of this administrative regulation. Current staff will implement the provisions once promulgated.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Currently, crime victim claims are determined by the Kentucky Claims Commission. The Kentucky Claims Commission has a backlog of tax appeal cases. By separating the functions and creating the Crime Victims Compensation Board, claims of crime victims will be more efficiently processed.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: None. Current staff and agency funds will provide implementation.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current agency budgetary funding will be used to implement and enforce this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No additional funding or increase in fees is needed.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are directly or indirectly established or increased by the administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applicable as the proposed language will be applied equally to all entities impacted by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Public Protection Cabinet, Office of Claims and Appeals, and the Crime Victims Compensation Board.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 13B, 49.020, 49.220.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The administrative regulation should not create any additional expenses or revenues for any state or local government agency after implementation. It is only updating references to the newly created Office of Claims and Appeals and the Crime Victims Compensation Board, and establishing procedures to file claims under the new office structure.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenues are expected to be generated by the provisions of this administrative regulation. This administrative regulation does not contain any fees or charges for filing a claim with the Crime Victims Compensation Board.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? There are no additional costs.

(d) How much will it cost to administer this program for subsequent years? See 3.(c).

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: