

FORM 16 SETTLEMENT AGREEMENTS

The workers' compensation statute generally provides that settlement agreements be approved when the agreement terms conform to the statute's provisions. [[21 VSA §662\(a\)](#)]. The Form 32 (formerly Form 21 pre 09/2011) and Form 22 are examples of this type of agreement. However, when it can be demonstrated that a settlement is in the best interest of the injured worker, the Department may approve the settlement even though it does not strictly conform to the statute's provisions. Form 16s are frequently used for this purpose and are often accompanied by an addendum providing additional specific terms that form the basis of the settlement agreement.

The Form 16 replaces the former Form 14, which closed all benefit claims except ongoing medical care, and the former Form 15, which was used to close out a claim entirely. A Form 16 must comply with all of the following:

1. It must be signed by **all** parties;
2. The agreement must clearly identify whether it is being used to settle a portion, or portions of a claim, or the entire claim. If any benefits remain open (for example, ongoing medical benefits) the agreement should indicate that it is only a "partial" or "modified" settlement;
3. It should identify any benefits or disputes that are not being resolved by the agreement;
4. Any **addendum** with additional settlement terms should be referenced on the settlement form, and be separately signed and dated by **all** parties;
5. If the insurer has accepted some or all of the claim, or has been ordered to pay medical benefits, it will be responsible for paying all

- medical bills incurred up to the date the agreement is approved, unless the agreement specifically provides for an alternative method of handling outstanding medical bills;
6. The settlement shall consider whether a Medicare set-aside (“MSA”) is needed, and if so the terms of any such MSA. The settlement shall also either pro-rate any non-medical payments, or indicate that the injured worker has expressly waived to the pro-ration provision.

When submitting a Form 16 for Department review and approval:

- a. the adjuster should ensure that all required forms have been filed with the Department, including the First Report of Injury, the properly completed and approved Form 25 wage statement, and approved annual compensation rate increases (Form 28), as well as any correspondence accepting or denying some or all of the claim. If the Department receives a Form 16 and such documents have not been previously provided, the adjuster will be ordered to provide them, and in some instances, may be ordered to commence payment per the settlement terms while awaiting Department review. If you are unsure whether the Department has received these forms, contact a W.C. Specialist who will be able to advise you as to the documents in the Department’s file.
- b. it is recommended that the adjuster or insurer’s attorney include a letter detailing the disputed issue(s), the parties’ respective positions, an explanation as to how the settlement amount was reached and the reason(s) why each party feels the settlement is justified.
- c. In addition, the settlement must be accompanied by either a letter from the injured worker (or his or her legal representative), explaining why he or she believes the settlement is in his or her best interests. *See* W.C. Rule 17.6. The letter may be signed by the adjuster or adjuster’s attorney, but must be signed by the injured worker.

- d. The Rule 17.6 letter should indicate whether the injured worker has returned to work, or has a regular source of income, whether it is anticipated that there will be ongoing medical expenses, and his or her general understanding of what the settlement means.

All proposed Form 16 settlement agreements are reviewed by the Director, and will only be approved if the Director concludes that the settlement is in the **best interests** of the injured worker. A settlement agreement is not valid and enforceable until it is approved and signed by the Director. Please remember that once the agreement is approved, the insurer is generally obligated to provide all payments due under the settlement terms within the time frame established in [21 VSA §650\(e\)](#). Failure to timely pay benefits may result in the insurer being liable for additional penalties and interest.