

ADVISORY BULLETIN

TRANSMITTAL NO. 2019-02

**TO: ALL FUNDED PROGRAMS
ADVISORY COUNCIL MEMBERS**

**FROM: ELIZABETH CRONIIN, ESQ.
DIRECTOR**

SUBJECT: Executive Law Updates

DATE: June 26, 2019

Within the past year, changes to state law have resulted in expanded access to compensation and reimbursement available from OVS.

Some of the most significant changes are related to death claims and ***take effect for all claims filed on or after June 26, 2019.*** These changes are ***not applicable*** to claims filed prior to the effective date and these pre-existing claims cannot be reopened for consideration under the new provisions.

The new law and regulations that take effect on June 26, 2019, are attached to the end of this advisory bulletin, which is designed to help ensure that our partners have – and provide – correct information to all current and potential OVS claimants.

Under the previous provisions, Emergency Awards (EAs) for burial expenses could be made by OVS prior to a full investigation of a claim up to \$2,500. Additionally, an award up to \$6,000, could be made to anybody who pays for a victim's burial expense. However, because of the previous statutory requirements, such an award was reduced or denied in its entirety based on the victim's contributing conduct. This would put family members, loved ones, or simply Good Samaritans at risk of being denied any reimbursement by OVS for burial expenses because of the conduct of a deceased victim.

These changes increase the amount available for an EA for burial from \$2,500 to \$3,000 and eliminate the possibility that a claimant could be entirely denied reimbursement based on the victim's contributing conduct. The new law caps the reduction for conduct contributing to no more than 50%. With the new EA amount for burial of \$3,000 (50% of the \$6,000 cap for burial), these changes eliminate the need for OVS to recoup any EA amount, based on a later determination that the victim contributed to his or her death.

For some time now, section 631 of the Executive Law has allowed OVS to make awards not exceeding \$6,000 for the burial expenses of a victim who has died as a direct result of a crime. OVS had been limited, however, in its ability to make new awards for burial expenses based on old crimes. The history of both the law and related regulations direct that the agency base such awards on the financial caps in effect at the time the crime

occurred. A person who was a victim of a crime committed against them decades ago may have just died as a result of their crime-related injuries. The burial expenses for such a victim would be at present-day cost, not the cost decades ago when the crime occurred. Accordingly, these changes also protect the interests of new claimants who submit claims for victims who die on or after November 1, 1996.

Lastly, the old provisions of Article 22 of the Executive Law and the Surrogates Court Procedure Act (SCPA) did not permit OVS to be considered a funeral creditor. If an OVS claimant was not a beneficiary to an estate, the agency had no legal ability to recover funds from the estate. OVS routinely received inquiries from fiduciaries about their legal obligation to repay the agency from an estate, but they were informed that no such obligation existed. This resulted in claimants being treated dissimilarly, OVS recovering from a claimant who is an estate beneficiary, but turning away the offer of such monies when there is no such claimant. These changes addressed this statutory shortcoming. The new law both provides the necessary statutory authority in Article 22 of the Executive Law for OVS to do so, and it makes changes to the SCPA so fiduciaries are on notice that OVS is to be considered a funeral creditor.

General questions related to the implementation of these changes should be directed to Crime Victim Specialist III Tana Orologio at 518-457-8518.

On behalf of the New York State Office of Victim Services, thank you for working with us to provide the highest quality services to crime victims.

A handwritten signature in cursive script, appearing to read "Elizabeth Cronin".

Elizabeth Cronin, Esq.
Director

LAWS OF NEW YORK, 2018

CHAPTER 494

AN ACT to amend the executive law and the surrogate's court procedure act, in relation to burial expenses

Became a law December 28, 2018, with the approval of the Governor.
Passed by a majority vote, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision 2 of section 630 of the executive law, as amended by section 21 of part A1 of chapter 56 of the laws of 2010, is amended to read as follows:

2. Notwithstanding the provisions of [~~section six hundred twenty-seven of this article, local crime victim service programs shall be authorized to provide emergency awards to crime victims for essential personal property, medical treatment, shelter costs, security services, counseling and transportation the total amount of such emergency awards not to exceed five hundred dollars. These programs shall be reimbursed by the office, pursuant to the provisions of this article, if it is subsequently determined that the victim is an eligible claimant. Local crime victim service programs shall be authorized to establish special accounts for this purpose. The office shall initiate a program to assist local crime victim service programs in establishing special accounts to provide emergency awards, within amounts designated for that purpose.~~] subdivision one of this section, if the crime upon which the claim is based resulted in the death of the victim, and it appears to the office that such claim is one with respect to which an award probably will be made, and undue hardship will result to the claimant if immediate payment is not made, the office may make one or more emergency awards to the claimant for reasonable burial expenses pending a final decision of the office or payment of an award in the case; provided, however, that the total amount of an emergency award or awards for reasonable burial expenses shall not exceed three thousand dollars. The amount of such emergency award or awards shall be deducted from any final award made to the claimant, and the excess of the amount of any such award or awards over the amount of the final award, of the full amount of an emergency award or awards if no final award is made, shall be repaid by the claimant to the office.

§ 2. Subdivision 2 of section 631 of the executive law, as amended by section 3 of part H of chapter 55 of the laws of 2017, is amended to read as follows:

2. Any award made pursuant to this article shall be in an amount not exceeding out-of-pocket expenses, including indebtedness reasonably incurred for medical or other services necessary as a result of the injury upon which the claim is based; loss of earnings or support resulting from such injury not to exceed thirty thousand dollars; loss of savings not to exceed thirty thousand dollars; burial expenses not exceeding six thousand dollars of a victim who died on or after November first, nineteen ninety-six as a direct result of a crime; the costs of

EXPLANATION--Matter in italics is new; matter in brackets [-] is old law to be omitted.

crime scene cleanup and securing of a crime scene not exceeding twenty-five hundred dollars; reasonable relocation expenses not exceeding twenty-five hundred dollars; and the unreimbursed cost of repair or replacement of articles of essential personal property lost, damaged or destroyed as a direct result of the crime. An award for loss of earnings shall include earnings lost by a parent or guardian as a result of the hospitalization of a child victim under age eighteen for injuries sustained as a direct result of a crime. In addition to the medical or other services necessary as a result of the injury upon which the claim is based, an award may be made for rehabilitative occupational training for the purpose of job retraining or similar employment-oriented rehabilitative services based upon the claimant's medical and employment history. For the purpose of this subdivision, rehabilitative occupational training shall include but not be limited to educational training and expenses. An award for rehabilitative occupational training may be made to a victim, or to a family member of a victim where necessary as a direct result of a crime.

§ 3. Subdivision 5 of section 631 of the executive law is amended by adding a new paragraph (g) to read as follows:

(g) Notwithstanding the provisions of paragraph (a) of this subdivision, if the crime upon which the claim is based resulted in the death of the victim, the office shall determine whether, because of his or her conduct, the victim of such crime contributed to the infliction of his or her injury, and the office may reduce the amount of the award by no more than fifty percent, in accordance with such determination.

§ 4. Section 634 of the executive law is amended by adding a new subdivision 2-a to read as follows:

2-a. To the extent the office has made an award pursuant to this article for burial expenses, such amount shall be considered among reasonable funeral expenses of the decedent pursuant to subdivision one of section eighteen hundred eleven of the surrogate's court procedure act, to be recovered by the office, provided, however, that if a beneficiary of the victim's estate is also a person eligible to receive an award pursuant to section six hundred twenty-four of this article, the office shall recover such amounts pursuant to subdivision two of this section to the extent an award has been made to such person, prior to pursuing recovery from the victim's estate. Any recovery from a victim's estate under this subdivision shall reduce the state's lien under this section to the extent of the recovery by the office.

§ 5. Subdivision 22 of section 103 of the surrogate's court procedure act, as amended by chapter 503 of the laws of 1980, is amended to read as follows:

22. Funeral expense. Includes reasonable expense of a funeral, suitable church or other services as an integral part thereof, expense of interment or other disposition of the body, a burial lot and suitable monumental work thereon and a reasonable expenditure for perpetual care of a burial lot of the decedent. For the purpose of subdivision one of section eighteen hundred eleven of this act, funeral expense shall also include burial expenses awarded pursuant to article twenty-two of the executive law.

§ 6. This act shall take effect on the one hundred eightieth day after it shall have become a law and shall apply to all claims filed on or after such effective date.

The Legislature of the STATE OF NEW YORK ss:

Pursuant to the authority vested in us by section 70-b of the Public Officers Law, we hereby jointly certify that this slip copy of this session law was printed under our direction and, in accordance with such section, is entitled to be read into evidence.

JOHN J. FLANAGAN
Temporary President of the Senate

CARL E. HEASTIE
Speaker of the Assembly

Regulations change:

Subdivision (b) of section 525.11 is amended to read as follows:

(b) A request for an emergency award may be approved if it appears to the office that such claim is one with respect to which an award probably will be made and undue hardship will result to the claimant if immediate payment is not made. The determination by the office of an emergency award request shall include, at a minimum, the consideration of: (1) whether a crime did in fact occur, (2) the eligibility of the person to receive an award pursuant to section 624 of the Executive Law, (3) whether if the crime upon which the claim is based did not result in the death of such person, the person contributed to their injuries because of their conduct pursuant to subdivision 5 of section 631 of the Executive Law, (4) the office as payer of last resort, pursuant to subdivision 4 of section 631 of the Executive Law, (5) whether the claimant and/or victim failed to cooperate with the reasonable requests of law enforcement authorities, including prosecutors, and (6) the out-of-pocket loss, as defined in section 626 of the Executive law, upon which the request for an emergency award is made.

Paragraph (iv) of subdivision (m) of section 525.12 amended to read as follows:

(iv) 25 percent reduction of award. All other conduct on part of the victim, not considered in subparagraph (i), (ii) or (iii) of this paragraph, as indicated in the investigation of the claim pursuant to subdivision (b) of section 52[2]5.5 of this Part.

Subdivision (m) of section 525.12 is amended to add a new paragraph (2) to read as follows:

(2) Notwithstanding the provisions paragraph (1) of this subdivision, if the crime upon which the claim is based resulted in the death of the victim, awards made pursuant to Executive Law article 22 and this Part shall be reduced for conduct contributing in the following manner:

(i) 50 percent denial of award. Any conduct on part of the victim, as indicated by law enforcement in the investigation of the claim pursuant to subdivision (b) of section 525.5 of this Part, constituting felonies or misdemeanors involving violence. For the purpose of this subparagraph, the term "violence" shall include, but not be limited to: gang activity, the dealing of illegal drugs, being the initial aggressor, and the use or brandishing of illegal firearms or other dangerous instruments at or near the time of the crime.

(ii) 25 percent reduction of award. Any conduct on part of the victim, as indicated by law enforcement in the investigation of a claim pursuant to subdivision (b) of section 525.5 of this Part, constituting any other felony not considered in subparagraph (i) of this paragraph.

(iii) Any other conduct on part of the victim, not considered in subparagraph (i) or (ii) of this paragraph, as indicated in the investigation of the claim pursuant to subdivision (b) of section 525.5 of this Part, shall not be considered a reason to reduce an award.