

2.26. SETTLEMENTS. -- (A) PROCEDURE FOR LUMP SUM SETTLEMENT OR STRUCTURED-TYPE PAYMENT. -- (1) Every petition for approval of a lump sum settlement or structured-type payment shall set forth the pertinent facts, including but not limited to, the date of the injury, a description of all injuries, the periods of incapacity totaling at least six (6) months, the settlement amount, the amounts of any liens, the amount of any Medicare set-aside, any settlement structure, and whether the medicals will be left open.

(2) The following documents shall be attached to the petition at the time of filing, and the court shall not accept any petition for filing unless accompanied by all necessary documents:

(a) Legible copies of all agreements, orders, and decrees establishing liability for the injury or injuries, the weekly compensation rate, the periods and degree of incapacity, and the receipt of specific compensation.

(b) A statement, dated within thirty (30) days of the date of the filing of the petition, on the letterhead of and signed by the physician who is currently treating the employee for the injury for which the employee is receiving compensation, describing the employee's present medical condition and ability to return to the workforce as it relates to the work-related injury; or in the event that the employee is no longer treating, the medical report of the employee's last date of treatment, describing the employee's medical condition and ability to return to the workforce as it relates to the work-related injury accompanied by an affidavit signed by the employee or her/his attorney attesting that the employee is no longer treating.

(c) A copy of correspondence notifying the employer, as distinguished from the insurer, of the details of the proposed settlement, and of its right to be heard thereon. Failure of the employer to appear at the hearing following receipt of sufficient notice shall be deemed a waiver of the employer's right to be heard.

(d) A copy of correspondence notifying the employer, as distinguished from the insurer, of the potential effect of the proposed settlement on its workers' compensation insurance premium.

(e) The report from the most recent impartial medical examination performed at the direction of the Medical Advisory Board and/or the court.

(f) A statement listing all health care providers known to the parties who have provided any services to the employee and a list of balances owed for treatment.

(g) The parties shall agree to and submit a joint proposed order and final decree. If the parties are unable to agree on a joint proposed order, the parties may set the matter for hearing before the judge.

(3) Any dispute as to the reasonableness of any charge for medical services shall be brought to the attention of the judge hearing the petition who may, in her/his discretion (a) conduct a hearing pursuant to G.L. 1956 § 28-35-20 et seq., to address the charges in dispute; (b) continue the hearing on the petition for settlement until the dispute is resolved; or (c) dismiss the petition for settlement without prejudice.

(4) The petition shall be considered by a judge of the court and may be granted where it is shown to the satisfaction of the judge that the payment of a lump sum or structured-type payment in lieu of future weekly payments will be in the best interest of the parties, including the employee, employer, and insurance carrier.

(5) The judge shall determine the fees and costs of the employee's attorney in accordance with G.L. 1956 § 28-33-25, which shall be set forth in the order and decree.

(6) If the judge determines after hearing on the record that the proposed settlement is in the best interest of all parties, the judge shall enter an order so finding and directing that the lump sum shall be paid within fourteen (14) days of the entry of the order. The judge shall schedule a hearing date for the entry of a final decree following entry of the order. In the case of a structured-type settlement, payment shall commence in accordance with the terms of the settlement agreement.

(7) On the date and time set by the judge, the parties shall appear and submit a final decree for entry by the court. The decree shall contain an agreement signed by all counsel that all payments ordered at the time of the approval of the settlement have been made and that all health care expenses incurred in the care and treatment of the employee's work-related injuries which are the subject of the settlement have been paid.

(8) Any pending petitions regarding the work-related injury which is the subject of the settlement must be withdrawn or otherwise resolved prior to the entry of the order approving the settlement.

(9) Petitions seeking approval of settlements with open medicals must be filed utilizing the forms promulgated by the court.

(10) Petitions for settlement with open medicals shall be heard no sooner than one (1) week after the petition is filed with the court.

Reporter's Notes. The amendment to this rule recognizes recent changes in the Medicare Rules and Regulations that may require an employee to set aside a certain portion of the settlement proceeds to satisfy any potential obligation to Medicare for medical expenses for treatment of the work-related injury. The rule also addresses settlements in which the employer/insurer remains liable for future medical expenses for treatment of the work-related injury.

(B) PROCEDURE FOR SETTLEMENT OF DISPUTED CASES. -- (1) Every petition for approval of a settlement of a disputed claim pursuant to G.L. 1956 § 28-33-25.1 shall set forth the pertinent facts of the case, the amount of the proposed settlement, including the net amount to be realized by the employee, and, if applicable, the amount of any liens, the amount of any Medicare set-aside, and any settlement structure.

(2) The petition shall be considered by a judge of the court and may be granted where it is shown to the satisfaction of the judge that the settlement proposal is in the best interest of the parties, including the employee, employer, and insurance carrier.

(3) If the judge determines after hearing on the record that the proposed settlement is in the best interest of all parties, the judge shall enter an order granting the settlement and enter a decree denying and dismissing the petition with prejudice.

(4) The parties shall agree to and submit a joint proposed order and decree. If the parties are unable to agree to a joint proposed order, the parties may set the matter for hearing before the judge.

In all settlement proceedings, the parties shall use forms, pleadings, and settlement documents promulgated by the court when such forms exist.

Reporter's Notes. This rule is designed to standardize the practice of the court regarding petitions for approval of settlement. The 1992 Reform of the Workers' Compensation Act (P.L. 1992, Ch. 31) eliminated a unilateral petition to commute future benefits and authorized the court to hear petitions for approval of a settlement only when they are filed jointly. This rule, recognizing that such petitions are filed only when the parties have agreed to settle a case, requires that the parties submit sufficient documentary evidence with the petition to allow the court to review the matter and determine if the proposed settlement meets the standard enunciated in G.L. 1956 § 28-33-25.

This rule also recognizes the statutory amendment requiring that all settlement payments approved by the court must be paid within fourteen (14) days of the date the order is entered and requires the parties to appear and present a pleading indicating that all required payments have been made prior to the entry of a decree approving the settlement. It is anticipated that the rule will virtually eliminate petitions which are filed after a settlement has been approved alleging a failure to make payments under the terms of the Act.