

# Title 14 INDEPENDENT AGENICIES

## Subtitle 09 WORKERS' COMPENSATION COMMISSION

### Chapter 10 Settlements and Lump Sum Payments

#### [.18].01 Lump Sum Payment.

A. A claimant seeking a lump sum payment shall file an application with the Commission[.] *that:* [The application shall]  
(1) [state] *states* specifically the facts and circumstances that the claimant contends justify the lump sum payment; and  
(2) [shall be] *is* accompanied by any documents upon which the claimant [is relying] *relies* [to] *in support of* the application.

B. The party who may be required to make the lump sum payment shall file with the Commission a statement showing the outstanding balance of payments due the claimant and indicating whether that party objects to the granting of the application.

C. A hearing on the application shall be scheduled [only] if:

(1) [an objection and a request for hearings are filed] *the employer, insurer or other payor does not consent to the lump sum,* or

(2) [on] the [Commission's own initiative] Commission, upon review of the application, determines a hearing is warranted.

#### [.19].02 Agreements for Final Compromise and Settlement.

A. General Requirements. An agreement for final compromise and settlement of a claim that is submitted to the Commission for approval as required by Labor and Employment Article, §9-722, Annotated Code of Maryland, shall contain the following:

(1) The total amount of settlement proposed;

(2) A payment allocation sheet including the amount of any deductions for attorney's fees, medical fees, and other costs;

(3) The inclusive dates of any temporary total disability;

(4) The date on which the payments under the agreement are to begin;

(5) If any compensation was previously awarded or paid, a statement indicating whether the settlement includes, is in addition to, or is in place of all or part of that compensation;

(6) A statement indicating the rate of payment and whether all or part of the settlement is to be paid in a lump sum;

(7) The claimant's average weekly wage;

(8) The claimant's date of birth and age in years and months;

(9) The total amount of all indemnity benefits paid to claimant;

(10) [A statement that the insurer shall reimburse Medicare for any provisional or conditional payments made by Medicare, up to the date of the settlement, that are determined to be the responsibility of the employer/insurer in a non-compromise case;

(11)] The gross total of all future payments to be paid pursuant to an annuity (not present value);

[(12)](11) If the insurer makes an assignment of any of its obligations to a third party, the settlement agreement shall contain affirmative language confirming that the employer/insurer shall resume its obligation for all remaining payments in the event of default by the third party; [and]

[(13)](12) The date of disablement by accidental injury or occupational disease[.]; and

(13) *A completed copy of the Settlement Worksheet form, available on the Commission website, attached to the settlement.*

B. Future Medical Expenses.

(1) A settlement involving future medical expenses, including future pharmaceutical expenses, may be approved by the Commission provided that the settlement agreement:

(a) Contains a detailed statement explaining how the interests of Medicare have been considered in reaching the settlement; and

(b) Identifies the amount of the proposed settlement:

(i) Apportioned to future medical expenses; or

(ii) Set aside for future medical expenses through a formal set-aside allocation.

(2) The apportionment of the amount of the settlement associated with future medical expenses shall be supported by medical evidence such as a medical opinion or evaluation.

(3) A formal set-aside allocation shall comply with the guidelines established by Medicare for set-aside allocations.

(4) In determining whether a set-aside allocation and settlement may be reviewed and approved by the Centers for Medicare and Medicaid Services (CMS), the Commission shall apply the most current Medicare review thresholds set forth in the memoranda or regulations available on the CMS website.

(5) A settlement within the Medicare review thresholds may be approved by the Commission provided that, in addition to the requirements set forth in §B(1) of this regulation, the settlement agreement contains a statement acknowledging:

(a) That the settlement is within the CMS review thresholds;

(b) That the parties voluntarily have elected not to submit the settlement and formal set-aside allocation to CMS for review and approval; and

(c) That the parties are aware that CMS may refuse to pay for services related to the injury and may assert a recovery claim against any entity, including a claimant, provider, supplier, physician, attorney, or private insurer.

(6) *A settlement involving future medical expenses may not be approved if the proposed settlement contains contingency provisions from which the Commission can not determine the amount of medical expenses, if any, subject to assessment under Labor and Employment Article, § 9-806(a)(2) and § 9-1007(a)(2), Annotated Code of Maryland.*

C. Special Requirements.

(1) Resolution of Third-Party Liability Claims. When a third-party liability claim has been resolved by settlement or judgment, the agreement settling the workers' compensation claim shall be submitted to the Commission for approval, comply with §§A and B of this regulation, and contain or be accompanied by the following:

(a) A statement of the full amount of compensation paid or to be paid by the employer and insurer;

(b) A statement of the total amount of compensation paid or payable, the amount the employer or insurer is waiving reimbursement from the third-party settlement, the amount of the third-party settlement, the amount of attorney's fee charged in the third-party case; and

(c) A copy of the executed release or judgment.

(2) Dependency Claims.

(a) When the settlement arises in connection with a claim involving a surviving dependent, the agreement submitted to the Commission for approval, in addition to complying with §§A and B, shall contain:

(i) A statement setting forth in factual detail the position of the parties on each issue involved in the claim; and

(ii) The name and address, if known, of any dependent for whom a claim has not been filed or a statement that no other dependents are known to the parties.

(b) The parties shall file with the agreement, if not previously filed in the case, certified copies of the following:

(i) The certificate of death of the deceased employee;

(ii) The autopsy report for the deceased employee, if applicable;

(iii) The certificate of marriage for the dependent and deceased employee, if the dependent is the surviving spouse of the employee; and

(iv) The birth certificate of the dependent, if the dependent is the surviving child of the employee.

(c) *When a document or public record required by this chapter was created or issued in a foreign State, the party submitting the document shall comply with the authentication requirements for foreign documents set forth in COMAR 14.09.02.05.*

D. Structured Settlements. Agreements for the structured settlement of a claim shall be determined on a case-by-case basis.

E. Medical Report.

(1) An agreement for final compromise and settlement shall be accompanied by all medical reports evaluating the nature and extent of the claimant's disability.

(2) On written request of the parties, the Commission may waive the requirement under §E(1) of this regulation if:

(a) The claim being settled is contested on an issue that denies the claimant's right to any benefits under Labor and Employment Article, Title 9;

(b) The claim has been disallowed by the Commission and is pending on appeal; or

(c) Good cause, that does not involve solely the question of the nature and extent of the claimant's disability, is shown for not requiring a medical report.

F. Hearing.

(1) The Commission may not approve an agreement for final compromise and settlement without a hearing unless the agreement is accompanied by the affidavit of the claimant, on the form prescribed by the Commission, waiving the hearing.

(2) The Commission may, at its discretion, require a hearing even when the affidavit is filed.

#### **[.21].03 Assessments on [Awards] Third Party and Structured Settlements**

[C.]A. Third-Party Settlements. In [case of] a final compromise and settlement involving third-party liability under Labor and Employment Article, Title 9, Subtitle 9, Annotated Code of Maryland, the assessments for SIF and UEF shall be computed on the amount of compensation paid or to be paid by the employer or insurer for which the employer or insurer may not be reimbursed from the third-party settlement.

[D.]B. Structured Settlements.

(1) In case of a structured settlement of a claim, the assessments for SIF and UEF shall be computed on the premium payable by the employer or insurer for any annuity policy purchased on behalf of the employee.

(2) If the parties fail to disclose to the Commission the amount of premium payable by the employer or insurer, then the assessments shall be computed on the total amount of money guaranteed to be paid under the settlement agreement.