01-25-16

PART 525

PRACTICE AND PROCEDURE BEFORE THE OFFICE OF VICTIM SERVICES

(Statutory authority: Executive Law, art. 22, section 623(3),

L. 2010, Ch. 56)

Sec.

[525.1](javascript:getselect(%22GETSECT%22,%229A4-SEC525.1%22,%22REG1%22)) Declaration of policy and regulatory intent

[525.2](javascript:getselect(%22GETSECT%22,%229A4-SEC525.2%22,%22REG2%22)) Transitional provisions

[525.3](javascript:getselect(%22GETSECT%22,%229A4-SEC525.3%22,%22REG3%22)) Definitions

[525.4](javascript:getselect(%22GETSECT%22,%229A4-SEC525.4%22,%22REG4%22)) Filing of claims

[525.5](javascript:getselect(%22GETSECT%22,%229A4-SEC525.5%22,%22REG5%22)) Assignment and investigation of claim

[525.6](javascript:getselect(%22GETSECT%22,%229A4-SEC525.6%22,%22REG6%22)) Decision on a claim

[525.7](javascript:getselect(%22GETSECT%22,%229A4-SEC525.7%22,%22REG7%22)) Notice of hearing

[525.8](javascript:getselect(%22GETSECT%22,%229A4-SEC525.8%22,%22REG8%22)) Hearings

[525.9](javascript:getselect(%22GETSECT%22,%229A4-SEC525.9%22,%22REG9%22)) Representation by attorney

[525.10](javascript:getselect(%22GETSECT%22,%229A4-SEC525.10%22,%22REG10%22)) Subpoenas and subpoenas duces tecum; depositions

[525.11](javascript:getselect(%22GETSECT%22,%229A4-SEC525.11%22,%22REG11%22)) Emergency awards

[525.12](javascript:getselect(%22GETSECT%22,%229A4-SEC525.12%22,%22REG12%22)) Manner of payment; awards

[525.13](javascript:getselect(%22GETSECT%22,%229A4-SEC525.13%22,%22REG13%22)) Review of decision on a claim

[525.14](javascript:getselect(%22GETSECT%22,%229A4-SEC525.14%22,%22REG14%22)) Judicial review

[525.15](javascript:getselect(%22GETSECT%22,%229A4-SEC525.15%22,%22REG15%22)) Claimant records

[525.16](javascript:getselect(%22GETSECT%22,%229A4-SEC525.16%22,%22REG16%22)) Availability of rules

[525.17](javascript:getselect(%22GETSECT%22,%229A4-SEC525.17%22,%22REG17%22)) Requests for further reduction of lien

[525.18](javascript:getselect(%22GETSECT%22,%229A4-SEC525.18%22,%22REG18%22)) Battered spouses shelter cost guidelines

[525.19](javascript:getselect(%22GETSECT%22,%229A4-SEC525.19%22,%22REG19%22)) Crimes committed by family members

[525.20](javascript:getselect(%22GETSECT%22,%229A4-SEC525.20%22,%22REG20%22)) Victims of human trafficking, presumption of physical injury

[525.21](javascript:getselect(%22GETSECT%22,%229A4-SEC525.21%22,%22REG21%22)) Prohibited use of personal identifying information

[525.22](javascript:getselect(%22GETSECT%22,%229A4-SEC525.22%22,%22REG22%22)) Victim assistance programs or VAPs

[525.23](javascript:getselect(%22GETSECT%22,%229A4-SEC525.23%22,%22REG23%22)) Freedom of information law or FOIL

[525.24](javascript:getselect(%22GETSECT%22,%229A4-SEC525.24%22,%22REG24%22)) Limits on administrative expenses and executive compensation

525.25 (Reserved)

525.26 (Reserved)

525.27 (Reserved)

525.28 (Reserved)

[525.29](javascript:getselect(%22GETSECT%22,%229A4-SEC525.29%22,%22REG25%22)) Construction of rules

[525.30](javascript:getselect(%22GETSECT%22,%229A4-SEC525.30%22,%22REG26%22)) Severability

Section 525.1 Declaration of policy and regulatory intent. The Office

of Victim Services recognizes that the statutory provisions enumerated

in Article 22 of the Executive Law may not fully describe the services

provided to claimants or the processes followed by the office during the

claim process and thereafter. Pursuant to subdivision 3 of section 623

of the Executive Law, the office adopts this Part in order to implement

the provisions and purposes of Article 22 and to describe the services

provided to claimants and the processes followed by the office during

the claim process and thereafter. This Part is meant to supplement the

information provided by the provisions of Article 22 of the Executive

Law.

525.2 Transitional provisions. Part A-1 of Chapter 56 of the Laws of

2010 eliminated the Crime Victims Board and created the Office of Victim

Services under Article 22 of the Executive Law. Part A-1 of Chapter 56

was deemed effective on June 22, 2010. Section 54 of Part A-1 provides

for the transition from Crime Victims Board to the Office of Victim

Services and is as follows: Completion of unfinished business. Any busi-

ness or other matter undertaken or commenced by the crime victims board

pertaining to or connected with the functions, powers, obligations and

duties hereby transferred and assigned to the office of victim services

and pending on the effective date of this act may be conducted and

completed by the office of victim services in the same manner and under

the same terms and conditions and with the same effect as if conducted

and completed by the former crime victims board; provided, however, that

claims accepted by the crime victims board but not determined before the

effective date of this act shall be determined by the office of victim

services pursuant to the regulations promulgated pursuant to section 627

of the executive law as added by section eighteen of this act.

525.3 Definitions. As used in this Part for the purpose of Executive

Law, article 22, in addition to the definitions contained in Executive

Law, article 22:

(a) Child victim shall mean a person less than eighteen years of age

who:

(1) suffers physical, mental or emotional injury, or loss or damage,

as a direct result of a crime or as a result of witnessing a crime,

pursuant to subdivision 11 of section 621 of the Executive Law; or

(2) who is reported missing for a period greater than 7 days, as there

shall be a rebuttable presumption that he or she is a victim of a crime,

pursuant to paragraph (d) of subdivision 1 of section 627 of the Execu-

tive Law.

(b) Conduct contributing shall mean culpable conduct logically and

rationally related to the crime by which the victim was victimized and

contributing to the injury suffered by the victim.

(c) Representative shall also mean a designee of the claimant. A

claimant who wishes to designate a representative shall provide to the

office a notarized authorization compliant with Public Officers Law,

section 96 before any confidential records of, or information about a

claimant can be disclosed by the office. This authorization shall be

valid unless and until revoked by the claimant in writing. The form

shall be as follows:

Representative's Authorization by Claimant

Pursuant to New York State Executive Law, section 633 and Public Offi-

cers Law section 96, I:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name of Claimant

(Please print)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Claim Number

hereby authorize:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name of Representative

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Address of Representative

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Phone Number of Representative

to act as my representative in the above mentioned claim. This author-

ization is to allow the Office of Victim Services to share my informa-

tion and records compiled for this claim with the above authorized

representative. This authorization shall be valid until revoked by me in

writing.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature of Claimant

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date

State of New York )

) ss.:

County of

\_\_\_\_\_\_\_\_\_\_\_\_\_\_ )

On the \_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_ in the year \_\_\_\_\_\_\_\_\_ before me,

the undersigned, personally appeared \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, personally

known to me or proved to me on the basis of satisfactory evidence to be

the individual whose name is subscribed to the within instrument and

acknowledged to me that he/she executed the same in his/her capacity,

and that by his/her signature on the instrument, the individual, or the

person upon behalf of which the individual acted, executed the instru-

ment.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

NOTARY PUBLIC

(d) Medical services or medical expenses shall mean services provided

or monitored by, or expenses incurred from those medical professionals

licensed by the New York State Department of Education and within their

licensed discipline. If the provider is out-of-state, payment for

services within their licensed discipline shall only be made if such

professional is licensed under one of the titles recognized by the New

York State Department of Education's list of licensed professions. The

office may require an out-of-state provider to submit a copy of his/her

license.

(1) Notwithstanding the provisions of this subdivision, for all new

claims received after the adoption of this rule (effective date August

15, 2007), the office may authorize the reimbursement of expenses asso-

ciated with the provision of home-care services rendered by a non-li-

censed caregiver who is a family member when:

(i) the victim is under 18 years of age;

(ii) the claimant submits a physician's statement clearly stating that

in the physician's opinion the victim will benefit from such home care

by a non-licensed caregiver; and

(iii) the authorization is for no more than a three-month period.

Family members who perform such services shall be reimbursed at a rate

no greater than the current state minimum wage for up to 40 hours per

week.

(2) Notwithstanding the provisions of this subdivision, medical

expenses shall also include the reasonable transportation expenses

incurred for necessary, causally related medical care which may include,

but are not limited to, reasonable airplane, cab, bus or train fare,

with receipts, or if a claimant has provided his or her own transporta-

tion, the federally recognized mileage reimbursement rate at the time

the expense was incurred and the reasonable cost of hotel/motel stays if

more cost effective than round-trip travel during a certain time period.

The office may require proof that such expenses were the most economical

under the circumstances. Meals shall not be considered a related trans-

portation expenses.

(e) Transportation expenses incurred for necessary court appearances

may include, but are not limited to, reasonable airplane, cab, bus or

train fare, with receipts, or if a claimant has provided his or her own

transportation, the federally recognized mileage reimbursement rate at

the time the expense was incurred and the reasonable cost of hotel/motel

stays if more cost effective than round-trip travel during a certain

time period. The office may require proof that such expense were the

most economic under the circumstances. Meals shall not be considered a

related transportation expense.

(f) Hospitalization shall mean the period during which a person is a

patient in or resident of a licensed facility for:

(1) emergency care or ambulatory surgery; or

(2) in-patient treatment at: a general hospital, a psychiatric center,

a physical rehabilitation facility or a residential health care facili-

ty.

(g) Financial counseling shall also mean financial services provided

by an experienced financial counselor or adviser, who is licensed by New

York State and operating within his or her licensed discipline. If the

provider is out-of-state, payment for services within his or her

licensed discipline shall only be made if such professional is licensed

under one of the titles recognized by New York State's licensed

professions. The office may require an out-of-state provider to submit a

copy of his or her license to the claimant for submission to the office.

Such counseling may include, but is not limited to: analysis of a

victim's financial situation such as income producing capacity and crime

related financial obligations; assistance with restructuring budget and

debt; assistance in accessing insurance, public assistance and other

benefits; assistance in completing the financial aspects of victim

impact statements; and assistance in setting estates and handling guar-

dianship matters.

(h) Reasonable attorney's fees for representation before the office

and/or before the appellate division upon judicial review shall mean

those reasonable attorney's fees incurred by a claimant during (1) the

administrative review for reconsideration of such decision pursuant to

subdivision (2) of section 627 of the Executive Law and/or (2) the judi-

cial review of the final decision of the office pursuant to section 629

of the Executive Law.

525.4 Filing of claims. In addition to the provisions contained in

section 625 of the Executive Law:

(a) Claim applications shall be filed with the office in person, by

mail, or electronically via facsimile, electronic mail or any other

manner the office may make available for the filing of claims pursuant

to subdivision one of section 305 of the New York State Technology Law.

(1) If mailed, such application shall be directed to:

Office of Victim Services

Alfred E. Smith State Office Building

80 South Swan Street, 2nd Floor

Albany, New York 12210-8002

(2) Emergency award claim applications may be sent via facsimile, to a

number the office may make available.

(b) If a person is eligible to file a claim for loss of earnings as a

parent or guardian during the period of hospitalization of a child

victim under the age of eighteen for injuries sustained as a direct

result of a crime, all other requests for the reimbursement of related,

out-of-pocket expenses must be submitted together under the name of one,

eligible parent or guardian. Should more than one parent or guardian be

responsible for the child victim, the office shall determine all other

requests for reimbursement of such expenses under the first, eligible

claim accepted by the office. All claims received for loss of earnings

as a parent or guardian during the period of hospitalization of the same

child victim under the age of eighteen for injuries sustained as a

direct result of a crime shall be cross-referenced to ensure no dupli-

cate awards are made.

(c) If a person is eligible to file a claim for crime scene clean-up

as a surviving spouse, child or stepchild of a victim of a crime who

died as a direct result of such crime and where such crime occurred in

the residence shared by such family member or members and the victim,

out-of-pocket expenses must be submitted together under the name of one

family member who is eligible pursuant to paragraph (k) of subdivision

(1) of section 624 of the Executive Law. Should more than one eligible

family member file a claim requesting reimbursement for crime scene

clean-up, the office shall determine all other requests for reimburse-

ment of such expenses under the first, eligible claim accepted by the

office. If the child or stepchild of a victim is a minor, the claimant

filing on behalf of the child or stepchild must also be responsible for

the residence shared by such family member and the victim. All claims

received for crime scene clean-up as a surviving spouse, child or step-

child of a victim of a crime who died as a direct result of such crime

and where such crime occurred in the residence shared by such family

member or members and the victim shall be cross-referenced to ensure no

duplicate awards are made.

(d) If a claim application is received complete, it shall be accepted

and delivered to the Director for assignment pursuant to subdivision (a)

of section 525.5 of this Part.

(d) If a claim application is received incomplete, the office shall:

(1) if submitted pursuant to subdivision (a) of section 525.20 of this

Part, return the claim application to the Victim Assistance Program to

complete the application, (2) if submitted directly by the claimant

without any Victim Assistance Program indicated on the application,

assign a staff person to obtain the necessary information from the

claimant or other parties to complete the application, or (3) return it

to the claimant to obtain the necessary information to complete the

application.

525.5 Assignment and investigation of claims.

(a) After a claim has been accepted by the office, it shall be

assigned by the Director for investigation as soon as practicable, but

no later than three months after acceptance pursuant to subdivision (c)

of section 525.4 of this Part. All claims arising from the same crimi-

nal act(s) shall be assigned or re-assigned to the same staff person

when practical.

(b) The staff person to whom a claim is assigned shall conduct an

investigation into the validity of the claim commencing as soon as prac-

ticable, but no later than six months after assignment pursuant to

subdivision (a) of this section. This investigation may, but need not

necessarily, include the verification of information supplied by the

claimant and the development of new or different information concerning

the circumstances of the crime, the victim's conduct contributing to the

crime or the criminal injury, if any, the reporting of the crime to

appropriate authorities, the cooperation of the crime victim or claimant

with a subsequent criminal investigation or prosecution, or with the

office, the status of the crime victim or claimant as a disabled or

elderly person, any physical or other injury suffered as a result of the

crime, any health care or other services required as a result of the

crime, any earnings or support lost as a result of the crime, the iden-

tity or value of any "essential personal property" lost, damaged or

destroyed as a result of the crime, and any other matter deemed relevant

to the claim.

(c) The staff person to whom the claim is assigned may, if deemed

necessary or appropriate, direct the medical examination of a crime

victim, take or cause to be taken affidavits or depositions, order a

hearing, examine any person under oath or affirmation, and issue subpoe-

nas requiring the attendance and testimony of witnesses and the

production of documents.

(d) All claims accepted by the office shall be investigated regardless

of whether the alleged criminal has been apprehended or prosecuted for,

or convicted of any crime based upon the same incident, or has been

acquitted, or found not guilty of the crime in question owing to crimi-

nal irresponsibility or other legal exemption.

525.6 Decision on a claim.

(a) If the information developed in the course of the investigation

discloses that (1) the claimant has withdrawn the claim or (2) the

claimant has failed or refused to supply information requested by the

office or (3) a claim arising from the same circumstance is pending

before another agency or (4) the claimant cannot be located, then the

office may issue a decision denying the claim without prejudice to the

claim being reopened at a later time.

(b) After investigation of the claim, and after a hearing, if any, the

office shall issue a decision either granting an award or denying the

claim. The decision may also include a determination whether the victim

engaged in conduct contributing to the crime or criminal injury, and

shall reduce the amount of the award or deny the claim altogether in

accordance with such determination and pursuant to subdivision (m) of

section 525.12 of this Part.

(c) If the information developed in the course of the investigation

discloses that the claimant and/or the victim failed to cooperate with

the reasonable requests of law enforcement authorities, including prose-

cutors, then the office may issue a decision denying the claim with

prejudice.

(d) All claims investigated by the office shall receive a decision

regardless of whether the alleged criminal has been apprehended or pros-

ecuted for, or convicted of any crime based upon the same incident, or

has been acquitted, or found not guilty of the crime in question owing

to criminal irresponsibility or other legal exemption.

(e) The decision shall state in writing the reason(s) therefor. Should

the decision contain a specific payment or payments to the claimant or

providers(s), the decision shall state in writing the projected date of

such payment(s). A copy of the decision shall become part of the claim's

file and the claimant and/or his or her attorney shall be provided a

copy of such decision.

(f) The decision shall have printed or typed thereon notices to the

claimant and/or attorney. These notices shall include any rights to

appeal that the claimant may have of the decision and a projected date

of payment in the case of an award to the claimant.

(g) Unless the office receives a written application for reconsider-

ation of the decision, pursuant to section 525.13(a) of this Part, the

decision of the office shall become the final determination.

525.7 Notice of hearing. The claimant, his or her attorney, and all

material and necessary parties, shall be notified in writing of the

time, place and purpose of any hearing, as well as the evidence to be

produced by the claimant or other parties. The notice shall be mailed

not less than 10 days before the date of the hearing. In the discretion

of the office any issue may be considered and determined, although not

indicated in the notice of hearing, if the administration of justice

will thereby be substantially served.

525.8 Hearings.

(a) The claimant may be present at the hearing and shall be allowed to

present testimony or cross-examine witnesses in person or by counsel, or

shall otherwise make him or herself available in a manner prescribed by

the office to receive such evidence.

(b) The claimant shall have the burden of proof. The parties or their

counsel shall be allowed a reasonable time for presentation of oral

argument and/or for the filing of briefs or other statements or disposi-

tions as to the facts or the law.

(c) The office may receive as evidence any statement, document, infor-

mation or matter that it finds in its discretion is relevant and of such

a nature as to afford the parties a fair hearing. The office may also

accept hospital records and reports and physician's reports as proof of

the injury sustained, without requiring the presence of the attending

physician at the hearing.

(d) The office may direct medical examination of the claimant or

victim by a physician designated by the office for this purpose. The

claimant or victim shall present him or herself to the physician named

at the time and place designated. A written report of such examination

shall be filed by the examining physician with the office and a copy

mailed to the claimant or his or her attorney. The physician's fee shall

be paid by the office. The failure of the claimant or victim to appear

at the time of the scheduled medical examination shall result in an

amended decision to be issued to the claimant reflecting an overpayment

in the amount of the physician's fee incurred by the office, unless the

office, for good cause shown, finds the failure to appear at such

medical examination to have been justified.

(e) All hearings shall be conducted in an orderly manner in order to

ascertain the substantial rights of the parties. All witnesses shall

testify under oath (or by affirmation) and a record of the proceedings

shall be made. The office may examine the claimant and all witnesses.

The office shall not be bound by common law or statutory rules of

evidence, or by technical or formal rules for procedure.

(f) Hearings may be adjourned on motion of the office. The failure of

the claimant to appear at the time of the hearing may, in the discretion

of the office, upon good cause shown, be excused.

(g) Claimant hearings shall be confidential pursuant to section 633 of

the Executive Law.

(h) Prior to decision by the office, on application of the claimant or

his or her attorney in writing or upon motion of the office, the case

may be reopened for consideration of further payment or reinvestigated

to facilitate the determination of a decision under review and, if the

office finds it necessary, it may request further information or testi-

mony from the claimant or other interested persons.

(i) A hearing shall be held at a place and time designated by the

office.

525.9 Representation by attorney.

(a) A claimant and/or victim may choose to be represented before the

office, at any stage of a claim, by an attorney-at-law duly licensed to

practice in the State of New York and/or before the Appellate Division

upon judicial review of the office's final determination. However, only

those fees incurred by a claimant during (1) the administrative review

for reconsideration of such decision pursuant to subdivision (2) of

section 627 of the Executive Law and/or (2) the judicial review of the

final decision of the office pursuant to section 629 of the Executive

Law may be considered for reimbursement by the office. The office shall

provide written notification to an applying claimant and/or victim of

their right to representation by counsel, as well as their potential

eligibility for an award of attorney's fees pursuant to Executive Law

subdivision one of section 626 of article 22 if they are successful

during the administrative review and/or before the Appellate Division

upon judicial review, pursuant to subdivision (g) of section 525.3 of

this Part. Parties shall provide to the office an authorization compli-

ant with subdivision (c) of section 525.3 of this Part.

(b) The attorney shall file a notice of appearance and, when appropri-

ate, a notice of substitution prior to or at his or her first appear-

ance.

(c) Upon a successful review pursuant to subdivision (a) of this

section attorney's fees may be approved by the office which may require

a written statement of services rendered. Whenever an award is made to a

claimant who is represented by an attorney, the office may approve a

reasonable fee commensurate with the services rendered, up to $1,000.

(d) The factors to be considered in determining the reasonableness of

a fee include the following:

(1) the time and labor required, the novelty and difficulty of the

questions involved, and the skill requisite to perform the legal service

properly;

(2) the fee customarily charged in the locality for similar legal

services;

(3) the amount involved and the results obtained;

(4) the time limitations imposed by the client or by the circum-

stances;

(5) the experience, reputation, and ability of the lawyer or lawyers

performing the services; and

(6) whether any part of the cost of the legal service provided to the

claimant has been paid or is payable by a third party.

(e) If any party designates an attorney-at-law to represent him or her

and such attorney has executed and filed with the office a notice of

appearance in the matter, such notice shall remain in effect until:

(1) the party represented files with the office a written revocation

of the attorney's authority;

(2) the attorney files with the office a written statement of his or

her withdrawal from the case;

(3) the attorney states on the record at an office hearing that he or

she is withdrawing from the case; or

(4) the office receives notice of the attorney's death or disquali-

fication.

(f) After the filing of an authorization and a notice of appearance in

accordance with this section, and so long as both remain in effect,

copies of all written communications or notices in the matter to the

party shall be sent to such attorney in addition to the party repres-

ented. Service upon the attorney shall be deemed service on the party he

or she represents.

525.10 Subpoenas and subpoenas duces tecum; depositions.

(a) The office shall issue subpoenas and subpoenas duces tecum, upon

written application of any party made not less than five days prior to

the hearing. Subpoenas and subpoenas duces tecum shall comply with the

Civil Practice Law and Rules. Their issuance at the request of a party

shall depend upon a showing of the necessity therefor. A written request

shall also designate the names and addresses of witnesses and the

location of documents, books, payrolls, personnel records, correspond-

ence, papers or any other evidence relating to the claim being heard.

The office may, in his discretion, waive the five-day provision.

(b) Where a subpoena or subpoena duces tecum is issued at the request

of the claimant or other necessary party, the cost of service and

witnesses and mileage fees shall be borne by the party at whose request

it is issued. Where a subpoena or a subpoena duces tecum is issued by

the office itself, such service and witnesses and mileage fees shall be

borne by the office. Such witnesses and mileage fees shall be the same

as are paid at trials in the New York State Supreme Court.

(c) The office itself or on the application of the claimant, shall,

whenever necessary, and upon such terms and conditions as it may deter-

mine, take or cause to be taken affidavits and depositions of witnesses

residing within or without the State.

525.11 Emergency awards.

(a) No request for an emergency award shall be considered unless a

claim application has been filed with the office. The claim application

and the request for an emergency award may be made simultaneously. A

victim assistance program as defined in section 525.22 of this Part may

assist a claimant in making such a request. A request for an emergency

award shall be expeditiously acted upon.

(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 proba-

bly will be made and undue hardship will result to the claimant if imme-

diate payment is not made. The determination by the office of an emer-

gency 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 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.

(c) The amount of an emergency award shall be the actual out-of-pocket

loss as defined in section 626 of the Executive Law and subject to any

applicable maximum award limitations contained in section 630 of the

Executive Law. The amount of such emergency award shall be deducted from

any final award made to the claimant, and the excess of the amount of

any such emergency award over the amount of the final award, or the full

amount of any emergency awards if no final award is made, shall be

repaid by the claimant to the office. Failure to repay such amount to

the office may result in the delivery of such claim to the Office of the

Attorney General for collection.

525.12 Manner of payment; awards.

(a) The award shall be paid in a lump sum, except that in the case of

death or protracted disability the award shall provide for periodic

payments to compensate for loss of earnings or support. No award shall

be subject to execution or attachment other than for expenses resulting

from the injury which is the basis for the claim.

(b) In cases in which the claimant is a minor or incompetent, the

award may be paid to a relative, guardian, committee, conservator or

attorney of such person on behalf of and for the benefit of such person.

In such cases the payee may be required to file a periodic accounting of

the award with the office and take such other action as the office shall

determine is necessary and appropriate for the benefit of the minor or

incompetent.

(c) If there are two or more persons entitled to an award as a result

of the death of a person which is the direct result of a crime, the

office shall apportion the award among the claimants in the proportion

as it finds that the deceased victim contributed to their support.

(d) In the event of a change of dependency of the claimant or any of

them, either by marriage of a widow or otherwise, the office may change

the proportion and the amount of the payments to the claimant.

(e) In death cases the office shall, at least every 12 months, verify

the dependency and financial circumstances of the claimants; and upon

finding a change, the office may reduce or increase the proportion of

the allowance and award to the claimants as the circumstances warrant.

(f) In protracted disability cases the office shall, at least every 12

months, verify the disability of the claimant to determine whether he or

she is entitled to continue to receive periodical payments either in the

amount awarded or in a reduced amount.

(g) Any compensation award made pursuant to Executive Law, article 22,

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, together with

loss of earnings or support resulting from such injury.

(1) If the injury causes death, the award shall include funeral, buri-

al plot and marker cost, not exceeding:

$6,000 for crimes occurring on and after 11/1/96, claims submitted by

any person who incurs such costs;

$2,000 for crimes occurring on and after 6/12/91 until 10/31/96,

claims submitted by any person who incurs such costs;

$2,500 for crimes occurring on and after 8/1/85 until 6/11/91, claims

submitted by any person who incurs such costs;

$1,500 for crimes occurring on and after 7/30/83 until 7/31/85, claims

submitted by any person who incurs such costs;

$1,500 for crimes occurring on and after 6/15/82 until 7/29/83, claims

submitted by family members;

$1,500 for crimes occurring on and after 6/16/68 until 6/14/82, claims

submitted by a surviving spouse, parent or child;

$1,000 for crimes occurring on and after 8/1/66 until 6/15/68, claims

submitted by a surviving spouse or child.

(2) Where a third party, non-claimant pays for a causally-related

out-of-pocket expense on behalf of a claimant and the third party has no

contractual responsibility to the claimant to make such payment, the

office shall require affidavits from both the claimant and the third

party stating that the payment by the third party was meant as a loan to

the claimant, as proof for the office to reimburse the third party.

(3) In order for the costs associated with new or enhanced security

devices, beyond those which, pursuant to the Executive Law are repaired

or replaced under subdivision 2 of section 631, or are awarded under

subdivision 12 of section 631, to be compensable, the office shall

require a statement from the claimant's physician or counselor, or the

district attorney handling the victim's case, indicating that without

the aid of such a device the claimant's health is in imminent danger.

Compensable costs shall be limited to the devices themselves and their

installation, and shall not include the periodic service charges for

monitoring or maintaining any such devices.

(4) The office may require proof from claimants for all claims of

crime-related counseling expenses which are filed more than one year

after counseling has begun. The claimants shall offer evidence to the

office that the counseling is causally connected to the crime and the

office may request an independent medical examination of any claimant

before authorizing reimbursement for reasonable expenses of counseling

services.

(5) Court transportation expenses. (i) An award shall include reason-

ably transportation expenses of the claimant incurred for necessary

court appearances in connection with the prosecution of the crime upon

which the claim is based.

(ii) Except for calculating the reimbursement rate for mileage trav-

eled in instances where a claimant has provided his or her own transpor-

tation, the standards for the rates of reimbursement for state employees

as promulgated by the Department of Audit and Control and set forth in 2

NYCRR Part 8, shall be followed in making a determination as to the

reasonableness of the travel expense incurred as well as the amount of

reimbursement. When a claimant has provided his or her own transporta-

tion, the standards for the rates of reimbursement for mileage traveled

shall be calculated as set forth in subdivision (e) of section 525.3 of

this Part. The rates of reimbursement in effect on the date the travel

expense for the necessary court appearance was incurred shall be

controlling.

(iii) Any claimant eligible to receive an award under article 22 and

this Part shall be eligible for an award for transportation expenses

incurred for necessary court appearances.

(6) Any award for financial counseling expenses must be related to the

crime and shall not exceed the actual monetary loss or fraudulent charg-

es and/or debt incurred by the victim. For services provided during a

six-month period or longer, the office shall require evidence on a semi-

annual basis that such counseling continues to be necessary as a direct

result of the crime.

(7) An award for crime-related counseling expenses may be made to:

(i) certain family members, pursuant to paragraph (b) of subdivision 1

of section 624 of the Executive Law, including spouses, grandparents,

parents, stepparents, guardians, brothers, sisters, stepbrothers, step-

sisters, children or stepchildren of homicide victims, if otherwise

eligible and as a result of the death of such victim;

(ii) certain family members, pursuant to paragraph (h) of subdivision

1 of section 624 of the Executive Law, including parents, stepparents,

grandparents, guardians, brothers, sisters, stepbrothers or stepsisters

of child victims, if otherwise eligible and as a result of the victimi-

zation of such child victims; and

(iii) child victims, pursuant to subdivision 17 of section 631 of the

Executive Law, if otherwise eligible and as a result of having witnessed

a crime.

(h) Direct reimbursement of forensic sexual assault examinations. (1)

Definitions:

(i) Licensed provider shall mean any New York State accredited hospi-

tal or licensed physician, nurse practitioner, registered nurse or

physician assistant practicing within the State of New York whose

performance of a sexual assault forensic examination is within the scope

of practice of the discipline in which he or she holds a license or any

other sexual assault examiner certified by the Department of Health to

conduct a sexual assault forensic examination.

(ii) Sexual assault shall mean any sexual offense defined in article

130 of the New York State Penal Law.

(iii) Forensic examination shall mean an examination conducted by a

licensed provider as defined in subparagraph (i) of this paragraph for

the purpose of collecting and preserving evidence to document a sexual

assault, conducted in accordance with the New York State Department of

Health's Protocol for the Acute Care of the Adult Patient Reporting

Sexual Assault or the Child and Adolescent Sexual Offense Protocol.

Copies of these protocols may be obtained from the Department of Health

at the following address:

The Bureau of Women's Health

NYS Department of Health

Room 1882, Tower Building

Empire State Plaza

Albany, New York 12237-0621

Phone: (518) 474-3664

(iv) Claim form shall mean the Office of Victim Services Medical

Provider Forensic Rape Examination Claim Form. In addition to being

included in the Sexual Offense Evidence Collection Kit, this form is

available from the Office of Victim Services online at

**http://www.ovs.ny.gov**.

(2) Notwithstanding any contrary provisions, whenever a licensed

provider administers a forensic examination to a survivor of a sexual

assault in accordance with the established protocol as defined in

subparagraph (1)(iii) of this subdivision, such provider shall render

such services without charge and shall bill the office directly for such

services, unless the sexual assault survivor assigns his or her private

insurance benefits for the forensic examination, in which case the

office shall not be billed for such services by the provider pursuant to

this subdivision. Except as provided in paragraph (6) of this subdivi-

sion, nothing in this section shall preclude a licensed provider from

billing a sexual assault survivor for medical services unrelated to the

forensic exam as set forth in subparagraphs (5)(i), (ii), (iii) and (iv)

of this subdivision.

(3) At the time of the initial visit, the provider shall:

(i) request assignment of any private health insurance benefits on a

form prescribed by the office;

(ii) advise a sexual assault survivor orally and in writing that he or

she may decline to provide private health insurance information if he or

she believes it would substantially interfere with his or her personal

privacy or safety;

(iii) advise a sexual assault survivor that providing such information

may provide additional resources to pay for services to other sexual

assault victims; and

(iv) require that if he or she declines to provide such health insur-

ance information, he or she shall indicate such decision on the form

prescribed by the office.

(4) Eligibility criteria.

(i) To establish eligibility, a licensed provider shall submit a

completed Claim Form as defined in subparagraph (1)(iv) of this subdivi-

sion and attach an itemized bill indicating the relevant forensic exam-

ination related current procedural terminology (CPT) codes associated

with each service provided to the office at the address below:

Office of Victim Services

Alfred E. Smith State Office Building

80 South Swan Street, 2nd Floor

Albany, NY 12210-8002

(ii) Upon receipt of a completed Claim Form with an itemized bill

including CPT codes and acceptance by the Office of Victim Services,

payment will be authorized directly to the licensed provider through the

appropriate billing facility as set forth in paragraph (8) of this

subdivision.

(5) The provider shall be reimbursed at the rate of itemized charges

not exceeding $800 for forensic examiner services, hospital or health-

care facility services directly related to the forensic exam, and

related laboratory tests and pharmaceuticals directly related to the

exam. The office has determined that reimbursable expenses shall include

at a minimum:

(i) forensic examiner and hospital or healthcare facility services

directly related to the exam, including integral forensic supplies;

(ii) scope procedures directly related to the forensic exam including

but not limited to anoscopy and colposcopy;

(iii) laboratory testing directly related to the forensic examination,

including drug screening, urinalysis, pregnancy screening, syphillis

screening, chlamydia culture, gonorrhea coverage culture, blood test for

HIV screening, hepatitis B and C, herpes culture and any other STD test-

ing directly related to the forensic examination;

(iv) pharmaceuticals directly related to the forensic examination

including STD, pregnancy, initial HIV prophylaxis up to a seven day

supply and hepatitis prophylaxis;

(v) Except as provided in section paragraph (6) of this subdivision,

follow-up post exposure HIV prophylaxis and follow-up HIV counseling,

charges for inpatient services, and for services other than those

included in subparagraphs (5)(i), (ii), (iii) and (iv) of this paragraph

are not included in this rate and shall not be reimbursable under this

Part, but shall continue to be reimbursable under established office

procedure.

(6) The victim shall not be responsible for the payment of the cost of

the forensic examination or any other services specified by the provider

in its submission to the office pursuant to paragraph (4) of this subdi-

vision. The licensed provider must accept the reimbursement rate as

payment in full for those services submitted to the office pursuant to

paragraph (4) of this subdivision and included in subparagraphs (5)(i),

(ii), (iii) and (iv) of this subdivision. The licensed provider shall

not submit any remaining balance due for such services after submission

to the office to the victim or commence civil actions against the victim

to recover any balance due for such services.

(7) The costs for multiple forensic examinations of the same victim

will not be reimbursed. The cost of only one forensic sexual assault

examination per victim per alleged sexual assault will be considered a

reimbursable cost.

(8) For the forensic examination and services directly related to the

forensic examination, the office will reimburse the facility in which

the forensic examination was conducted and whose operator's certificate

number or facility identification, if applicable, appears on the Claim

Form, the amount of itemized charges not exceeding $800. The amount

reimbursed shall be proportionately allocated among the service provid-

ers by the billing facility.

(9) Expenses must be related to a forensic examination performed with-

in 96 hours following the incident. This reporting time shall be waived

for a child victim or for any victim if good cause has been shown.

(10) A claim for reimbursement of expenses associated with a forensic

examination made pursuant to this section must be submitted within one

year of the date of the examination to the Albany Office of Crime Victim

Services.

(i)(1) The office may award loss of earnings or support in accordance

with this Part, subdivision 3 of section 631 of the Executive Law and

subject to any applicable maximum award limitations pursuant to article

22 of the Executive Law, for such amounts that can be verified to the

satisfaction of the office.

(i) Any award for loss of earnings shall include time which an employ-

ee was absent from work and not paid for the date or time off.

(ii) Except as provided in subparagraph (iii) of this paragraph, any

award for loss of earnings or support shall be limited to the victim's

income which has been reported to an appropriate taxing authority.

(iii) If during an investigation of a claim the office determines that

such income is not subject to taxation, the office shall request alter-

native information to verify such income.

(2) An award for loss of earnings by a parent or guardian as a result

of the hospitalization of a child victim under the age of 18 for inju-

ries sustained as a direct result of a crime, shall further be limited

by the following:

(i) the victim's full loss of earnings shall take priority over any

other eligible claim for loss of earnings by a parent or guardian based

on the victim's hospitalization;

(ii) should more than one parent or guardian be eligible for an award

for loss of earnings, the office shall only award the first eligible

claim received, in addition to the victim's claim, per hospitalization

period or portion of such period;

(iii) the total weekly award for an eligible claimant or claimants

shall not exceed $600. See Executive Law section 631(3); and

(iv) the total loss of earnings award for an eligible claimant or

claimants shall not exceed $30,000. See Executive Law section 631(2).

(3)(i) Except as provided in subparagraph (ii) of this paragraph, and

pursuant to and in accordance with this Part and Executive Law article

22 and subject to any applicable maximum award limitations contained

therein, any award for a victim's loss of earnings shall be limited to a

period of disability resulting from crime-related injuries as estab-

lished by the medical evidence obtained during the investigation of a

claim.

(ii) If during the investigation of the claim such period of disabili-

ty can not be established by medical evidence, there shall be a rebutta-

ble presumption that such victim has suffered a period of disability of

not longer than seven consecutive days beginning on the date of the

crime. The office may award loss of earnings for such period, or a

portion thereof.

(j) Notwithstanding any contrary provisions of this Part, claims with

respect to a livery operator victim shall be investigated on an expe-

dited basis and a decision shall be made within 30 days of the date upon

which the claim was accepted for filing.

(1) Each award for loss of earnings pursuant to this paragraph made

with respect to a claim involving a livery operator assault victim shall

be for such period of time as the office determines that the livery

operator assault victim is unable to work and has lost earnings as a

result of such assault, in an amount not to exceed $20,000. Such award

shall be distributed in increments of $500 per week.

(2) Each award for loss of support pursuant to this paragraph made

with respect to a claim involving a livery operator homicide victim

shall be in the amount of $20,000, distributed in increments of $500 per

week.

(k) Any claimant may submit an additional claim for any loss of earn-

ings or support in excess of the amount awarded pursuant to this

section, or an additional claim for any other award pursuant to this

Part or Executive Law article 22, in each case pursuant to and in

accordance with this Part and Executive Law article 22 and subject to

any applicable maximum award limitations contained therein.

(l) The office is payer of last resort and as such, the claimant must

exhaust all collateral sources available to them pursuant to subdivision

4 of section 631 of the Executive Law. All awards made pursuant to

Executive Law article 22 and this Part shall be reduced in the manner

prescribed in subdivision 4 of section 631 of the Executive Law,

provided however that any payments received or to be received by the

claimant or victim as the result of a private civil action brought

against the "profits of a crime" or the "funds of a convicted person"

pursuant to section 632-a of the Executive Law shall not reduce the

amount of such awards.

(m) When determining an award, the office must consider conduct

contributing to the crime or criminal injury.

(1) All awards made pursuant to Executive Law article 22 and this Part

shall be either reduced or denied altogether for conduct contributing in

the following manner:

(i) 100 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 subpara-

graph, 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 instru-

ments at or near the time of the crime.

(ii) 75 percent reduction of award. Any conduct on part of the victim,

as indicated by law enforcement in the investigation of a claim pursu-

ant to subdivision (b) of section 525.5 of this Part, constituting any

other felony not considered in subparagraph (i) of this paragraph.

(iii) 50 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 misdemeanor not considered in subparagraph (i) of this para-

graph.

(iv) 25 percent reduction of award. All other conduct on part of the

victim, not considered in subparagraph (i), (ii) or (iii) of this para-

graph, as indicated in the investigation of the claim pursuant to subdi-

vision (b) of section 522.5 of this Part.

(2) However, when considering conduct contributing the office shall

examine the following mitigating factors: the victim was a minor, a

victim of human trafficking, a sex worker, or a victim of sexual

assault. If any such mitigating factors are found in the investigation

of the claim pursuant to subdivision (b) of section 525.5 of this Part,

the office may make an award without reduction for conduct contributing.

525.13 Review of a decision on a claim.

(a) The claimant may, within 30 days after receipt of the decision of

the office, make an application in writing to the office for reconsider-

ation of such decision. Such application shall include the claim number

and an original signature of the claimant.

(b) Upon receipt of an application pursuant to subdivision (a) of this

section, the Director and/or his or her designee(s) shall either re-open

the claim for reconsideration based upon new information or approve the

application for the Director and/or his or her designee(s) to review the

record, to affirm or modify the decision of the office. The Director

shall ensure the person or persons reviewing the record shall not

include the person who made the determination which is being reviewed.

If the application for reconsideration is based wholly upon the law

under which the office operates, a decision may be issued without a

hearing. If the application for reconsideration is based in part or

wholly upon the facts of the claim, the office shall notify the claimant

of the date and time during which the Director and/or his or her

designee(s) will consider their application. The claimant may request to

personally appear or otherwise make him or her available in a manner

prescribed by the Director and/or his or her designee(s) at such time

for a hearing pursuant to section 525.8 of this Part prior to the

rendering of a decision. If such hearing is requested and the claimant

fails to appear or be available in the manner prescribed by the Director

and/or his or her designee(s), the hearing shall be considered waived by

the claimant and the Director and/or his or her designee(s) shall review

the record to make its final determination, unless the Director and/or

his or her designee(s), for good cause shown, finds such failure to have

been justified. If such hearing is not requested, the Director and/or

his or her designee(s) shall review the record and make its determi-

nation. The decision of the Director and/or his or her designee(s) shall

become the final determination of the office. The Director and/or his or

her designee(s) shall issue a written determination. The determination

shall state in writing the reason(s) therefor. Should the determination

contain a specific payment or payments to the claimant or provider(s),

the determination shall state in writing the projected date of such

payment(s). A copy of the determination shall become part of the claim's

file and the claimant and/or his or her attorney shall be provided a

copy of such determination.

(c) A written determination shall have printed or typed thereon

notices to the claimant and/or attorney. These notices shall include any

rights to appeal that the claimant may have of the decision and a

projected date of payment in the case of an award to the claimant.

(d) If no application is received pursuant to subdivision (a) of this

section, the decision of the office shall become the final determi-

nation.

(e) The office may reinvestigate or reopen cases at any time, as the

office deems necessary.

525.14 Judicial review.

(a) Any claimant aggrieved by a final determination of the office may

seek court review of that determination, as provided for in article 78

of the Civil Practice Law and Rules.

(b) Upon a proceeding being instituted by the Attorney General for

court review of a decision of the office, pursuant to section 629 of the

Executive Law, the office shall furnish a certified copy of the record

upon which the decision was based to the Attorney General and to the

claimant and/or his or her attorney.

525.15 Claimant records.

(a) Claimant records are (1) not subject to the provisions of the

Public Officers Law: article six; paragraphs c and d of subdivision one

or subdivisions two, three and six of section ninety-four and section

ninety-five and (2) confidential, subject to the provisions of section

633 of the Executive Law and section 96 of the Public Officers Law.

Pursuant to section 633 of the Executive Law, the following exceptions

exist to such confidentiality: (1) requests fro information based upon

legitimate criminal justice purposes;

(ii) judicial subpoenas;

(iii) requests for information by the victim or claimant or his or her

authorized representative pursuant to subdivision c of section 525.3 of

this Part;

(iv) requests for the release of records as authorized by a claimant

pursuant to subdivision e of this section;

(v) for purposes necessary and proper for the administration of Arti-

cle 22 of the Executive Law, including but not limited to, providing

information to a victim assistance program pursuant to subdivision a of

section 525.22 of this Part.

(b) A claimant shall notify the office of any change of contact infor-

mation in person, by mail, or electronically via facsimile, electronic

mail or any other manner the office may make available for the change of

contact information pursuant to subdivision one of section 305 of the

New York State Technology Law. (1) If mailed, such notification shall

be directed to:

Office of Victim Services

Alfred E. Smith State Office Building

80 South Swan Street, 2nd Floor

Albany, New York 12210-8002

(2) Change of contact information may be sent via facsimile, to a

number the office may make available.

(c) A claimant may request a copy of part or all of their record by

letter, indicating the claim number and containing an original signature

of the claimant. Such request shall be directed to:

Legal Unit

Office of Victim Services

Alfred E. Smith State Office Building

80 South Swan Street, 2nd Floor

Albany, New York 12210-8002

(d) Should a claimant authorize a representative pursuant to subdivi-

sion (c) of section 525.3 of this Part, such representative may request

a copy of part or all of the claimant's record by letter, indicating the

claim number and containing an original signature of the representative

and directed to the unit and address contained in paragraph (c) of this

subdivision.

(e) A claimant may authorize another party, who is not an authorized

representative pursuant to subdivision (c) of section 525.3 of this

Part, to receive information related to their claim. Such authorized

party may request a copy of part or all of the claimant's record by

letter, indicating the claim number and containing an original signature

of the authorized party and directed to the unit and address contained

in paragraph (c) of this subdivision. This authorization shall be valid

unless and until revoked by the claimant in writing. A claimant who

wishes to designate another party to receive information related to

their claim shall provide to the office a notarized authorization

compliant with Public Officers Law, section 96 before any confidential

records of, or information about a claimant can be disclosed by the

office. The form shall be as follows:

Authorization by Claimant for Release of Records

Pursuant to New York State Executive law, § 633 and

Public Officers Law § 96, I:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name of Claimant

(Please Print)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Claim Number

hereby authorize:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name of Individual

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Address of Individual

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Phone Number of Individual

to have a complete copy of the records maintained with respect to me and

the above mentioned claim for their information. This authorization is

to allow the Office of Victim Services to share the records compiled for

this claim with the above authorized individual. This authorization

shall be valid until revoked by me in writing.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature of Claimant

Date

State of New York))ss.:

County of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_)

On the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_in the year\_\_\_\_\_\_\_\_\_\_\_

before me, the undersigned, personally appeared\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,

personally known to me or proved to me on the basis of satisfactory

evidence to be the individual whose name is subscribed to the within

instrument and acknowledged to me that he/she executed the same in

his/her capacity, and that by his/her signature on the instrument, the

individual, or the person upon behalf of which the individual acted,

executed the instrument.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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(f) The office may deny access to portions of a claimant record (i)

subject to the provisions of subdivision two of section eighty-seven of

the Public Officers Law and (ii) to protect any personally identifying

information from disclosure.

(g) Fees. Fees for copies of claimant records may be charged, provided

that: (1) the fee for copying records shall not exceed 25 center per

page for photocopies not exceeding 9 by 14 inches, (2) the fee for

photocopies of records in excess of 9 by 14 inches shall not exceed the

actual cost of reproduction, (3) the fee for copying records onto a

storage device or media provided to the person making the request shall

not exceed the actual cost of such storage device or media, (4) the fee

for delivery to the person making the request shall not exceed the actu-

al cost of delivery, (5) the office shall inform the person requesting a

copy of the record of the estimated cost, (6) the office may require

that the fee for copying or reproducing a record and delivery be paid in

advance of the preparation of such copy, and (7) the office may waive a

fee in whole or in part when making copies of records available to a

claimant or a claimant's attorney.

525.16 Availability of rules. Copies of the rules of the office and

article 22 of the Executive Law shall be available to the public at all

locations of the Office of Victim Services and online at

**http://www.ovs.ny.gov**. The office may also be contacted at

1-800-247-8035.

525.17 Requests for further reduction of lien.

(a) A request for a further reduction of the amount of the State's

lien pursuant to subdivision 2 of section 634 of the Executive Law,

shall be submitted by the claimant or the claimant's attorney in writing

to the office at the following address:

Legal Unit

Office of Victim Services

Alfred E. Smith State Office Building

80 South Swan Street, 2nd Floor

Albany, New York 12210-8002

(b) Such request shall include:

(1) the claim number or other information which would assist in iden-

tifying the claimant and/or the victim;

(2) a statement setting forth the reason(s) the proposed further

reduction would be in the best interests of the claimant and the State;

(3) copies of the following documents where they exist:

(i) the complaint(s) served in the case;

(ii) statement of attorney fees; and

(iii) a listing of disbursements or other expenses incurred in the

action.

(c) Upon receipt of a request for further reduction in the State's

lien, the legal unit of the office shall examine the request and make a

written recommendation to the Director.

(d) The Director shall determine all such requests and upon such

determination, the legal unit shall inform the claimant or the claim-

ant's attorney of the determination.

525.18 Battered spouses shelter cost guidelines.

(a) As a means of ensuring that eligible battered spouses and children

receive necessary shelter and services; to provide an objective, fair

and reasonable equitable reimbursement rate for battered spouses and

shelter providers who service these claimants, thereby maximizing avail-

able program dollars and improving administration of claims for the

benefit of all victims; the office hereby establishes a guideline sched-

ule of maximum charges for the cost of residing at or utilizing services

provided by shelters for eligible battered spouses and children payable

under sections 626 and 631(2) of the Executive Law.

(b) Adoption of county departments of social services shelter fee

guidelines. The office in computing the amount of an award payable for

the cost of residing at or utilizing services provided by shelters for

battered spouses and children, shall use the per diem rate, where estab-

lished, of the county department of social services in which the shelter

is located.

525.19 Crimes committed by family members. A victim who is injured as

result of a crime committed by a family member will be eligible to

receive an award unless the office finds that the person responsible for

the crime will derive substantial economic benefit or unjust enrichment.

A determination that a family member will derive substantial economic

benefit or unjust enrichment will be based upon a consideration of the

offender's access to the award, the victim's cooperation with the crimi-

nal justice system, and the availability of collateral resources.

(a) Access. It shall be determined whether the offender will have

access to any award to the victim and/or whether a substantial portion

of the money will be primarily used by or for the benefit of the offen-

der.

(1) When an award is made directly to a victim it must be determined

that the offender will not substantially benefit from such award.

Factors to be considered in determining whether substantial benefit will

be derived include:

(i) whether a significant portion of the award will pay for the

offender's living expenses, or be otherwise used for his or her benefit;

and

(ii) the needs of the victim and other family members in comparison to

any benefit to be derived by the offender. The fact that the offender

may benefit incidentally from such award will not support a determi-

nation of substantial economic benefit or unjust enrichment where such

award is essential to the well-being of the victim and other innocent

and dependent family members, particularly in regard to their living

expenses.

(2) The fact that the offender is present in the household will be a

factor to be considered but shall not preclude an award.

(3) Whenever possible payments will be made directly to third-party

providers.

(b) Cooperation. The victim must file a police report and be willing

to cooperate with the criminal justice system or in a family court

proceeding.

(c) Collateral resources. In domestic violence claims as in any other

claim, collateral resources available to the victim, including those

from the offender, must be considered and deducted from any award. If,

however, the offender fails to meet legal responsibilities to pay resti-

tution or to provide for the medical needs of a family member, or if the

offender impedes payment of insurance that may be available to cover a

claimant's out-of-pocket losses, the office may make an award to cover

such losses. The offender will remain liable for such losses pursuant to

the office's subrogation right.

525.20 Victims of human trafficking, presumption of physical injury.

When a claimant applies as a victim of labor trafficking as defined in

section 135.35 of the Penal Law, or sex trafficking as defined in

section 230.34 of the Penal Law, there shall be a rebuttable presumption

that such victim has suffered a physical injury for the purposes of

eligibility under Article 22 of the Executive Law.

525.21 Prohibited use of personal identifying information. 1. The

office shall not do any of the following, unless otherwise required by

law:

(a) Intentionally communicate to the general public or otherwise make

available to the general public in any manner an individual's social

security account number. This paragraph shall not apply to any individ-

ual intentionally communicating to the general public or otherwise

making available to the general public his or her social security

account number.

(b) Print an individual's social security account number on any card

or tag required for the individual to access products, services or bene-

fits provided by the office.

(c) Require an individual to transmit his or her social security

account number over the internet, unless the connection is secure or the

social security account number is encrypted.

(d) Require an individual to use his or her social security account

number to access an internet web site, unless a password or unique

personal identification number or other authentication device is also

required to access the internet website.

(e) Include an individual's social security account number, except the

last four digits thereof, on any materials that are mailed to the indi-

vidual, or in any electronic mail that is copied to third parties,

unless State or Federal law requires the social security account number

to be on the document to be mailed. Notwithstanding this paragraph,

social security account numbers may be included in applications and

forms sent by mail, including documents sent as part of an application

or enrollment process, or to establish, amend or terminate a claim,

account, contract or policy, or to confirm the accuracy of the social

security account number. A social security account number that is

permitted to be mailed under this section may not be printed, in whole

or in part, on a postcard or other mailer not requiring an envelope, or

visible on the envelope or without the envelope having been opened.

(f) Encode or embed a social security number in or on a card or docu-

ment, including, but not limited to, using a bar code, chip, magnetic

strip, or other technology, in place or removing the social security

number as required by this section.

(g) No person may file any document available for public inspection

with the office that contains a social security account number of any

other person, except as required by Federal or State law or regulation,

or by court rule.

2. As used in this section "social security account number" shall

include the nine digit account number issued by the Federal Social Secu-

rity Administration and any number derived therefrom. Such term shall

not include any number that has been encrypted.

3. This section shall not prevent the collection, use or release of a

social security account number as required by State or Federal law, or

the use of a social security account number for internal verification,

fraud investigation or administrative purposes.

525.22 Victim Assistance Programs or VAPs.

(a) Victim Assistance Programs may assist claimants in the preparation

of claims for presentation to the office and requests for emergency

awards pursuant to section 525.11 of this Part.

(1) If a VAP is listed on a claim form, the office shall be permitted

to discuss such claim(s) with the VAP notwithstanding the provisions of

section 633 of the Executive Law.

(2) If a VAP is not listed on a claim form and the claimant subse-

quently wishes the VAP to assist them with the office, the claimant may

authorize a representative pursuant to subdivision (c) of section 525.3

of this Part from the VAP. Pursuant to section 633 of the Executive

Law, the office shall be unable to discuss a claim with a third party

unless so authorized and designated by the claimant.

(b) Victim Assistance Programs receiving state funds or state-author-

ized payments from the office pursuant to the terms of a contract or

memorandum of understanding shall comply with all applicable federal and

state laws and regulations and any applicable contractual or memorandum

of understanding language entered into with the office. Applicable state

regulations shall include, but not be limited to this section and

section 525.24 of this Part.

525.23 Freedom of information law or FOIL. (a) Purpose and scope. (1)

The people's right to know the process of government decision-making and

the documents and statistics leading to determinations is basic to our

society. Access to such information should not be thwarted by shrouding

it with the cloak of secrecy of confidentiality. (2) These regulations

provide information concerning the procedures by which records may be

obtained. (3) Personnel shall furnish to the public the information and

records required by the Freedom of Information Law, as well as records

otherwise available by law. (4) Any conflicts among laws governing

public access to records shall be construed in favor of the widest

possible availability of public records.

(b) Designation of records access officer. (1) The Office of Victim

Services is responsible for insuring compliance with the regulations

herein, and designates the Counsel to the Office of Victim Services as

records access officer. (2) The records access officer is responsible

for insuring appropriate agency response to public requests for access

to records. The designation of a records access officer shall not be

construed to prohibit officials who have in the past been authorized to

make records or information available to the public from continuing to

do so. The records access officer shall insure that agency personnel:

(i) Maintain an up-to-date subject matter list.

(ii) Assist persons seeking records to identify the records sought, if

necessary, and when appropriate, indicate the manner in which the

records are filed, retrieved or generated to assist persons in reason-

ably describing records.

(iii) Contact persons seeking records when a request is voluminous or

when locating the records involves substantial effort, so that personnel

may ascertain the nature of records of primary interest and attempt to

reasonably reduce the volume of records requested.

(iv) Upon locating the records, take one of the following actions:

(a) Make records available for inspection; or,

(b) Deny access to the records in whole or in part and explain in

writing the reasons therefor.

(v) Upon request for copies of records:

(a) Make a copy available upon payment or offer to pay established

fees, if any, in accordance with subdivision h; or,

(b) Permit the requester to copy those records.

(vi) Upon request, certify that a record is a true copy; and

(vii) Upon failure to locate records, certify that:

(a) The Office of Victim Services is not the custodian for such

records, or

(b) The records of which the Office of Victim Services is a custodian

cannot be found after diligent search.

(c) Location. Records shall be available for public inspection and

copying at:

New York State Office of Victim Services

Alfred E. Smith State Office Building

80 South Swan Street, 2nd Floor

Albany, New York 12210-8002

(d) Hours for public inspection. Requests for public access to records

shall be accepted and records produced during all hours regularly open

for business. These hours are Monday through Friday, 9:00am to 5:00pm.

(e) Requests for public access to records. (1) A written request may

be required, but oral requests may be accepted when records are readily

available. (2) If records are maintained on the internet, the requester

shall be informed that the records are accessible via the internet and

in printed form either on paper or other information storage medium. (3)

A response shall be given within five business days of receipt of a

request by:

(i) informing a person requesting records that the request or portion

of the request does not reasonably describe the record sought, including

direction, to the extent possible, that would enable that person to

request records reasonably described;

(ii) granting or denying access to records in whole or in part;

(iii) acknowledging the receipt of a request in writing, including an

approximate date when the request will be granted or denied in whole or

in part, which shall be reasonable under the circumstances of the

request and shall not be more than twenty business days after the date

of the acknowledgment, or if it is known that circumstances prevent

disclosure within twenty business days from the date of such acknowledg-

ment, providing a statement in writing indicating the reason for inabil-

ity to grant the request within that time and a date certain, within a

reasonable period under the circumstances of the request, when the

request will be granted in whole or in part; or

(iv) if the receipt of request was acknowledged in writing and

included an approximate date when the request would be granted in whole

or in part within twenty business days of such acknowledgment, but

circumstances prevent disclosure within that time, providing a statement

in writing within twenty business days of such acknowledgment specifying

the reason for the inability to do so and a date certain, within a

reasonable period under the circumstances of the request, when the

request will be granted in whole or in part.

(4) In determining a reasonable time for granting or denying a request

under the circumstances of a request, personnel shall consider the

volume of a request, the ease or difficulty in locating, retrieving or

generating records, the complexity of the request, the need to review

records to determine the extent to which they must be disclosed, the

number of requests received by the agency, and similar factors that bear

on the ability to grant access to records promptly and within a reason-

able time.

(5) A failure to comply with the time limitations described herein

shall constitute a denial of a request that may be appealed. Such fail-

ure shall include situations in which an officer or employee:

(i) fails to grant access to the records sought, deny access in writ-

ing or acknowledge the receipt of a request within five business days of

the receipt of a request;

(ii) acknowledges the receipt of a request within five business days

but fails to furnish an approximate date when the request will be grant-

ed or denied in whole or in part;

(iii) furnishes an acknowledgment of the receipt of a request within

five business days with an approximate date for granting or denying

access in whole or in part that is unreasonable under the circumstances

of the request;

(iv) fails to respond to a request within a reasonable time after the

approximate date given or within twenty business days after the date of

the acknowledgment of the receipt of a request;

(v) determines to grant a request in whole or in part within twenty

business days of the acknowledgment of the receipt of a request, but

fails to do so, unless the agency provides the reason for its inability

to do so in writing and a date certain within which the request will be

granted in whole or in part;

(vi) does not grant a request in whole or in part within twenty busi-

ness days of the acknowledgment of the receipt of a request and fails to

provide the reason in writing explaining the inability to do so and a

date certain by which the request will be granted in whole or in part;

or

(vii) responds to a request, stating that more than twenty business

days is needed to grant or deny the request in whole or in part and

provides a date certain within which that will be accomplished, but such

date is unreasonable under the circumstances of the request.

(f) Subject matter list. (1) The records access officer shall maintain

a reasonably detailed current list by subject matter of all records in

its possession, whether or not records are available pursuant to subdi-

vision two of Section eighty-seven of the Public Officers Law. (2) The

subject matter list shall be sufficiently detailed to permit identifica-

tion of the category of the record sought. (3) The subject matter list

shall be updated annually. The most recent update shall appear on the

first page of the subject matter list.

(g) Denial of access to records. (1) Denial of access to records shall

be in writing stating the reason therefor and advising the requester of

the right to appeal to the individual or body established to determine

appeals, [**who or which**] shall be identified by name, title, business

address and business phone number.

(2) If requested records are not provided promptly, as required in

paragraph 5 of this section, such failure shall also be deemed a denial

of access.

(3) The Director or his or her designee shall determine appeals

regarding denial of access to records under the Freedom of Information

Law. Such appeal shall be directed to:

Director

New York State Office of Victim Services

Alfred E. Smith State Office Building

80 South Swan Street, 2nd Floor

Albany, New York 12210-8002.

(4) Any person denied access to records may appeal within thirty days

of a denial.

(5) The time for deciding an appeal by the Director or his or her

designee to determine appeals shall commence upon receipt of a written

appeal identifying:

(i) the date and location of requests for records;

(ii) a description, to the extent possible, of the records that were

denied; and

(iii) the name and return address of the person denied access.

(6) A failure to determine an appeal within ten business days of its

receipt by granting access to the records sought or fully explaining the

reasons for further denial in writing shall constitute a denial of the

appeal.

(7) The Director or his or her designee shall transmit to the Commit-

tee on Open Government copies of all appeals upon receipt of appeals.

Such copies shall be addressed to:

Committee on Open Government

Department of State

One Commerce Plaza

99 Washington Avenue, Suite 650

Albany, NY 12231

(8) The Director or his or her designee shall inform the appellant and

the Committee on Open Government of its determination in writing within

ten business days of receipt of an appeal. The determination shall be

transmitted to the Committee on Open Government in the same manner as

set forth in paragraph 7 of this subdivision.

(h) Fees. (1) There shall be no fee charged for:

(i) inspection of records;

(ii) search for records; or

(iii) any certification pursuant to this part.

(2) Copies may be provided without charging a fee.

(3) Fees for copies may be charged, provided that:

(i) the fee for copying records shall not exceed 25 cents per page for

photocopies not exceeding 9 by 14 inches;

(ii) the fee for photocopies of records in excess of 9 x 14 inches

shall not exceed the actual cost of reproduction; or

(iii) the office has the authority to redact portions of a paper

record and does so prior to disclosure of the record by making a photo-

copy from which the proper redactions are made.

(4) The fee which the office may charge for a copy of any other record

is based on the actual cost of reproduction and may include only the

following:

(i) an amount equal to the hourly salary attributed to the lowest paid

employee who has the necessary skill required to prepare a copy of the

requested record, but only when more than two hours of the employee's

time is necessary to do so; and

(ii) the actual cost of the storage devices or media provided to the

person making the request in complying with such request; or

(iii) the actual cost to the office of engaging an outside profes-

sional service to prepare a copy of a record, but only when the office's

information technology equipment is inadequate to prepare a copy, and if

such service is used to prepare the copy.

(5) When the office has the ability to retrieve or extract a record or

data maintained in a computer storage system with reasonable effort, or

when doing so requires less employee time than engaging in manual

retrieval or redactions from non-electronic records, the office shall be

required to retrieve or extract such record or data electronically. In

such case, the office may charge a fee in accordance with paragraph 4(i)

and (ii) above.

(6) The office shall inform a person requesting a record of the esti-

mated cost of preparing a copy of the record if more than two hours of

an agency employee's time is needed, or if it is necessary to retain an

outside professional service to prepare a copy of the record.

(7) The office may require that the fee for copying or reproducing a

record be paid in advance of the preparation of such copy.

(8) The office may waive a fee in whole or in part when making copies

of records available.

(i) Public notice. A notice containing the title or name and business

address of the records access officers and appeals person and the

location where records can be seen or copies shall be posted in a

conspicuous location wherever records are kept and/or published in a

local newspaper of general circulation.

525.24 Limits on administrative expenses and executive compensation.

(a) Background and intent. The purpose of this section is to implement

Executive Order No. 38 (E.O. 38), issued by Governor Andrew Cuomo on

January 18, 2012, by exercising the authority of the Director of the

Office of Victim Services to issue regulations governing the use of

state funds and state-authorized payments in connection with providing

program services to members of the public. E.O. 38 provides for a limit

on administrative expenses and executive compensation of providers of

program services in order to meet the state's ongoing obligation to

ensure the proper use of taxpayer dollars and the most effective

provision of such services to the public. This section is meant to

establish the minimum expectations and requirements pursuant to E.O. 38.

Any contractual agreements or memoranda of understanding entered into

with the office may provide for additional expectations and requirements

beyond those enumerated in this section.

(b) Definitions. For purposes of this section:

(1) Administrative expenses are those expenses authorized and allow-

able pursuant to applicable agency regulations, contracts or other rules

that govern reimbursement with state funds or state-authorized payments

that are incurred in connection with the covered provider's overall

management and necessary overhead that cannot be attributed directly to

the provision of program services.

(i) Such expenses shall be limited to those permitted by the federal

Victims of Crime Act (VOCA, 42 USC Chapter 112 and related regulations)

and shall include but are not limited to the following expenses, if

otherwise authorized and allowable pursuant to applicable agency regu-

lations, contracts or other rules that govern reimbursement with state

funds or state-authorized payments:

(a) that portion of the salaries and benefits of staff performing

administrative and coordination functions that cannot be attributed to

particular program services, including but not limited to the executive

director or chief executive officer, financial officers such as the

chief financial officer or controller and accounting personnel, billing,

claiming or accounts payable and receivable personnel, human resources

personnel, public relations personnel, administrative office support

personnel, and information technology personnel where such expenses

cannot be attributed directly to the provision of program services;

(b) that portion of legal expenses that cannot be attributed directly

to the provision of program services; and

(c) that portion of expenses for office operations that cannot be

attributed directly to the provision of program services, including but

not limited to telephones, computer systems and networks, professional

and organizational dues, licenses, permits, subscriptions, publications,

audit services, postage, office supplies, conference expenses, publicity

and annual reports, insurance premiums, interest charges and equipment

that is expensed (rather than depreciated) in cost reports, where such

expenses cannot be attributed directly to the provision of program

services.

(ii) Administrative expenses shall not include:

(a) capital expenses, including but not limited to non-personal

service expenditures for the purchase, development, installation, and

maintenance of real estate or other real property;

(b) property rental, mortgage or maintenance expenses;

(c) taxes, payments in lieu of taxes or assessments paid to any unit

of government; or

(d) equipment rental, depreciation and interest expenses, including

expenditures for vehicles and fixed, major movable and adaptive equip-

ment that is expensed (rather than depreciated) in cost reports; or

(e) expenses of an amount greater than $ 10,000 that would otherwise

be administrative, except that they are either non-recurring (no more

frequent than once every five years) or not anticipated by a covered

provider e.g., litigation-related expenses). Such expenses shall not be

considered administrative expenses or program expenses for purposes of

this regulation; or

(f) that portion of the salaries and benefits of staff performing

policy development or research.

(2) Covered operating expenses shall mean the sum of program services

expenses and administrative expenses of a covered provider as defined in

this subdivision.

(3) Related organization shall have the same meaning as the same term

in Schedule R of the Internal Revenue Service's Form 990 except that for

purposes of this regulation a related organization must have received or

be anticipated to receive state funds or state-authorized payments from

a covered provider during the reporting period.

(4) Covered executive is a compensated director, trustee, managing

partner, or officer whose salary and/or benefits, in whole or in part,

are considered administrative expenses as defined in paragraph (1) of

this subdivision, and any key employee whose salary and/or benefits, in

whole or in part, are administrative expenses and whose executive

compensation during the reporting period exceeded $199,000. For the

purposes of this definition, the terms director," "trustee," "officer,"

and "key employee" shall have the same meaning as such terms in the

Internal Revenue Service's instructions accompanying Form 990, Part VII.

If the number of key employees employed by the covered provider who meet

this definition exceeds ten, then the covered provider shall report only

those ten key employees whose executive compensation is the greatest

during the reporting period and no other key employees shall be consid-

ered covered executives. Clinical and program personnel in a hospital or

other entity providing program services, including but not limited to

chairs of departments, heads of service, chief medical officers, direc-

tors of nursing, or similar types of personnel fulfilling administrative

functions that are nevertheless directly attributable to and comprise

program services shall not be considered covered executives for purposes

of limiting the use of state funds or state-authorized payments to

compensate them. In the event that a covered provider pays a related

organization to perform administrative or program services, the covered

executives of the related organization shall also be considered "covered

executives" of the covered provider for purposes of reporting and

compliance with this section if more than thirty (30) percent of such a

covered executive's compensation is derived from state funds or state-

authorized payments received from the covered provider. In such a

circumstance, the related organization shall not be subject to the limi-

tations on the use of state funds or state-authorized payments for

administrative expenses in subdivision (c) of this section solely as a

result of having covered executives.

(5)(i) Covered provider shall mean a contractor, subcontractor, gran-

tee or subgrantee that:

(a) has received pursuant to contract or other agreement with the

office, or with another governmental entity, including county and local

governments, or an entity contracting on its behalf, to render program

services, state funds or state-authorized payments during the covered

reporting period and the year prior to the covered reporting period, and

in an average annual amount greater than $500,000 during those two

years; and

(b) at least thirty (30) percent of whose total, annual in-state

revenues for the covered reporting period and for the year prior to the

covered reporting period were from state funds or state-authorized

payments. This percentage shall be calculated as a percentage of the

total annual revenues derived from and in connection with the provider's

activities within New York State, irrespective of whether the provider

derives additional revenues from activities in another state. The source

of such revenues shall include those from sources outside New York State

if such revenues were derived from or in connection with activities

inside New York State, including contributions by out-of-state individ-

uals or entities for in-state activities. Where applicable, a provider's

method of calculating in-state revenues for purposes of determining tax

liability or in connection with completion of its financial statements

shall be deemed acceptable by the office for the purpose of applying

this paragraph.

(ii) For purposes of this section, the method of accounting used by

the contractor, subcontractor, grantee or subgrantee in the preparation

of its annual financial statements shall be used, except that a contrac-

tor, subcontractor, grantee or subgrantee that otherwise reports to the

office using a different method of accounting shall use such method.

(iii) Covered provider shall not include:

(a) State, county, and local governmental units in New York State, and

tribal governments for the nine New York State recognized nations, and

any subdivisions or subsidiaries of the foregoing entities;

(b) Individuals or entities providing child care services who are in

receipt of child care subsidies pursuant to title 5-C or section 410 of

the Social Services Law, except that such providers may be considered a

covered provider if it also receives state funds or state-authorized

payments that are not child care subsidies pursuant to title 5-C or

section 410 of the Social Services Law and would otherwise satisfy the

criteria in this definition;

(c) Individual professional(s), partnerships, S-Corporations or other

entities at least seventy-five percent of whose program services paid

for by state funds or state-authorized payments are provided by the

individual professional(s), by the partner(s), or by the owner(s) of the

corporation or entity, rather than by employees or independent contrac-

tors employed or retained by the entity, as determined by the amounts

obtained in state funds or state-authorized payments for such program

services;

(d) Individuals or entities providing primarily or exclusively

products, rather than services, in exchange for state funds or state-au-

thorized payments, including but not limited to pharmacies and medical

equipment suppliers. For the purpose of applying this exception, the

percentage of revenues derived from products rather than from services

shall be used; or

(e) Entities within the same corporate family as a covered provider,

including parent or subsidiary corporations or entities, except where

such a corporation or entity would otherwise qualify as a covered

provider but for the fact that it has received its state funds or state-

authorized payments from a covered provider rather than directly from a

governmental agency.

(iv) Covered reporting period shall mean the provider's most recently

completed annual reporting period, as defined herein, commencing on or

after July 1, 2013.

(6) Executive compensation shall include all forms of cash and noncash

payments or benefits given directly or indirectly to a covered execu-

tive, including but not limited to salary and wages, bonuses, dividends,

distributions to a shareholder/partner from the current reporting peri-

od's earnings where such distributions represent compensatory or guaran-

teed payments or compensatory partnership profits allocation or compen-

satory partnership equity interest for services rendered during such

reporting period, and other financial arrangements or transactions such

as personal vehicles, housing, below-market loans, payment of personal

or family travel, entertainment, and personal use of the organization's

property, reportable on a covered executive's W-2 or 1099 form, except

that mandated benefits (e.g., Social Security, worker's compensation,

unemployment insurance and short-term disability insurance), and other

benefits such as health and life insurance premiums, and retirement and

deferred compensation plan contributions that are consistent with those

provided to the covered provider's other employees shall not be included

in the calculation of executive compensation. For the purposes of this

definition, such benefits shall be considered consistent with those

provided to other employees where the intended value of the benefit is

substantially equal, even where the cost to the covered provider to

provide such a benefit may differ. With respect to employer contrib-

utions to retirement and deferred compensation plans that are not

consistent with those provided to other employees, executive compen-

sation shall be deemed to include only those amounts contributed or

accrued during the reporting period for the benefit or intended benefit

of the covered executive, even if not reported on the executive's W-2 or

1099 for that reporting period (but not those amounts that vested during

such period but were contributed or accrued prior to the period).

(7) Office shall mean the Office of Victim Services.

(8)(i) Program services are those services rendered by a covered

provider or its agent directly to and for the benefit of members of the

public (and not for the benefit or on behalf of the state or the award-

ing agency) that are paid for in whole or in part by state funds or

state-authorized funds.

(ii) Program services shall not include:

(a) policy development or research; or

(b) staffing or other assistance to a state agency or local unit of

government in such agency's or government's provision of services to

members of the public.

(9) Program services expenses are those expenses authorized and allow-

able pursuant to applicable agency regulations, contracts or other rules

that govern reimbursement with state funds or state-authorized payments

that are incurred by a covered provider or its agent in direct

connection with the provision of program services.

(i) Such expenses shall be limited to those permitted by the federal

Victims of Crime Act (VOCA. 42 USC Chapter 112 and related regulations)

and shall include but are not limited to the following expenses, if

otherwise authorized and allowable pursuant to applicable agency regu-

lations, contracts or other rules that govern reimbursement with state

funds or state-authorized payments:

(a) that portion of the salaries and benefits of staff providing

particular program services, including but not limited to, employees or

contractors providing direct care to clients and supervisory personnel

and support personnel whose work is attributable to a specific program

in whole or in part and contributes directly to the quality or scope of

the program services provided;

(b) that portion of the salaries and benefits of quality assurance and

supervisory personnel whose work is attributable in whole or in part to

particular programs and contributes to the quality or scope of the

program services provided by other personnel and related expenses;

(c) that portion of expenses incurred in connection with and attribut-

able to the provision of particular program services, including but not

limited to, travel costs to and from client residences, direct care

supplies, public outreach or education or personnel training to facili-

tate program services delivery, information technology and computer

services and systems directly attributable to program services, includ-

ing but not limited to, electronic patient records systems to facilitate

improved patient care or computer systems used in program services

delivery or documentation of program services provided, quality assur-

ance and control expenses, and legal expenses necessary to accomplish

particular program service objectives; and

(d) Expenses related to services which permit for a victim or person

related to a victim to access information related to important dates and

developments relating to criminal proceedings at issue in a timely and

efficient manner, pursuant to 42 USC Sec. 10603e.

(ii) Program services expenses shall not include:

(a) capital expenses, including but not limited to non-personal

service expenditures for the purchase, development, installation, and

maintenance of real estate or other real property; or

(b) taxes, payments in lieu of taxes or assessments paid to any unit

of government; or

(c) equipment rental, depreciation and interest expenses, including

but not limited to expenditures for vehicles and fixed, major movable

and adaptive equipment that is expensed (rather than depreciated) in

cost reports; or

(d) expenses of an amount greater than $10,000 that would otherwise be

administrative, except that they are either non-recurring (no more

frequent than once every five years) or not anticipated by a covered

provider (e.g., litigation-related expenses). Such expenses shall not be

considered administrative expenses or program expenses for purposes of

this regulation; or

(e) that portion of the salaries and benefits of staff performing

policy development or research.

(10) Reporting period shall mean, at the provider's option, the calen-

dar year or, where applicable, the fiscal year used by a provider.

However, where a provider is required to file an annual cost report with

the state, reporting period shall mean the reporting period applicable

to said cost report.

(11)(i) State-authorized payments refer to those payments of funds

that are not state funds but which are distributed, or disbursed upon a

New York State agency's approval or by another governmental unit within

New York State upon such approval, including but not limited to the

federal and county portions of Medicaid program payments approved by the

state agency. The office shall publish a list of government programs

whose funds shall be considered state-authorized payments prior to the

effective date of this regulation.

(ii) State-authorized payments shall not include any payments solely

for the following purposes:

(a) procurement contracts awarded on a "lowest price" basis pursuant

to section 163 of the State Finance Law;

(b) awards to state or local units of government except to the extent

such funds or payments are used by such government unit to pay covered

providers to provide program services through a contract or other agree-

ment;

(c) capital expenses, including but not limited to non-personal

service expenditures for the purchase, development, installation, and

maintenance of real estate or other real property, or equipment;

(d) direct payments of state funds or state-authorized payments, or

provision of vouchers or other items of monetary value that may be used

to secure specific services selected by the individual, or health insur-

ance premiums including but not limited to New York State Health Insur-

ance Program (NYSHIP) premium payments, or Supplemental Security Income

(SSI) payments, to or on behalf of individual members of the public;

(e) wage or other salary subsidies paid to employers to support the

hiring or retention of their employees;

(f) awards to for-profit corporations or other entities engaged exclu-

sively in commercial or manufacturing activities and not in the

provision of program services;

(g) policy development or research; or

(h) funds expressly intended to pay exclusively for administrative

expenses, including but not limited to Community Service Program "core"

contract funding for HIV/AIDS services programs.

(12) (i) State funds are those funds appropriated by law in the annual

state budget pursuant to article VII, section 7 of the New York State

Constitution. The office shall publish a list of government programs

whose funds shall be considered state funds prior to the effective date

of this regulation.

(ii) State funds shall not include any payments solely for the follow-

ing purposes:

(a) procurement contracts awarded on a "lowest price" basis pursuant

to section 163 of the State Finance Law;

(b) awards to state or local units of government except to the extent

such funds or payments are used by such government unit to pay covered

providers to provide program services through a contract or other agree-

ment;

(c) capital expenses, including but not limited to non-personal

service expenditures for the purchase, development, installation, and

maintenance of real estate or other real property, or equipment;

(d) direct payments of state funds or state-authorized payments, or

provision of vouchers or other items of monetary value that may be used

to secure specific services selected by the individual, or health insur-

ance premiums including but not limited to New York State Health Insur-

ance Program (NYSHIP) premium payments, or Supplemental Security Income

(SSI) payments, to or on behalf of individual members of the public;

(e) wage or salary subsidies paid to employers to support the hiring

or retention of their employees;

(f) awards to for-profit corporations or other entities engaged exclu-

sively in commercial or manufacturing activities and not in the

provision of program services;

(g) policy development or research; or

(h) funds expressly intended to pay exclusively for administrative

expenses, including but not limited to Community Service Program "core"

contract funding for HIV/AIDS services programs.

(c) Limits on administrative expenses.

(1) Limits on allowable administrative expenses. No less than seven-

ty-five (75) percent of the covered operating expenses of a covered

provider paid for with state funds or state-authorized payments shall be

program services expenses rather than administrative expenses. This

percentage shall increase by five (5) percent each year until it shall

be no less than eighty-five (85) percent in 2015 and for each year ther-

eafter. In determining whether an expense is a program service expense

or an administrative expense, a covered provider may allocate a portion

of the expense to each type if such allocation is supported by the

nature of the expense. Such allocation may include allocation of

portions of an employee's time and compensation to administrative or

program services. Commencing on July 1, 2013, the limits on allowable

administrative expenses pursuant to this section shall be effective and

applicable to each covered provider on the first day of each provider's

respective covered reporting period.

(2) Subcontractors, subgrantees and agents of covered providers. The

restriction on allowable administrative expenses in paragraph (1) of

this subdivision and the reporting requirements in subdivision (h) of

this section shall apply to subcontractors, subgrantees and agents of

covered providers if and to the extent that such a subcontractor,

subgrantee or agent has received state funds or state-authorized

payments from the covered provider to provide program or administrative

services during the reporting period and would otherwise meet the defi-

nition of a covered provider but for the fact that it has received state

funds or state-authorized payments from the covered provider rather than

directly from a governmental agency. A covered provider shall incorpo-

rate into its agreement with such a subcontractor, subgrantee or agent

the terms of this section by reference to require and facilitate compli-

ance. Upon request, covered providers shall promptly report to the fund-

ing or authorizing agency the identity of such subcontractors, subgran-

tees and agents, along with any other information requested by that

agency or by the office or its designee. A covered provider shall not be

held responsible for a subcontractor's or agent's failure to comply with

these regulations.

(3) Covered providers receiving state funds or state-authorized

payments from county or local government or from an entity contracting

on its behalf. The office or its designee, rather than the county or

local unit of government or entity contracting on behalf of such govern-

ment, shall be responsible for obtaining the necessary reporting from

and compliance by such covered providers, and shall issue guidance to

affected county and local governments to set forth the procedures by

which the office or its designee shall do so.

(4) Covered providers with multiple sources of state funds or state-

authorized payments. If a covered provider receives state funds or

state-authorized payments from multiple sources, the provider's compli-

ance with the restriction on allowable administrative expenses in para-

graph (1) of this subdivision shall be determined based upon the total

amount of program services expenses and administrative expenses paid for

by such funding received from all of such sources. As set forth in

subdivision (h) of this section, the covered provider shall report all

of such state funds and state-authorized payments, and the expenses paid

for by such funding, in the form and at the time specified by the office

or its designee.

(5) Other limits on administrative expenses. If the contract, grant,

or other agreement is subject to more stringent limits on administrative

expenses, whether through law or contract, such limits shall control and

shall not be affected by the less stringent limits imposed by this

section. However, the definition and interpretation of terms in this

section shall not be affected or limited by the definition or interpre-

tation of terms in other regulations or agreements.

(d) Limits on executive compensation.

(1) Limits on executive compensation. Except if a covered provider has

obtained a waiver pursuant to subdivision (e) of this section, a covered

provider as defined in this section shall not use state funds or state-

authorized payments for executive compensation given directly or indi-

rectly to a covered executive in an amount greater than $199,000 per

annum, provided, however, that the office shall review this figure annu-

ally to determine whether adjustment is necessary based on appropriate

factors and subject to the approval of the Director of the Division of

the Budget. Commencing on July 1, 2013, the limits on executive compen-

sation pursuant to this section shall be effective and applicable to

each covered provider on the first day of each covered provider's

respective covered reporting period.

(2) Except if a covered provider has obtained a waiver pursuant to

subdivision (e) of this section, where a covered provider's executive

compensation given to a covered executive is greater than $199,000 per

annum (including not only state funds and state-authorized payments but

also any other sources of funding), and either:

(i) greater than the 75th percentile of that compensation provided to

comparable executives in other providers of the same size and within the

same program service sector and the same or comparable geographic area

as established by a compensation survey identified, provided, or recog-

nized by the office and the Director of the Division of the Budget, or

(ii) was not reviewed and approved by the covered provider's board of

directors or equivalent governing body (if such a board or body exists)

including at least two independent directors or voting members (or,

where a duly authorized compensation committee including at least two

independent directors or voting members conducted such review on behalf

of the full board, such actions were not reviewed and ratified by such

board), or such review did not include an assessment of appropriate

comparability data; then such covered provider shall be subject to the

penalties set forth in subdivision (i) of this section. To determine

whether a covered provider may be subject to penalties, such provider

shall provide, upon request by the office or its designee, contemporane-

ous documentation in a form and level of detail sufficient to allow such

determination to be made.

(3) Program services rendered by covered executives. The limit on

executive compensation pursuant to this Section shall not be applied to

limit reimbursement with state funds or state-authorized payments for

reasonable compensation paid to a covered executive for program

services, including but not limited to supervisory services performed to

facilitate the covered provider's program services, rendered by the

executive outside of his or her managerial or policy-making duties.

Documentation of such program services rendered shall be used by the

covered provider to determine that percentage, if any, of the covered

executive's compensation that is attributable to program services and

that compensation shall not be considered in the calculation of his or

her executive compensation. Such documentation shall be maintained and

provided to the office or its designee upon request. Clinical and

program personnel in a hospital or other entity providing program

services, including but not limited to chairs of departments, heads of

service, chief medical officers, directors of nursing, or similar types

of personnel fulfilling administrative functions that are nevertheless

directly attributable to and comprise program services shall not be

considered covered executives for purposes of limiting the use of state

funds or state-authorized payments to compensate them.

(4) Covered providers with multiple sources of state funds or state-

authorized payments. If a covered provider receives state funds or

state-authorized payments from multiple sources, the provider's compli-

ance with the limits on executive compensation in paragraphs (1) and (2)

of this subdivision shall be determined based upon the total amount of

such funding received and the reimbursements received from all sources

of state funds or state-authorized payments. As set forth in subdivision

(h) of this section, the covered provider shall report all of such state

funds and state-authorized payments in the form specified by the office

or its designee.

(5) Subcontractors, subgrantees and agents of covered providers. The

limits on executive compensation in paragraphs (1) and (2) of this

subdivision and the reporting requirements required in subdivision (h)

of this section shall apply to subcontractors, subgrantees and agents of

covered providers if and to the extent that such a subcontractor,

subgrantee or agent has received state funds or state-authorized

payments from the covered provider to provide program or administrative

services during the reporting period and would otherwise meet the defi-

nition of a covered provider but for the fact that it has received state

funds or state-authorized payments from the covered provider rather than

directly from a governmental agency. A covered provider shall incorpo-

rate into its agreement with such a subcontractor or agent the terms of

this section by reference to require and facilitate compliance. Upon

request, covered providers shall promptly report to the funding or

authorizing agency the identity of such subcontractors, subgrantees and

agents, along with any other information requested by that agency or by

the office or its designee. A covered provider shall not be held respon-

sible for a subcontractor's or agent's failure to comply with these

regulations.

(6) Covered Providers receiving State Funds or State-Authorized

Payments from county or local government or an entity contracting on its

behalf. The office or its designee, rather than the county or local

unit of government or entity contracting on behalf of such government,

shall be responsible for obtaining the necessary reporting from and

compliance by such covered providers, and shall issue guidance to

affected county and local governments to set forth the procedures by

which the office or its designee shall do so.

(7) Other Limits on Executive Compensation. If the contract, grant, or

other agreement is subject to more stringent limits on executive compen-

sation, whether through law or contract, such limits shall control and

shall not be affected by the less stringent limits imposed by this

section. However, the definition and interpretation of terms in this

section shall not be affected or limited by the definition or interpre-

tation of terms in other regulations or agreements.

(8) A covered provider's contract or other agreement with a covered

executive agreed to prior to July 1, 2012 shall not be subject to the

limits in this section during the term of the contract, except that:

(i) Covered providers must apply for a waiver for any contracts or

agreements with covered executives for executive compensation that

exceeds or otherwise fails to comply with these regulations if such

contracts or agreements extend beyond April 1, 2015; and

(ii) renewals of such contracts or agreements after the completion of

their term must comply with these regulations.

(e) Waivers for limits on executive compensation. The office or its

designee and the Director of the Division of the Budget may grant a

waiver to the limits on executive compensation in subdivision (d) of

this section for the executive compensation for one or more covered

executives, or for one or more positions, during the reporting period

and, where appropriate, for a longer period upon a showing of good

cause. To be considered, an application for such a waiver must comply

with this subdivision in its entirety.

(1) The application must be filed no later than concurrent with the

timely submission of the covered provider's EO

38 Disclosure Form required pursuant to subdivision (h) of this section

for the reporting period for which the waiver is requested. The applica-

tion shall be transmitted in the manner and form specified by the office

or its designee and the Director of the Division of the Budget - the

office shall consider untimely waiver applications where a reasonable

cause for such delay is shown.

(2) The following factors, in addition to any other deemed relevant by

the office or its designee and the Director of the Division of the Budg-

et, shall be considered in the determination of whether to grant a waiv-

er:

(i) the extent to which the executive compensation that is the subject

of the waiver is comparable to that given to comparable executives in

other providers of the same size and within the same program service

sector and the same or comparable geographic area;

(ii) the extent to which the covered provider would be unable to

provide the program services reimbursed with state funds or state-au-

thorized payments at the same levels of quality and availability without

obtaining reimbursement for executive compensation given to a covered

executive in excess of the limits in subdivision (d) of this section;

(iii) the nature, size, and complexity of the covered provider's oper-

ations and the program services provided;

(iv) the provider's review and approval process for the executive

compensation that is the subject of the waiver, including whether such

process involved a review and approval by the board of directors or

other governing body (if such a board or body exists), whether such

review was conducted by at least two independent directors or independ-

ent members of the governing body, whether such review included an

assessment of comparability data including a compensation survey, and

contemporaneous substantiation of the deliberation and decision to

approve such executive compensation;

(v) the qualifications and experience possessed by or required for the

covered executive(s) or position(s), respectively; and

(vi) the provider's efforts, if any, to secure executives with the

same levels of experience, expertise, and skills for the positions of

covered executives at lower levels of compensation.

(3) A waiver to the limits set forth in subdivision (d) of this

section shall be granted only where a covered provider has demonstrated

good cause supporting such a waiver, and has provided any documentation

requested by the office or its designee or the Director of the Division

of the Budget to support such a waiver. Unless additional information

has been requested, but not received from the covered provider, a deci-

sion on a timely submitted waiver application shall be provided no later

than sixty (60) calendar days after submission of the application.

(4) If granted, a waiver to a covered provider shall remain in effect

for the period of time specified by the office or its designee and the

Director of the Division of the Budget for the covered executive

position(s) at issue, but shall be deemed revoked when:

(i) the executive compensation that is the subject of the waiver

increases by more than five (5) percent in any calendar year; or

(ii) upon notice provided at the discretion of the office or its

designee as a result of additional relevant circumstances.

(5) Unless already publicly available, information provided by a

covered provider to the office in connection with a waiver application

regarding the limits on executive compensation shall not be subject to

public disclosure under the state's Freedom of Information Law.

(f) Waivers for limit on reimbursement for administrative expenses.

The office or its designee and the Director of the Division of the Budg-

et may grant a waiver to obtain reimbursement for administrative

expenses incurred during the reporting period and thereafter in excess

of the limit set forth in subdivision (c) of this section upon a showing

of good cause. To be considered, an application for such a waiver must

comply with this subdivision in its entirety.

(1) The application must be filed no later than concurrent with the

timely submission of the covered provider's EO

38 Disclosure Form for the period for which the waiver is requested, as

required pursuant to subdivision (h) of this section. The office shall

consider untimely waiver applications where a reasonable cause for such

delay is shown.

(2) The following factors, in addition to any others deemed relevant

by the office or its designee and the Director of the Division of the

Budget, shall be considered in the determination of whether to grant a

waiver:

(i) The extent to which the administrative expenses that are the

subject of the waiver are necessary or avoidable;

(ii) Evidence that a failure to reimburse specific administrative

expenses that are the subject of the waiver would negatively affect the

availability or quality of program services in the covered provider's

geographic area;

(iii) The nature, size, and complexity of the covered provider's oper-

ations and the program services provided;

(iv) The provider's efforts, if any, to monitor and control adminis-

trative expenses and to limit requests for reimbursement for such costs;

and

(v) The provider's efforts, if any, to find other sources of funding

to support its administrative expenses and the nature and extent of such

efforts and funding sources.

(3) A waiver to the limit set forth in subdivision (c) of this section

shall be granted only where a covered provider has demonstrated good

cause supporting such a waiver, and has provided any documentation

requested by the office or its designee or the Director of the Division

of the Budget to support such a waiver. Unless additional information

has been requested but not received from the covered provider, a deci-

sion on a timely submitted waiver application shall be provided no later

than sixty (60) calendar days after submission of the application.

(4) If granted, a waiver granted to a covered provider shall remain in

effect only for the reporting period, except that the covered provider

may request in its waiver application and the office or its designee and

the Director of the Division of the Budget may grant an extension of the

effective period of such waiver when the waiver is granted.

(5) Unless already publicly available, information provided by a

covered provider to the office in connection with a waiver application

regarding the limit on administration expenses shall not be subject to

public disclosure under the state's Freedom of Information Law.

(g) Denial of waiver request.

(1) If the office or its designee or the Director of the Division of

the Budget propose to deny a request for waiver made pursuant to either

subdivision (e) or (f) of this section, the applicant shall be given

written notice of the proposed denial, stating the reason or reasons for

such proposed denial. Such notice shall be sent by certified mail and

shall be a final determination to be effective thirty (30) calendar days

from the date of the notice, unless reconsideration is requested;

(2) If the office or its designee or the Director of the Division of

the Budget provides a notice of proposed denial, the applicant may

request consideration of the proposed denial by submitting a written

request for reconsideration within thirty (30) calendar days of the date

of the notice of proposed denial. Submission of a request for reconsid-

eration within thirty (30) calendar days shall stay any action to deny

an applicant's request for a waiver, pending a decision regarding such

request for reconsideration, and shall stay any action to enter into a

contract or other agreement. Any vouchers submitted by the applicant for

payment by the office during which such reconsideration is pending may

be considered incomplete at the office's discretion.

(3) The written request for reconsideration shall be signed by the

owner(s) or chief executive officer of the applicant, and shall include

all information the applicant wishes to be considered, including any

written documentation that would controvert the reason(s) for the denial

or disclose that the denial was based upon a mistake of fact;

(4) If the applicant properly seeks reconsideration of the proposed

denial, the office or its designee or the Director of the Division of

the Budget shall review the proposed denial and shall issue a written

determination after reconsideration. The determination after reconsider-

ation may affirm, revoke, or modify the proposed denial. Such determi-

nation shall be a final decision.

(h) Reporting by covered providers.

(1) Beginning after the effective date of this regulation, covered

providers shall submit a completed EO

38 Disclosure Form for each covered reporting period. Such form shall be

submitted no later than one hundred eighty (180) calendar days following

the covered reporting period, unless otherwise authorized. Such form

shall be submitted in the manner and form specified by the office or its

designee. Covered providers shall further provide the information

requested in that form, and any other information requested, upon the

request of the office or its designee at any time during the term of or

prior to the execution of any contract or agreement with such provider.

(2) Covered providers receiving state funds or state-authorized

payments from county or local government or from an entity contracting

on behalf of such government must report directly to the office as

required by this section. The county or local government shall advise

such covered providers of their obligation to report directly to the

office under this section, but shall not be responsible for receiving or

forwarding such reports to the department.

(3) Failure to report. A covered provider's failure to submit a

completed EO

38 Disclosure Form, or to provide additional or clarifying information

at the request of the office or its designee, may result in the termi-

nation or non-renewal of a contract or agreement for state funds or

state-authorized payments.

(i) Penalties.

(1) Notice of preliminary determination of non-compliance. Whenever it

is determined that a covered provider may not be in compliance with the

requirements of subdivisions (c) or (d) of this section and has not

obtained a waiver, the provider shall be notified in writing of the

basis for that determination. Such notice shall provide the covered

provider with an opportunity and a procedure to submit additional or

clarifying information within thirty (30) calendar days of the provid-

er's receipt of such notice to demonstrate compliance with this section.

Failure to submit additional or clarifying information within the

required time period shall result in the determination of non-compliance

becoming final.

(2) Corrective action period. If the determination of non-compliance

becomes final as set forth in paragraph (1) of this subdivision or if

the office or its designee determines, after reviewing and considering

any information submitted by the covered provider, that such provider is

not in compliance with the requirements of subdivisions (c) or (d) of

this section, the provider shall receive notice of such determination

and a notice to cure. Such notice shall allow the covered provider a

period of not less than six (6) months to correct the violation(s) iden-

tified (the "corrective action period") prior to additional enforcement

action or penalties being imposed, and shall require that the covered

provider submit within thirty (30) calendar days a corrective action

plan ("CAP") for approval by the office or its designee.

(3) Corrective action plan. Within thirty (30) calendar days of

receipt of the covered provider's CAP, the office or its designee shall

either approve such CAP or request clarification or alterations. The

covered provider shall make such alterations to the CAP as may be

reasonably required by the office or its designee. Once the CAP has been

approved and the covered provider notified, and unless otherwise

provided in the approved CAP, the covered provider shall have six (6)

months to complete the CAP and comply with this section.

(4) Failure to cure. At the conclusion of the period for implementa-

tion of an approved CAP, the office or its designee may request informa-

tion from the covered provider to determine whether the CAP has been

fully and properly completed. If it has been so completed, the matter

shall be considered closed and no further action on the part of the

office or the provider shall be required. If the office or its designee

determines that the CAP has not been fully and properly implemented

within the designated corrective action period, the office or its desig-

nee shall provide written notice to the provider and may take one or

more of the following actions, taking into account the seriousness of

the violations, the nature of the provider's services, and the provid-

er's efforts to correct the violations, if any:

(i) At its sole discretion, modify the CAP and/or extend the time for

the provider to complete implementation;

(ii) Issue a final determination of non-compliance, together with a

notice of the sanctions which the office seeks to impose. Such sanctions

may include:

(a) Redirection of state funds or state-authorized payments to be used

to provide program services, where possible and consistent with federal

and state laws;

(b) Suspension, modification, limitation, or revocation of the provid-

er's license(s) to operate program(s) for the delivery of program

services;

(c) Suspension, modification or termination of contracts or other

agreements with the covered provider; and

(d) Any other lawful actions or penalties deemed appropriate by the

office or its designee.

(5) Opportunity for appeal. Within thirty (30) calendar days of

receipt of a final determination of noncompliance and notice of proposed

sanctions, a covered provider may request an administrative appeal by

submitting a written request to the name and address set forth in the

notice. The request must include a detailed explanation of the legal and

factual bases for the provider's challenge to the determination and all

documentation in support of the provider's position. If a request for an

administrative appeal is not made within the required thirty (30) calen-

dar days, the determination of noncompliance shall become final and the

proposed sanction shall be imposed. Unless the office seeks to impose a

sanction for which an administrative hearing is otherwise required by

statute or regulation, the covered provider's appeal shall be limited to

an administrative review of the record. Following the review, the

covered provider shall be provided with a final written determination

setting forth the findings of fact and conclusions of law that support

the determination. If the provider is found to be non-compliant, the

proposed sanction may be imposed forthwith.

525.25 (Reserved)

525.26 (Reserved)

525.27 (Reserved)

525.28 (Reserved)

525.29 Construction of rules. This Part shall be liberally construed

to accomplish the purpose of the law creating the office and the poli-

cies of the office.

525.30 Severability. If any provisions of this Part or the applica-

tion thereof to any person or circumstances are adjudged invalid by a

court of competent jurisdiction, such judgement shall not affect or

impair the validity of the other provisions of this Part or the applica-

tion thereof to other persons and circumstances.