

.01 Definitions.

A. In this subtitle, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Commission" means either the Workers' Compensation Commission or its designee.

(2) "Disputed workers' compensation claim" means a:

(a) Newly filed claim from the date it is filed until the employer or insurer commences paying the claim or until the consideration date has expired;

(b) New claim in which issues have been filed;

(c) Pending claim in which one or more issues have been filed; or

(d) Claim that is pending on appeal.

(3) "Formal set aside allocation" means a document reflecting a comprehensive analysis and projection of future injury-related medical needs and associated costs.

[(3)] (4) "Undisputed workers' compensation claim" means a claim in which all issues have been:

(a) Withdrawn;

(b) Resolved by a decision of the commission that is not appealed; or

(c) Resolved on appeal.

.19 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 the proposed settlement;

(2) A payment allocation sheet including [The] 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; [and]

(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 confirming that the interests of Medicare have been considered in reaching the settlement;

(11) A statement that the insurer shall reimburse Medicare for any provisional or conditional payments made by Medicare that are ultimately determined to be the responsibility of the employer/insurer;

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

(13) 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.

B. Future Medical Expenses

(1) In determining whether a settlement must be reviewed and approved by the Centers for Medicare and Medicaid Services ("CMS"), the Commission shall apply the Medicare thresholds set forth in the most current memoranda or regulation available at the CMS website.

(2) A settlement that falls within the Medicare thresholds must be approved by CMS before it will be approved by the Commission.

(3) A settlement that falls outside the Medicare thresholds may be approved by the Commission provided that the settlement agreement:

(a) Contains a statement confirming that 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.

(4) 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.

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

[B.] C. Special Requirements.

(1) Claims Involving Third-Party Liability. When the settlement arises in connection with a claim involving a third-party liability action under Labor and Employment Article, Title 9, Subtitle 9, the agreement submitted to the Commission for approval, in addition to complying with §A and § B, shall 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.]D. Structured Settlements. Agreements for the structured settlement of a claim shall be determined on a case-by-case basis.

[D.]E. Medical Report.

(1) Except for those settlements arising under [§B(2)] §C(2), 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 [§D(1)] §E(1), above, 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.

[E.]E. Hearing. The Commission may not approve an agreement for final compromise and settlement without a hearing unless the agreement is accompanied by [the notarized] affidavit of the claimant, on the form prescribed by the Commission, waiving the hearing. The Commission may, at its discretion, require a hearing even when the affidavit is filed.