MARYLAND REGISTER

Proposed Action on Regulations

Transmittal Sheet PROPOSED OR REPROPOSED Actions on Regulations	Date Filed with AELR Committee	TO BE COMPLETED BY DSD
		Date Filed with Division of State Documents
		Document Number
		Date of Publication in MD Register

1. Desired date of publication in Maryland Register: 4/4/2014

2. COMAR Codification

Title	Subtitle	Chapter	Regulation
12	01	01	04 - .12

3. Name of Promulgating Authority

Department of Public Safety and Correctional Services

4. Name of Regulations Coordinator **Telephone Number**
George H Hall 410 339 5073

Mailing Address

300 E Joppa Road Suite 400B

City	State	Zip Code
Towson	MD	21286

Email
ghhall@dpscs.state.md.us

5. Name of Person to Call About this Document **Telephone No.**
Scott Beard 401 585 3830

Email Address

6. Check applicable items:
_ New Regulations
X- Amendments to Existing Regulations

Date when existing text was downloaded from COMAR online: September 24, 2012.

_ Repeal of Existing Regulations

_ Recodification

_ Incorporation by Reference of Documents Requiring DSD Approval

_ Reproposal of Substantively Different Text:

: Md. R

(vol.) (issue) (page nos) (date)

Under Maryland Register docket no.: --P.

7. Is there emergency text which is identical to this proposal:

_ Yes **X-** No

8. Incorporation by Reference

_ Check if applicable: Incorporation by Reference (IBR) approval form(s) attached and 18 copies of documents proposed for incorporation submitted to DSD. (Submit 18 paper copies of IBR document to DSD and one copy to AELR.)

9. Public Body - Open Meeting

X- OPTIONAL - If promulgating authority is a public body, check to include a sentence in the Notice of Proposed Action that proposed action was considered at an open meeting held pursuant to State Government Article, §10-506(c), Annotated Code of Maryland.

X- OPTIONAL - If promulgating authority is a public body, check to include a paragraph that final action will be considered at an open meeting.

10. Children's Environmental Health and Protection

_ Check if the system should send a copy of the proposal to the Children's Environmental Health and Protection Advisory Council.

11. Certificate of Authorized Officer

I certify that the attached document is in compliance with the Administrative Procedure Act. I also certify that the attached text has been approved for legality by Stuart M. Nathan, Assistant Attorney General, (telephone #410 585 3070) on February 18, 2014. A written copy of the approval is on file at this agency.

Name of Authorized Officer

Gregg L. Hershberger

Title

Secretary

Telephone No.

410 339 5000

Date

February 24, 2014

Title 12

DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES

Subtitle 01 CRIMINAL INJURIES COMPENSATION BOARD

12.01.01 General Regulations

Authority: Criminal Procedure Article, §11-805, Annotated Code of Maryland

Notice of Proposed Action

[]

The Secretary of Public Safety and Correctional Services proposes to , in cooperation with the Criminla Injuries Compensation Board, ammendRegulations .04 - .12 under COMAR 12.01.01 - General Regulations

This action was considered at a public hearing conducted on October 25, 2013.

Statement of Purpose

The purpose of this action is to A. Update existing regulations to reflect a recent change to the statute increasing the time limit for filing a claim related to child abuse from the current 2 years to 3 years from the time the claimant knew or should have known about the child abuse;
B. Establish alternate procedures for processing claims for supplemental awards for $1,000 or less to improve processing;
C. Reduce the requirement for mailing notification from certified mail return receipt requested to first class mail;
D. Delete references to an outdated “sunset provision” and
E. Correct style and formatting issues.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Scott Beard, Executive Director - Criminal Injuries Compensation Board, Department of Public Safety and Correctional Services, 115

Sudbrook Lane Pikesville, MD 21208, or call 410 585 3010, or email to , or fax to . Comments will be accepted through 30 days after publishing. A public hearing will be held, To be announced

Economic Impact Statement Part C

A. Fiscal Year in which regulations will become effective: FY 2014

B. Does the budget for the fiscal year in which regulations become effective contain funds to implement the regulations?

Yes

C. If 'yes', state whether general, special (exact name), or federal funds will be used:

General

D. If 'no', identify the source(s) of funds necessary for implementation of these regulations:

E. If these regulations have no economic impact under Part A, indicate reason briefly:

These are administrative amendments that update regulation to reflect current practice.

F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.

These regulations effect victims of crimes applying to the Board for compensation permitting by statute.

G. Small Business Worksheet:

Attached Document:

Title 12 DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES

Subtitle 01 CRIMINAL INJURIES COMPENSATION BOARD

Chapter 01 General Regulations

Authority: Criminal Procedure Article, §11-805, Annotated Code of Maryland

.01 — .03 (text unchanged)

.04 Claims.

A. Filing a Claim.

(1) (text unchanged)

(2) The claimant, or, if represented, the claimant's attorney, shall file a claim*:*

(a) **[**in**]** *In* person **[**or**]**, by *regular* mail, *facsimile, electronic mail, or, if available, the Department's website;*

(b) **[**on official forms**]** *On a form or in a format approved by the Board; and*

(c) **[**which include an**]** *Providing signed* authorization **[**and**]** *for a* subrogation agreement with the Criminal Injuries Compensation Board.

(3) (text unchanged)

(4) Except as stated in §A(4)(b) **[**and (5)**]** of this regulation*, a claimant or, if represented, the claimant's attorney shall file a claim*:

(a) **[**A claimant shall file a claim within 180 days**]** *Within 3 years* of the date of the crime upon which the claim is based**[**; and**]**.

[(b) The Board may extend the time for filing a claim under §A(4)(a) of this regulation for a maximum of:

(i) 2 years from the date of the crime if the crime on which the claim is based occurred before October 1, 2004; or

(ii) 3 years from the date of the crime if the crime on which the claim is based occurred on or after October 1, 2004. **]**

[(5) In a case of child abuse, a maximum 2-year period for filing a claim begins with the date the abuse became known to or should have been known by the claimant.**]**

(b) In the case of child abuse, before the later of:

(i) 3 years after the occurrence of the crime that is the basis of the claim; or

(ii) 3 years after the claimant or victim knew or should have known of the child abuse.

B. **[**Investigating and Processing**]** *Examining* a Claim.

(1) Upon receipt of a claim application, the Board shall assign an **[**investigator**]** *examiner* to verify the eligibility of the claim by reviewing:

(a) The victim's or claimant's statement:

[(a)**]** *(b)***[** Police reports**]** *Reports made to a law enforcement agency or other appropriate authority*;

[(b)**]** *(c)* (text unchanged)

[(c)**]** *(d)*Medical reports*, if warranted by the examination*;

[(d)**]** *(e)* Medical **[**expenses**]** *bills*;

[(e)**]** *(f)* (text unchanged)

[(f)**]** *(g)* Employment **[**records**]** *verification*;

[(g)**]** *(h)*(text unchanged)

[(h)**]** *(i)* **[**Information**]** *Documentation* regarding receipt of benefits from **[**any**]** other sources.

(2) If the claimant, or, if represented, the claimant's attorney, does not cooperate in an **[**investigation**]** *examination* under §B(1) of this regulation or provide information requested by the Board, the Board may deny the claim.

(3) At the request of a claimant or, if represented, the claimant's attorney, the Board may re-open a claim previously denied under §B(2) of this regulation based on good cause.

[(3)**]** *(4)* **[**An investigator**]** *If an issue of fact still exists after an examination is complete, the examiner* shall:

(a) Prepare a written **[**report**]** *memorandum* summarizing the information obtained during the **[**investigation**]** *examination*; and

(b) Forward the **[**report**]** *memorandum* to **[**a**]** *the designated* supervisor.

[(4)**]** *(5)* A supervisor receiving a **[**report**]** *memorandum* under **[**§B(3)(b)**]** *§B(4)(b)* of this regulation shall:

(a) Ensure that the information in the **[**report**]** *memorandum* is adequate for the Board to make a decision; **[**and**]**

(b) Ensure that the information in the memorandum is correct;

[(b)**]** *(c)* Forward the claim and **[**report**]** *memorandum* to the Board for a decision*; and*

(d) If requested by the claimant or, if represented, the claimant's attorney, forward a copy of the memorandum to the claimant or, if represented, the claimant's attorney.

[(5)**]** *(6)* **[**When the Board receives**]** *Upon receipt of* a claim under **[**§B(4)(b)**]** *§B(5)(c)* of this regulation, the Board shall:

(a) (text unchanged)

(b) Make recommendations **[**as to**]** *on* further **[**action**]** *examination*;

(c) Upon concurrence on a recommendation by a minimum of three members of the Board, prepare a written report that:

(i) — (iii) (text unchanged)

(iv) Provides information *required under State Government Article, §§10-207 and 10-208, Annotated Code of Maryland* concerning a lack of response, challenges to the decision, *or* additional information requested**[**, and requesting the Board to reconsider the decision or conduct a hearing**]**; and

(d) Send a copy of the report to the claimant**[**, or**]** *and, if represented,* the claimant's attorney**[**, by certified U.S. mail, return receipt requested,**]** to the address contained in the claim application.

[(6)**]** *(7)* If the decision is challenged **[**or additional information is presented for consideration**]** *by the claimant or, if represented, the claimant's attorney*, the Board shall **[**reconsider the case with or without conducting**]** *conduct* a hearing.

[(7)**]** *(8)* (text unchanged)

[(8) Based on the response to the Board's decision by a claimant, or the claimant's attorney, the Board shall:

(a) Consider the facts of the objection or the additional information;

(b) Do one of the following:

(i) Affirm the original decision;

(ii) Modify the original decision; or

(iii) Conduct a hearing that may result in the actions described under §B(8)(b)(i) and (ii) of this regulation;

(c) Finalize the claim, forwarding the recommended decision and rationale to the Secretary; and

(d) After receipt of the Secretary's final decision under §B(9) of this regulation, advise the claimant, or the claimant's attorney, in writing:

(i) Of the decision;

(ii) Of the right to appeal to the circuit court, under State Government Article, §§10-222 and 10-223, Annotated Code of Maryland; and

(iii) That an appeal under §B(8)(d)(ii) of this regulation shall be initiated within 30 days of the final decision.**]**

(9) After **[**reviewing**]** the **[**Board's**]** *Board has made a* decision, *the Board shall forward the decision to* the Secretary, or a designee, *who* shall:

(a) Do one of the following:

(i) — (ii) (text unchanged)

(iii) Reverse the Board's decision **[**and direct what action to take**]**; and

(b) (text unchanged)

(10) Upon receipt of the Secretary's decision under §B(9) of this regulation, the Board shall advise the claimant and, if represented, the claimant's attorney, in writing:

(a) Of the final decision;

(b) Of the right to judicial review of the final decision under §B(10)(a) of this regulation to the circuit court, under State Government Article, §§10-222 and 10-223, Annotated Code of Maryland;

(c) That a request for judicial review under §B(10)(b) of this regulation shall be initiated within 30 days of the final decision; and

(d) How to request judicial review under §B(10)(b) of this regulation, providing:

(i) Instructions; and

(ii) Appropriate form.

[(10)**]** *(11)* (text unchanged)

.05 *Show Cause Order and* Administrative Closing of a Claim.

A. If a claimant, or, *if represented,* the claimant's attorney, does not provide information requested by the Board by the date established by the Board, the Board **[**shall:**]** *may*

(1) (text unchanged)

(2) Mail**[**, by certified U.S. mail, return receipt requested,**]** a copy *of the show cause order* to the claimant **[**, or**]** *and, if represented,* the claimant's attorney, to the address contained in the claim application.

B. (text unchanged)

C. If the claimant, or, *if represented,* the claimant's attorney, does not respond to the show cause order **[**as required**]** under §B of this regulation, the Board **[**shall**]** *may* administratively close the claim.

D. (text unchanged)

.06 Awards.

A. — B. (text unchanged)

C. Emergency Awards.

(1) (text unchanged)

(2) For the Board to consider an emergency award, the claimant, or, *if represented,* the claimant's attorney, shall:

(a) Make a **[**written**]** request for an emergency award at the time the claim is filed or anytime thereafter;

(b) — (c) (text unchanged)

(3) — (5) (text unchanged)

D. Supplemental Awards.

(1) After the Board grants a final award, the claimant, or, *if represented,* the claimant's attorney, may request that the Board reopen the claim to consider additional compensation for unreimbursed losses directly related to the same crime.

(2) (text unchanged)

.07 Protracted Claims.

A. (text unchanged)

B. **[**Monthly payments**]** *Except as provided under Criminal Procedures Article§11-811(a)(3), Annotated Code of Maryland, an award* for disability or dependency **[**are**]** *is* based upon a victim's average weekly wage, excluding overtime wages, at the time of the crime, and the Board shall calculate the **[**payment**]** *award* based on the following:

(1) Multiply the maximum weekly payment **[**established under Regulation .06 of this chapter**]** by 52 and divide the result by 12; and

(2) Subtract from the amount determined under §B(1) of this regulation the amount of benefits received from other sources for injuries resulting from the crime on which the claim is based, disregarding subtractions based on increases:

(a) In the victim's other sources of income *received or to be received under Criminal Procedures Article, §11-811(c), Annotated Code of Maryland*;

(b) In other benefits **[**based entirely on inflation**]**; or

(c) **[**Based on**]** *In* the Consumer Price Index.

(3) (text unchanged)

[C. Updated Financial Information.

(1) The Board shall request, in writing, updated financial information from a claimant, or the claimant's attorney, at least annually, based on the date of the award.

(2) The Board shall require that the information requested in §C(1) of this regulation includes:

(a) An Affidavit of Financial Resources form which the Board shall mail to the claimant, or the claimant's attorney, for completion; and

(b) Documentation supporting the benefits currently received from sources other than the Board.

(3) The Board shall:

(a) Review the updated financial information to determine if a change has occurred which may affect the Board's monthly payment to the claimant; and

(b) Continue, reduce, increase, or suspend the Board's monthly payment as circumstances warrant.

(4) If a claimant, or the claimant's attorney, does not provide the Board with updated financial information within 60 days of the date of the request, the Board shall suspend monthly payments until the information is received and reviewed by the Board. **]**

[D.**]** *C.* Partial Payment.

(1) A claimant, or, *if represented,* the claimant's attorney, may request a partial payment from a protracted award if the payment is needed for the living or business needs of the claimant.

(2) A claimant, or, *if represented,* the claimant's attorney, requesting a partial payment shall:

(a) — (b) (text unchanged)

(3) (text unchanged)

.08 Hearing Procedures.

A. Request for Hearing.

(1) The Board may **[**order**]** *schedule* a hearing if*:*

(a) **[**the**]** *The* Board is unable to arrive at a decision based on the **[**investigative report**]** *examination and memorandum; or*

(b) **[**and additional information**]** *There is a dispute of a fact uncovered in the Board's examination.*

(2) The claimant, or, *if represented,* the claimant's attorney, may request a hearing if dissatisfied with the Board's **[**decision**]** *proposed findings of fact, conclusions of law, or orders*. The claimant, or, *if represented,* the claimant's attorney, shall:

(a) — (c) (text unchanged)

B. Notice of Hearing.

(1) If **[**a hearing is to be held,**]** the Board *schedules a hearing, the Board* shall:

(a) — (b) (text unchanged)

(c) Make notification to the claimant, **[**or**]** *and, if represented,* the claimant's attorney, by **[**certified**]** U.S. mail**[**, return receipt requested, at the address provided on the application form,**]** not less than 30 days before the date of the hearing, unless the notice is waived by the claimant, or, *if represented,* the claimant's attorney.

(2) **[**If the Board denies a request for a hearing, the Board shall notify the claimant, or the claimant's attorney, of the denial in writing by certified U.S. mail, return receipt requested, at the address contained in the application form**]** *Notice shall be in accord with State Government Article, §10-213, Annotated Code of Maryland*.

C. Conduct of Hearings.

(1) Hearings are conducted **[**at the Board's office unless otherwise indicated**]** *in accordance with State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland*.

(2) A claimant has the burden of proof and shall be:

(a) Present at the hearing, unless the **[**claimant or the claimant's attorney can show good cause for**]** *Board, based on good cause, approves alternative arrangements* **[**the claimant not being present**]**; and

(b) (text unchanged)

(3) — (5) (text unchanged)

[(6) The Board is not bound by common law or statutory rules of evidence, or by technical or formal rules of procedure, other than as provided in these regulations.**]**

[(7)**]** *(6)* — **[**(10)**]** *(9)* (text unchanged)

[(11)**]** *(10)* If a claimant, or, *if represented,* the claimant's attorney, fails to appear at the time and place of the scheduled hearing, the Board *may*:

(a) **[**Absent good cause for the lack of an appearance, shall dismiss**]** *Dismiss* the claim; or

(b) **[**If the claimant, or the claimant's attorney, demonstrates good cause, may reschedule**]** *Reschedule* the hearing.

[(12)**]** *(11)* Hearings are open to the public except in the following instances:

(a) (text unchanged)

(b) **[**An alleged sexual offense is the basis for the claim and the**]** *The* welfare and interest of the victim or dependents may be adversely affected *in violation of the right to be treated with dignity, respect, and sensitivity*;

(c) (text unchanged)

(d) Upon written request by the claimant, or, *if represented*, the claimant's attorney, submitted at least 5 days before the scheduled hearing.

[(13)**]** *(12)* The Board may request further **[**investigation**]** *examination* of the claim before making a decision.

(13) At the request of a claimant or the claimant's attorney, the Board may re-open a claim previously dismissed under §C(10)(a) of this regulation based on good cause.

D. Subpoenas and Depositions.

(1) (text unchanged)

(2) A **[**claimant's**]** request *by the claimant, or, if represented, the claimant's attorney* shall be submitted not later than 20 days before the hearing and shall include:

(a) — (c) (text unchanged)

(3) (text unchanged)

(4) If a claimant, or, *if represented*, the claimant's attorney, requests the subpoena, the cost of service, witness, and mileage, at the Board's discretion, is the responsibility of the claimant or, *if represented*, the claimant's attorney.

.09 Judicial Review.

A. If a claimant or, *if represented*, the claimant's attorney initiates judicial review under Criminal Procedure Article, §11-815, Annotated Code of Maryland, the Board shall furnish a transcript of the Board's proceedings to the:

(1) — (2) (text unchanged)

(3) Claimant or, *if represented*, the claimant's attorney, at, *except if otherwise provided*, the claimant's or, *if represented*, the claimant's attorney's expense.

B. (text unchanged)

.10 Representation by Attorney.

A. — C. (text unchanged)

D. Once a claimant's attorney files a notice of appearance with the Board, the Board shall send all further communication concerning the claim to the attorney of record and consider service of **[**any**]** official documents on the attorney of record as service on the claimant.

E. Attorney Fees.

(1) — (2) (text unchanged)

(3) The hourly rate for an attorney's services*:*

(a) **[**other**]** *Other* than attending a hearing may not exceed $50**[.]***; or*

(b) If the attorney appears for a hearing, the hourly rate for time spent by the attorney attending the hearing may not exceed $65.

(4) — (7) (text unchanged)

(8) The calculations used in §E(7) of this regulation may not include parts of an award made for medical or funeral expenses.

(9) — (10) (text unchanged)

.11 Medical Examination.

A. The Board, at the Board's expense, may require a medical *or dental* examination to **[**determine if the eligible person's injury diminishes the eligible person's earning capacity**]** *verify the results of the claimant's medical documentation*.

B. — C. (text unchanged)

D. **[**If the eligible person claiming injury does not submit to the required medical examination,**]** *Unless good cause is demonstrated,* the Board**[**, absent just cause,**]** may deny compensation **[**for the alleged disabling injury**]** *to a claimant who does not submit to the required medical or dental examination*.

E. (text unchanged)

.12 [Board Record] ***Records*.**

A.**[** The record of a Board proceeding is a public record, except for information that is determined to be confidential by law or regulation.**]** *Other than for a claimant or, if represented, the claimant's attorney, review of the Board's records is subject to the limitations of disclosures under the Public Information Act in State Government Article, Title 10, Subtitle 6, Annotated Code of Maryland*.

B. **[**The Board may publish the record of a proceeding but may not include the name of the claimant or other person involved in the proceeding**]** *In any claim regarding a child, the Board shall:*

(1) Securely maintain documents that contain the name or other information concerning a child or an individual incompetent by reason of mental incapacity to prevent disclosure of or access to the documents by an individual who is not authorized to have that information; and

(2) Disclose documents regarding children or individuals incompetent by reason of mental incapacity or information about them to persons who, by reason of participation in the proceeding, have reason to know such information.

C. **[**The Board may provide a copy of the record to the claimant, or the claimant's attorneys, at the expense of the person making the request**]** *When submitting a record to a circuit court for judicial review, the Board shall submit parts of the record that are not open to public inspection under seal*.

D. Other than the last four digits, the Board may not disclose the following numbers, for public inspection:

(1) A social security number;

(2) An identification number issued by a unit of government, including:

(a) A driver's license number;

(b) State identification card number; or

(c) Other individual identification number;

(3) A passport number or other identification number issued by the United States government;

(4) An individual taxpayer identification number; and

(5) A financial or other account number, a credit card number, or a debit card number that, in combination with any required security code, access code, or password, would permit access to an individual's account.