

IDAPA 17 – INDUSTRIAL COMMISSION

DOCKET NO. 17-0000-2100

NOTICE OF OMNIBUS RULEMAKING – PROPOSED RULEMAKING

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 72-1004, 72-1013, and 72-1104, Idaho Code.

PUBLIC HEARING SCHEDULE: Oral comment concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This proposed rulemaking publishes the following rule chapter(s) previously submitted to and reviewed by the Idaho Legislature under IDAPA 17, rules of the Industrial Commission:

IDAPA 17

- 17.10.01, *Administrative Rules Under the Crime Victims Compensation Act*; and
- 17.11.01, *Administrative Rules of Peace Officer and Detention Officer Temporary Disability Act*.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: None.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2022 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rule(s) being reauthorized by this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the proposed rule(s) attached hereto.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule(s), contact Kamerron Slay, (208) 334-6017 or kamerron.slay@iic.idaho.gov.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

DATED this October 20, 2021.

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17.10.01 – ADMINISTRATIVE RULES UNDER THE CRIME VICTIMS COMPENSATION ACT

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Sections 72-1004 and 72-1013, Idaho Code. ()

001. SCOPE.

This chapter includes the Industrial Commission's procedures for administering the Crime Victim's Compensation Act. ()

002. ADMINISTRATIVE APPEALS.

Chapter 1, Section 11, Subsection 5, provides for appeals to the Commission from decisions of the Crime Victims Compensation Bureau. ()

003. -- 009. (RESERVED)

010. DEFINITIONS.

01. Commission. The Idaho Industrial Commission. ()

02. Crime Victim's Compensation Program. The program administered by the Crime Victim's Bureau of the Idaho Industrial Commission under the Crime Victim's Compensation Act. ()

03. Employer. The employer at the time of the criminally injurious conduct on which the Application for Compensation is based. ()

04. Medical Services. Words and terms used for determining the allowable payment for medical services under these rules are defined in Subsections 010.04.a. through 010.04.h. ()

a. "Allowable payment" means the lower of the charge for medical services calculated in accordance with this rule or as billed by the provider. ()

b. "Ambulatory Surgery Center (ASC)" means a facility providing surgical services on an outpatient basis only. ()

c. "Hospital" is any acute care facility providing medical or rehabilitation services on an inpatient and outpatient basis. ()

i. Large Hospital means any hospital with more than one hundred (100) acute care beds. ()

ii. Small Hospital means any hospital with one hundred (100) acute care beds or less. ()

d. "Provider" means any person, firm, corporation, partnership, association, agency, institution, or other legal entity providing any kind of medical service related to the treatment of a claimant for benefits under the Idaho Crime Victims Compensation Act. ()

e. "Medical Service" means medical, surgical, dental, mental health, or other attendance or treatment, nurse and hospital service, medicine, apparatus, appliance, prostheses and related service, facility, equipment and supply. ()

f. "Reasonable" means a charge does not exceed the Provider's "usual" charge and does not exceed the "customary" charge, as defined in Paragraph 010.04.h. ()

g. "Usual" means the most frequent charge made by an individual Provider for a given medical service to non-industrially injured patients. ()

h. "Customary" means a charge that has an upper limit no higher than the 90th percentile, as determined by the Commission, of usual charges made by Idaho Providers for a given medical service. ()

05. Wages. Means the wages at the time of the criminally injurious conduct on which the Application for Compensation is based and includes non-cash remuneration such as lodging and meals provided by the Employer and gratuities such as tips, which are not paid by the employer, but that are received by the victim in the normal course of his employment. ()

011. APPLICATIONS FOR COMPENSATION.

01. Claim for Benefits. To claim benefits under the Crime Victims Compensation Act, the claimant shall file an Application for Compensation with the Crime Victim's Compensation Bureau of the Commission. Applications for Compensation shall be made using the form approved by the Commission. An Application for Compensation is deemed filed when it is received at the Commission's office in Boise. ()

02. Providing Information. Before paying benefits to any claimant, the Commission shall gather sufficient information to establish that the claimant is eligible for benefits. The Commission may require the claimant to assist the Commission in obtaining that information. ()

03. Employment Verification. To verify information concerning a victim's employment, the Commission may require the victim's Employer or Employers to complete an Employment Verification form or the Commission may obtain such information from an Employer by telephone. ()

04. Order. After sufficient information has been gathered pursuant to Subsection 011.02 of this rule, the Commission may enter an award granting or partially granting benefits or an order denying benefits. The Commission may also enter orders necessary to further the purposes of the Act. ()

05. Finality of Order. An award or order issued by the Commission shall be final and conclusive as to all matters considered in the award or order; provided that within twenty (20) days from the date that such an award or order is issued, the claimant may file a request that the Crime Victim's Compensation Program reconsider the order, or the Crime Victim's Compensation Program may reconsider the matter on its own motion, and the order of the Crime Victim's Compensation Program shall be final upon issuance of the order on reconsideration; and provided further that, within forty five (45) days from the date that any order is issued by the Crime Victim's Compensation Program, a claimant may file a Request for Hearing before the Commission. The Hearing shall be held in accordance with the procedures set out in Section 012 of these rules. Requests for Hearing before the Commission and requests that the Crime Victim's Compensation Program reconsider an order is deemed filed when received at the Commission's office in Boise. ()

06. Recipients of Payments for Medical Services. If, pursuant to any order of the Commission or the Crime Victims Bureau, it is determined that a claimant is entitled to payment of medical expenses as provided in Section 72-1019(2), Idaho Code, or funeral or burial expenses as provided in Section 72-1019(4), Idaho Code, payment shall be made directly to the medical provider or the provider of funeral or burial services unless the claimant has already paid the provider; if the claimant has already paid the provider, payment shall be made to the claimant. ()

07. Allowable Payments for Medical Services. The Commission shall pay providers the allowable payment for medical services under these rules adopted in accordance with Section 72-1026, Idaho Code. ()

a. Adoption of Standard. The Commission hereby adopts the Resource-Based Relative Value Scale (RBRVS), published by the Centers for Medicare and Medicaid Services of the U.S. Department of Health and Human Services, as amended, as the standard to be used for determining the allowable payment under the Crime Victims Compensation Act for medical services provided by providers other than hospitals and ASCs. The standard for determining the allowable payment for hospitals and ASCs shall be: ()

i. For large hospitals: Eighty-five percent (85%) of the reasonable inpatient charge. ()

ii. For small hospitals: Ninety percent (90%) of the reasonable inpatient charge. ()

iii. For ambulatory surgery centers (ASCs) and hospital outpatient charges: Eighty percent (80%) of the reasonable charge. ()

iv. Surgically implanted hardware shall be reimbursed at the rate of actual cost plus fifty percent (50%). ()

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v. Paragraph 011.07.e. of this rule, does not apply to hospitals or ASCs. The Commission shall determine the allowable payment for hospital and ASC services based on all relevant evidence. ()

b. Conversion Factors. The following conversion factors shall be applied to the fully-implemented facility or non-facility Relative Value Unit (RVU) as determined by place of service found in the latest RBRVS, as amended, that was published before December 31 of the previous calendar year for a medical service identified by a code assigned to that service in the latest edition of the Physicians' Current Procedural Terminology (CPT), published by the American Medical Association, as amended:

MEDICAL FEE SCHEDULE		
DESCRIPTION	CODE RANGE(S)	CONVERSION FACTOR
Anesthesia	00000 - 09999	\$60.05
Surgery - Group One	22000 - 22999 Spine 23000 - 24999 Shoulder, Upper Arm, & Elbow 25000 - 27299 Forearm, Wrist, Hand, Pelvis & Hip 27300 - 27999 Leg, Knee, & Ankle 29800 - 29999 Endoscopy & Arthroscopy 61000 - 61999 Skull, Meninges & Brain 62000 - 62259 Repair, Neuroendoscopy & Shunts 63000 - 63999 Spine & Spinal Cord	\$144.48
Surgery - Group Two	28000 - 28999 Foot & Toes 64550 - 64999 Nerves & Nervous System	\$129.00
Surgery - Group Three	13000 - 19999 Integumentary System 20650 - 21999 Musculoskeletal System	\$113.52
Surgery - Group Four	20000 - 20615 Musculoskeletal System 30000 - 39999 Respiratory & Cardiovascular 40000 - 49999 Digestive System 50000 - 59999 Urinary System 60000 - 60999 Endocrine System 62260 - 62999 Spine & Spinal Cord 64000 - 64549 Nerves & Nervous System 65000 - 69999 Eye & Ear	\$87.72
Surgery - Group Five	10000 - 12999 Integumentary System 29000 - 29799 Casts & Strapping	\$69.14
Radiology	70000 - 79999 Radiology	\$87.72
Pathology & Laboratory	80000 - 89999 Pathology & Laboratory	To Be Determined
Medicine - Group One	90000 - 90749 Immunization, Injections, & Infusions 94000 - 94999 Pulmonary / Pulse Oximetry 97000 - 97799 Physical Medicine & Rehabilitation 97800 - 98999 Acupuncture, Osteopathy, & Chiropractic	\$46.44
Medicine - Group Two	90750 - 92999 Psychiatry & Medicine 96040 - 96999 Assessments & Special Procedures 99000 - 99607 E / M & Miscellaneous Services	\$66.56

MEDICAL FEE SCHEDULE		
DESCRIPTION	CODE RANGE(S)	CONVERSION FACTOR
Medicine - Group Three	93000 - 93999	Cardiography, Catheterization, & Vascular Studies
	95000 - 96020	Allergy / Neuromuscular Procedures
		\$72.24

()

c. The Conversion Factor for the Anesthesiology CPT Codes shall be multiplied by the Anesthesia Base Units assigned to that CPT Code by the Centers for Medicare and Medicaid Services of the U.S. Department of Health and Human Services as of December 31 of the previous calendar year, plus the allowable time units reported for the procedure. Time units are computed by dividing reported time by fifteen (15) minutes. Time units will not be used for CPT Code 01996. ()

d. Adjustment of Conversion Factors. The conversion factors set out in this rule may be adjusted each fiscal year (FY), starting with FY 2012, as determined by the Commission. ()

e. Services Without a CPT Code, RVU or Conversion Factor. The allowable payment for medical services that do not have a current CPT code, a currently assigned RVU, or a conversion factor will be the reasonable charge for that service, based upon the usual and customary charge and other relevant evidence, as determined by the Commission. Where a service with a CPT Code, RVU, and conversion factor is, nonetheless, claimed to be exceptional or unusual, the Commission may, notwithstanding the conversion factor for that service set out in Subsection 011.07.b. of this rule, determine the allowable payment for that service, based on all relevant evidence. ()

f. Coding. The Commission will generally follow the coding guidelines published by the Centers for Medicare and Medicaid Services and by the American Medical Association, including the use of modifiers. The procedure with the largest RVU will be the primary procedure and will be listed first on the claim form. Modifiers will be reimbursed as follows: ()

- i. Modifier 50: Additional fifty percent (50%) for bilateral procedure. ()
- ii. Modifier 51: Fifty percent (50%) of secondary procedure. This modifier will be applied to each medical or surgical procedure rendered during the same session as the primary procedure. ()
- iii. Modifier 80: Twenty-five percent (25%) of coded procedure. ()
- iv. Modifier 81: Fifteen percent (15%) of coded procedure. This modifier applies to MD and non-MD assistants. ()

08. Wage Loss Benefits. For the purpose of determining compensation benefits under Sections 72-1019(1) and 72-1019(3), Idaho Code, “wages received at the time of the criminally injurious conduct” shall be the victim’s gross weekly wage; which shall be determined under Section 72-419(1)-(3), Idaho Code, if applicable, and if not, as follows: ()

a. If the Wages were fixed by the hour, and the victim worked or was scheduled to work the same number of hours each week, the weekly wage shall be the hourly rate times the number of hours that the victim worked or was scheduled to work each week, plus one-half (1/2) the hourly wage times the number of hours worked or scheduled each week in excess of forty (40) hours if the victim was paid time-and-a-half for work in excess of forty (40) hours per week. ()

b. If the Wages were fixed by the hour and the victim did not work the same number of hours each week, or if the victim was paid on a piecework or commission basis, the weekly wage shall be computed by averaging

the amounts that the victim was paid during his last four completed pay periods prior to the criminally injurious conduct and converting that amount to a weekly basis using a method consistent with 72-419(1)-(3); provided that, if the victim was employed for less than four (4) pay periods before the criminally injurious conduct, the average shall be computed based upon the time period that he worked. ()

c. If none of the above methods are applicable, the weekly wage shall be computed in a manner consistent with the above methods. ()

09. Treating Physician. A victim may choose his own treating physician. If, after filing an Application for Compensation, a victim changes physicians without prior approval of the Commission, or if, without prior approval of the Commission, he seeks treatment or examination by a physician to whom he was referred by his treating physician, the Commission may deny payment for such treatment or examination. ()

10. Overpayment. If the Commission erroneously makes payments, the Commission may reduce future payments by an amount equal to the overpayment or request a refund when overpayments are made to either the claimant or the provider. ()

11. Weekly Compensation Benefits If Victim Employable But Not Employed. If a victim is qualified under Section 72-1019(7)(a), Idaho Code, the following provisions apply: ()

a. If at the time of the injurious conduct the victim was receiving unemployment benefits and as a result of that conduct the victim becomes ineligible for those benefits, the claimant's weekly benefits under the Crime Victims Compensation Act shall be the lesser of one hundred fifty dollars (\$150) or his weekly benefit amount under the Employment Security Law. ()

b. If at the time of the criminally injurious conduct the victim was unemployed, but scheduled to begin employment on a date certain and if he was unable to work for one (1) week as a result of that conduct, weekly benefits under the Crime Victims Compensation Act shall be the lesser of one hundred fifty dollars (\$150) or two-thirds (2/3) of the amount that he would have earned at his scheduled employment, and those benefits shall be payable beginning on the date that his employment was scheduled to begin. ()

c. If prior to the criminally injurious conduct the victim was performing necessary household duties which he is disabled from performing as a result of that conduct and it is necessary to employ a person who does not reside in the victim's house to perform those duties, the victim shall receive weekly benefits under the Crime Victims Compensation Act equal to the amount paid to the person so employed, but not exceeding one hundred fifty dollars (\$150) per week. ()

d. In other circumstances, the Commission may award an amount it deems appropriate. ()

12. Reimbursement for Transportation Expenses. If the claimant utilizes a private vehicle, reimbursement shall be at the mileage rate allowed by the State Board of Examiners for state employees. Reimbursement shall be provided only if services are not available in the local area and is limited to one (1) round trip per day. The claimant shall not be reimbursed for the first fifteen (15) miles of any round trip, nor for traveling any round trip of fifteen (15) miles or less. Such distance shall be calculated by the shortest practical route of travel. The mileage reimbursement amount shall be credited to the medical benefit. ()

13. Payment of Bills. Bills for treatment and sexual assault forensic examinations must be submitted within two (2) years from the date of treatment or the date of eligibility, whichever is later, to be compensable. ()

012. HEARING PROCEDURES.

01. Request for Hearing. If a Request for Hearing is filed, an informal hearing shall be held. The Commission may conduct the hearing or it may assign the matter to a Commissioner or Referee. If the matter is assigned to a Commissioner or a Referee, the Commissioner or Referee shall submit recommended findings and decision to the Commission for its review. ()

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02. Recommendations. If the Commission does not approve the recommendations of a member or Referee, the Commission may: ()

- a. Review the record and enter its own findings and decision; ()
- b. Conduct another informal hearing and issue a decision based upon the record of both hearings; or ()
- c. Assign the matter to another member or Referee to conduct another informal hearing and make recommendations pursuant to Subsection 012.01 above based upon the record of both hearings. ()

03. Notice of Hearing. The Commission shall give the claimant at least ten (10) days' advance written notice of the time and place of hearing and of the issues to be heard, either by personal service or certified mail. Service by mail shall be deemed complete when a copy of such notice is deposited in the United States post office, with postage prepaid, addressed to a party at his last known address as shown in the records and files of the Commission. Evidence of service by certificate or affidavit of the person making the same shall be filed with the Commission. ()

04. Transcript of Hearing. All hearings shall be tape-recorded. In addition, the Commission may arrange for a stenographic or machine transcription of any hearing. ()

05. Record. At the hearing the Application for Compensation filed by the claimant and any other documents in the Commission's file that contain information relevant to the issues in the case shall be admitted into the record. Such documents shall be marked for identification and the record shall specify that those documents are admitted. The Commission, member, or Referee conducting the hearing shall give those documents the weight that is appropriate under the circumstances of the particular case. ()

06. Evidence. At the hearing; after the claimant has presented his evidence, the Commission, or the Commissioner or Referee conducting the hearing shall allow an employee of the Commission to present evidence. After the presentation of evidence by an employee of the Commission, the Commission, or the Commissioner or Referee conducting the hearing may, in its or his discretion, allow any other person to testify. ()

07. Finality of Decision. After a hearing, the decision of the Commission shall be final and conclusive as to all matters adjudicated. Within twenty (20) days from the date that such decision is issued, the claimant may file a Motion for Reconsideration or the Commission may reconsider the matter on its own motion. ()

08. Crime Victim's Compensation Program Review. At the request of the claimant or on its own motion the Crime Victim's Compensation Program may review and amend any final order or award, within three (3) years of the date of issue of such order or award: ()

- a. If there is a change in circumstances that affects the claimant's entitlement to benefits; ()
- b. To correct a manifest injustice; ()
- c. If the order or award is based upon facts which were misrepresented or that were not fully disclosed; or ()
- d. To comply with the annual review requirements of Section 72-1021, Idaho Code. ()

09. Subpoenas. Subpoenas shall be served in the manner provided by the Idaho Rules of Civil Procedure. Witness fees and mileage shall be in the amounts provided by the Idaho Rules of Civil Procedure and the Claimant shall pay the fees of any witness who is subpoenaed to testify in his behalf. ()

013. -- 999. (RESERVED)

**17.11.01 – ADMINISTRATIVE RULES OF PEACE OFFICER AND
DETENTION OFFICER TEMPORARY DISABILITY ACT**

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Section 72-1104, Idaho Code. ()

001. SCOPE.

This chapter includes the Industrial Commission's rules regarding the Peace Office Temporary Disability Fund. ()

002. -- 009. (RESERVED)

010. DEFINITIONS.

The definitions set forth at Section 72-1103, Idaho Code apply to this chapter. ()

011. RULE GOVERNING APPLICATIONS FOR REIMBURSEMENT FROM THE PEACE OFFICER AND DETENTION OFFICER TEMPORARY DISABILITY FUND.

01. Eligibility. An employer who has paid the full base salary due to a peace officer or detention officer, as defined in Section 72-1103, Idaho Code, may apply for reimbursement from the Peace Officer and Detention Officer Temporary Disability Fund under the provisions of Section 72-1104, Idaho Code, for the amount of that salary not covered by the workers' compensation income benefit payments remitted to the employer during the time that such officer is: ()

a. Temporarily incapacitated and unable to perform employment duties; ()

b. Is otherwise eligible to receive workers' compensation benefits; and ()

c. Is one whose incapacitating injury was incurred in the performance of employment duties on or after July 1, 2008, either: ()

i. When responding to an emergency; or ()

ii. When in the pursuit of an actual or suspected violator of the law; or ()

iii. The injury was caused by the actions of another person after July 1, 2012. ()

02. Application. An employer eligible to seek reimbursement from the Peace Officer and Detention Officer Temporary Disability Fund shall make application on the form provided by the Commission, available online. ()

03. Payments. Payments to employers requesting reimbursement from the Peace Officer and Detention Officer Temporary Disability Fund shall be made within thirty (30) days of receipt of an approved request for reimbursement, subject to the availability of money in that fund. ()

04. Disputes. Disputes regarding eligibility for reimbursement from The Peace Officer and Detention Officer Temporary Disability Fund will be decided by the Commission upon written request by the employer. There is no appeal from the reimbursement dispute decisions of the Commission under this section. Disputes regarding eligibility of an injured peace officer or detention officer for workers' compensation benefits, including the continuation of salary benefit set out in Section 72-1104, Idaho Code, will be decided in accordance with the Commission's current rules and procedures governing disputes in all other workers' compensation claims. ()

012. -- 999. (RESERVED)