

Petition and Order Requirements

General Requirements

All documents must be filed simultaneously. The claimant's informational letter must be webfiled under Petition and Order Informational Letter (sealed). The remaining settlement documents (Petition, Order, Affidavit, Attorney Fee Agreement, etc.) should be filed under Petition and Order Related Docs. The Commission will not process the Petition and Order if they are webfiled under Petition and Order Informational Letter (sealed).

All Settlements will be reviewed by the Petition and Order Department.

If the settlement documents are mailed to the Commission, they should be mailed to the Commission's Richmond office, unless the file is in a Deputy Commissioner's regional office.

Because the Commission must mail a copy of the final Order or disposition of a proposal to all parties, the proposed Order must include the employer's correct name and address as well as the carrier's and/or third party administrator's name and address. *The final Order or disposition will be mailed to the address of the parties listed in the Commission's file.*

In accordance with the Supreme Court Rules, counsel licensed in Virginia must prepare all papers. Non-attorney insurance representatives cannot prepare the Petition and Order. All endorsing attorneys must be licensed to practice in Virginia (Va. Workers' Compensation Comm's R. 1.7(B)).

The Commission may require a conference with the employee before a settlement is approved.

A. The Commission's Processing Procedure

Settlement documents will be examined upon receipt to determine if the papers are properly executed and include the appropriate information as well as all required documentation. All parties must initial any addendum to the original documents.

Settlement papers that are technically compliant will be reviewed to determine whether the settlement complies with Commission policies and is in the best interest of the employee. Parties will be notified if a conference is required or if additional information or documentation is necessary. It is therefore unnecessary to contact the Commission. The parties will be notified in writing if a settlement proposal is approved or declined. The Commission carefully scrutinizes settlements and is particularly reluctant to approve a settlement that ends lifetime medical benefits.

1. Indemnification provisions

The Commission discourages the inclusion of indemnification provisions in compromise settlements. The Commission will not approve any settlement which contains broad indemnification language and will allow only indemnification provisions which are limited to issues of liability that are solely under the claimant's control (for example, misapplication of set-aside funds or misrepresentation regarding Medicare eligibility or intent to apply for Medicare). (Note: These are only examples of actions solely within the claimant's control.) The provision indemnifying the defendants must specify all actions that are within the claimant's sole control for which he would be indemnifying the defendants.

2. Ancillary agreements

All agreements related to the compromise settlement must be disclosed to the Commission and each settlement petition must contain a certification that either there are no such agreements or that all such agreements have been disclosed to the Commission. If the settlement documents reference an ancillary agreement which contains a general release of all claims, that agreement must contain a specific clause indicating that the release does not apply to any claims under the jurisdiction of the Virginia Workers' Compensation Commission. As a simple alternative, the Commission encourages the use of the following language:

The parties agree that any ancillary agreement shall not be construed to affect the claimant's rights or responsibilities with respect to Medicare, or to affect the claimant's rights with respect to any claim under the jurisdiction of the Commission. It is ORDERED that the Commission's approval of the settlement of the claimant's workers' compensation claim(s) referenced herein shall not be construed as the approval of the terms of any ancillary agreement.

If the ancillary agreement contains a confidentiality agreement, the above language must be included in the Petition and Order.

3. Blanket Releases

A compromise settlement that includes a blanket release of all workers' compensation claims is not acceptable and will be rejected. A broad release will be accepted for claims arising from a particular accident(s) or occupational disease(s) for which the settlement is proposed. The settlement documents must identify the specific date(s) for which the alleged accident or accidents are claimed to have occurred, and shall reflect the Jurisdiction Claim Number (or VWC File Number) for each such accident. The

Commission will allow the documents to contain a representation by the claimant that he is aware of no other accidents or occupational diseases arising from the employment except those for which he has previously given notice to the employer, filed a claim or received an award.

4. Structured or Deferred Settlements for Payment Under an Annuity

All Petitions and Orders for settlements involving funding by an annuity must include the following information:

- a. The Petition shall state that the company issuing the annuity is authorized by the State Corporation Commission to transact the business of insurance in the Commonwealth and that, in case of default, the employer or carrier shall remain responsible for payment. The employer and carrier shall be the owner of the annuity policy. The claimant shall have no legal interest in the contract except as it relates to the payment of benefits.
- b. Payments under the annuity contract shall be mailed directly by the Annuity Company to the claimant. The claimant shall be responsible for providing a current mailing address and mortality information to the Annuity Company.
- c. Except in cases involving annuities for a Medicare set-aside account, the Petition and Order must also include a provision that if the employee dies for any reason before payment is complete, the payments will continue to be made unaccelerated to a beneficiary named by the employee. In the event the employee dies without naming a beneficiary or the beneficiary dies first, payments will be made to the employee's estate.

5. Structured or Deferred Settlements for Payment Without An Annuity

All Petitions and Orders for structured or deferred settlements without an annuity must include the following language:

- a. The employer and carrier are solely responsible for the payment of benefits under the terms of this Order.
- b. The Petition and Order must also include a provision that if the employee dies for any reason before payment is complete, the payments will continue to be made unaccelerated to a beneficiary named by the employee. In the event the employee dies without naming a beneficiary or the beneficiary dies first, payments will be made to the employee's estate.

B. Preparation Requirements for the Petition and Order:

1. SIGNATURES. Signatures of all required parties must be on both documents. Under each signature, there must be the following:
 - a. Full typed name of individual;
 - b. Correct address of signer;
 - c. Name of business or law firm;
 - d. Name of party who counsel represents;
 - e. Title of claims representative, if signing;
 - f. Name of insurance company; and
 - g. Telephone number of each signer.

2. INTRODUCTORY PARAGRAPH. An introductory paragraph in the Petition containing the following language is required.

This case is before the Commission upon Petition for Compromise Settlement seeking approval of settlement whereby employee receives _____ and upon payment employer and carrier are released from liability from _____.

3. STATEMENT OF CASE. A statement of the case in the Petition containing the following information must be included:
 - a. Date of accident or alleged accident;
 - b. Average weekly wage;
 - c. Dates for which compensation has been paid; and
 - d. Date of the most recent award, if any.

4. PAYMENTS. The Petition must state the amount of all payments made in this case:
 - a. To the employee;
 - b. To the medical providers;
 - c. For vocational rehabilitation services and placement; and
 - d. The total amount paid on the case to date.

5. STATEMENT OF CONTROVERSY. A statement of the controversy leading to settlement must be included in the Petition.

6. SUMMARY OF MEDICAL TREATMENT. A summary of the medical treatment, including specific reference to most recent medical examination and conclusions of the doctor regarding future medical treatment, must be included in the Petition. (Recent medical reports must be submitted with the settlement documents).
7. STATEMENT OF AGREEMENT. A statement of the agreement is required in the Petition and Order, including at least:
 1. The amount of money to be paid to the employee;
 2. The agreement regarding medical treatment;
 3. Identification of other pertinent settlement terms; and
 4. The method of payment (such as lump sum, installment, or annuity) and when such payments are to be paid.
8. COST OF TREATMENT DEADLINE. The documents must identify the last date for which the carrier will accept financial responsibility for the cost of medical treatment incurred by the claimant. If medicals are being paid through the date of approval, the Commission suggests the following language be included in the Petition and Order:

IT IS FURTHER ORDERED that the defendants shall be responsible for medical treatment pursuant to §65.2-603 incurred through the date of entry of this Order approving the settlement, and the claimant shall be responsible for any and all medical expenses or any other costs incurred thereafter.

If an award has been entered and/or compensability of accident is not in dispute, medicals should be paid at least to date of entry of Settlement Order. If defendants are paying for medical treatment through a date prior to the entry date, then the Petition should reflect the reason and basis for the dispute, such as conflicting opinions as to causation, lack of authorization, etc.

9. ATTORNEY FEES. The documents must include a clause which reflects that the employee understands that the Commission will award an attorney fee which will be deducted from the settlement amount unless the Petition and Order contain an agreement to the contrary. In the proposed Order, the attorney fee and costs incurred portion of the Order must be blank. The Commission will determine the appropriate attorney fee and costs and will enter these amounts.
10. PAYMENT AMOUNTS. The documents must include a clause containing space for the Commission to specify the amounts to be paid to the employee and the attorney.

11. SPOUSAL AND CHILD SUPPORT. The parties must file any documentation reflecting a legally enforceable spousal and/or child support Order to Withhold. The carrier, without the Commission's approval, can deduct for child support when the carrier has been served with a legally enforceable Order to Withhold.

The Commission's suggested language for addressing arrearages is as follows:

The defendants shall comply with any legally enforceable Division of Child Support Enforcement Order to Withhold to the extent required by law, and shall deduct an appropriate sum from the claimant's net recovery.

If the Settlement Order contains a specific amount for the defendants to deduct and submit for child support arrearage, the Commission requires documentation from the Division of Child Support reflecting the amount to be withheld.

12. MEDICARE. All settlements closing out the defendants' responsibility for medical treatment must reflect in the Petition that Medicare's interests have been considered. If the claimant is currently entitled to Medicare and the settlement is over \$25,000 or the settlement is over \$250,000 and there is a reasonable expectation of Medicare entitlement within 30 months, then the parties must appropriately address the Medicare Secondary Payer Act, normally by a Medicare set-aside trust in an amount approved by the Centers for Medicare and Medicaid Services (CMS). If a Medicare set-aside trust is appropriate, documentation of CMS approval is required. CMS does not review WCMSA proposals for Medicare beneficiaries when the total settlement is less than \$25,000. ***The Petition must reflect the claimant's current Medicare status.***

If the parties wish to settle before CMS review and approval of the proposed WCMSA, the Petition and Order can indicate the WCMSA will be submitted to CMS for approval and the defendants will be responsible for any additional amounts required by CMS. The medical provision should provide for treatment through the date of CMS Approval or the date of funding of the MSA.

In appropriate cases as determined by the Commission, the parties may use in the documents the following Commission approved indemnification language if it is accompanied by a professionally prepared MSA proposal which is based upon reasonable and supportable assumptions as to future treatment:

1. Claimant agrees to be fully compliant with all MSA administration requirements as outlined by CMS. Attached are the current requirements from CMS entitled, ADMINISTERING YOUR STRUCTURED WORKERS' COMPENSATION MEDICARE SET-ASIDE ARRANGEMENT (WCMSA). The Claimant acknowledges, understands and agrees that either the lump sum or the initial seed money for the MSA and all subsequent MSA annuity payments received must be placed into a self-administered, interest-bearing account and exhausted specifically for Medicare covered medical expenses related to the specific work-injury conditions itemized above before any future injury-related claims are submitted to Medicare.

2. Although the parties have taken steps to avoid shifting the responsibility for payment of future medical expenses to Medicare, if this MSA should be found by CMS to be an attempt to shift the responsibility for payment of medical expenses to Medicare due to an MSA insufficiency, and medical coverage is being denied to the claimant on that basis, Carrier will resolve the issue with CMS, and agree to provide payment for Medicare covered services pertaining to the work-injury conditions until CMS agrees to assume primary payer status for Claimant's work-injury related medical care. The carrier will hold the claimant and claimant's attorney harmless from any action brought by or on behalf of CMS due to an MSA insufficiency. Carrier will not accept any liability to the extent that the MSA was not properly administered by the claimant or agent. This agreement does not cover denial of any medical services where Medicare recognizes primary payer status and has denied coverage as part of its normal medical claims handling practices.

3. The Claimant, Employer and Carrier agree that should any dispute arise regarding Carrier's agreement to indemnify the claimant from CMS actions as noted herein, the parties consent to the jurisdiction of the Virginia Workers' Compensation Commission.

Note: The above language must be used with no deviations/alterations.

If the settlement does not meet the threshold for CMS approval but the documents reflect an amount will be voluntarily set aside for future Medicare-expenses, this amount should be determined before the settlement documents are submitted to the Commission and should be reflected in the documents. If a blank is left for the amount to be voluntarily set-aside for future Medicare expenses, the Commission will handle in the following manner:

- 1) If the settlement is \$10,000 or less and the claimant is not on Medicare, the Commission will advise the parties they will insert \$0 for future Medicare expenses unless an objection is received within seven days.
- 2) If the settlement is between \$10,001 and \$25,000, the Commission will notify the parties that 10% of the settlement amount will be inserted for future Medicare expenses unless the parties object and advise of a different amount for future Medicare expenses within ten days.
- 3) For settlements over \$25,000 or if the claimant is on Medicare but the settlement is less than \$25,000, the Commission will request that the parties confer and advise of the amount to be inserted for future Medicare expenses.

13. SOCIAL SECURITY DISABILITY. If the claimant is receiving, or anticipates receiving, Social Security disability benefits, then the parties should appropriately address in the Order a potential lifetime pro-ration of the net settlement proceeds.

14. STRUCTURED SETTLEMENT OR ANNUITY LANGUAGE. If the settlement is structured or funded by an annuity, the appropriate language must be included in the Petition.

15. DEFERRED PAYMENTS. Cases involving deferred payments, whether by annuity or otherwise, must include in the Petition a provision for payment to the employee's named beneficiary if the employee dies before the payment period expires. In the event the employee dies without naming a beneficiary or the beneficiary should die first, the provision must state that payment will be made to the employee's estate.

16. SIGNATURE OF DEPUTY COMMISSIONER. A statement for the Deputy Commissioner's entry and signature should appear in the following form:

Entered this _____ day of _____, _____.

VIRGINIA WORKERS' COMPENSATION COMMISSION

C. Documents Required in Addition to the Petition and Order

1. Medical records to support the Petition and Order;
2. A confidential letter from the employee's counsel, or, if counsel is not retained, from the claimant, setting forth the following:
 - a. A brief procedural history of the case and a brief description of the employee including age, nature of injury and current employment status;
 - b. Statement whether the employee is competent to enter into a settlement;
 - c. Statement regarding current medical status and treatment, including the existence of any permanent partial or total impairment, and work status;
 - d. Anticipated future medical treatment and expenses and whether other medical insurance will assist in payment;
 - e. Statement of the employee's intended use of the settlement proceeds;
 - f. A statement that the employee is literate in English or had the settlement papers read and explained in his native language. The identity of the translator must be provided;
 - g. A statement from claimant's counsel explaining why the settlement is in the claimant's best interest. If an open award and/or medical benefits are being terminated, a statement explaining why this is in the claimant's best interest, including whether other medical insurance is available to the claimant. If medical benefits are not being paid through the date of the settlement Order, the parties must provide a satisfactory explanation. If there is an outstanding award of medical benefits, the parties must identify all outstanding medical bills, and explain why they are not being paid, and certify that all undisputed medical treatment has been paid in full with no contractual or other deductions
 - h. A statement regarding the type of work the claimant is currently capable of performing.
 - i. The amount of unpaid medical bills for which the claimant will be responsible for paying and whether counsel has been able to negotiate payment with the medical providers.

[See Sample Informational Letters for represented and unrepresented claimants.

Note: Sample information letter must be used by unrepresented claimants.

Note Also: Sample information letter in fatal cases must be used by unrepresented beneficiary.]

3. A notarized Affidavit
Sample of this mandatory Affidavit. *See Sample Affidavit.*
4. Child Support Order to Withhold
5. Medicare approval letter for set-aside trust
6. A signed attorney fee agreement identifying the fee agreement, fee request, itemized time schedule, or other documents identifying the time spent and the basis for the fee request. The employee must acknowledge the fee request and state whether he or she is in agreement with the fee request. The fee agreement should also include the costs for which the attorney is seeking reimbursement and an itemization of the costs should be provided. *See Sample Attorney Fee Agreement.*

Attached Guidelines and Forms

- [Preparing/Filing Settlement Documents](#)
- [Sample Petition](#)
- [Sample Order](#)
- [Sample of Affidavit](#)
- [Sample Attorney Info Letter – Disputed Claim](#)
- [Sample Attorney Info Letter – Open Award](#)
- [Sample pro se info letter](#)
- [Sample pro se info letter in fatal case](#)
- [Sample Attorney Fee Agreement](#)
- [Sample Certification of Translation](#)