



Workers' Compensation  
STATE HUMAN RESOURCES

# **OSHR Workers' Compensation Settlement Reserve Funds Allocations Beginning July 1, 2016**

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**If you have any questions or need further information, please contact the  
OSHR Safety Health & Workers' Compensation Division via email to:  
[workerscomp@nc.gov](mailto:workerscomp@nc.gov) or call (919) 807-4858.**

## OSHR Workers' Compensation Settlement Reserve Funds (WCSRF) Administration Process

1. OSHR will accept applications for Workers' Compensation Settlement Reserve Funds (WCSRF) beginning July 1, 2016 from all state agencies, boards, commissions, UNC system institutions, and community colleges for any currently open workers' compensation claims.
2. In order for an individual claim to be eligible for WCSRF, the employee's salary must be partially or fully funded with State funds appropriated by the General Assembly. Individual claims of employees whose salaries are funded entirely by federal funds will not be considered for WCSRF.
3. WCSRF funding for claim settlement of an **employee whose salary is paid partially with state funds and partially with federal funds is capped based upon the percentage of the employee's salary paid with state funds** and may be either of the following amounts:
  - a. Dollar amount of allocated WCSRF for that individual claim; or
  - b. The same percentage of final claim settlement cost including MSA, if applicable, as the percentage of state funds utilized in payment of the employee's salary.

Example: An employee's salary is \$60,000 per year funded with 25% state funds (i.e. \$15,000) and 75% federal funds (i.e. \$45,000). The workers' compensation final claim settlement amount is \$100,000. The maximum amount of WCSRF that may be used in partial payment of this settlement is 25% of the settlement amount, \$25,000.

4. OSHR will consider applications and allocate WCSRF funds **on a continuous, ongoing basis** until available funds are exhausted.
5. All individual claims for which OSHR approved **deferred** WCSRF on or before June 30, 2016 until funds became available in the future are automatically eligible for consideration for WCSRF to be distributed between July 1, 2016 and June 30, 2017. Agencies **DO NOT** need to reapply for WCSRF for these claims. OSHR will review all claims approved for deferred WCSRF funding to determine if they still remain eligible for WCSRF allocation utilizing all of the factors in Number 10 below. If OSHR later denies a WCSRF allocation for a claim previously approved for **deferred** WCSRF, the employing entity may reapply for WCSRF for use in settling that individual claim via the process described in this document.
6. Eligible state agencies may apply for funds to assist in settling **any open workers' compensation claim at any time PRIOR TO reaching a full and final settlement** by submitting the following via email to [workerscomp@nc.gov](mailto:workerscomp@nc.gov):
  - a. Signed and dated OSHR Workers' Compensation Settlement Reserve Fund Application Form, see page 6. A fillable PDF version of this form is available at [workerscomp.nc.gov](http://workerscomp.nc.gov). (**For instructions on how to complete the application form, see pages 7-8**); and
  - b. "Settlement Evaluation" prepared by assigned adjuster dated **no more than thirty (30) days prior** to the agency's WCSRF request submission date. **Contact adjuster to obtain a current settlement evaluation**; and
  - c. If required, Medicare Set Aside (MSA) estimate. **See pages 9-10 for information on how to determine if an MSA is needed for claim settlement and how it may be obtained.**
7. Incomplete requests that do not include all required documents/information will not be reviewed. OSHR will send a reply email to the requesting agency with detailed information as to

additional items/information needed. Agencies may resubmit complete requests including all information properly updated, if necessary.

8. Upon receipt of a complete agency WCSRF request, OSHR shall request an Attorney General's Settlement Approval memo for the claim for which settlement funds are being requested. A current Attorney General's Settlement Approval Memo shall be completed and sent to [workerscomp@nc.gov](mailto:workerscomp@nc.gov) no later than fourteen (14) calendar days from receipt of OSHR's request.

9. Upon receipt of the Attorney General's Settlement Approval memo for a claim, OSHR shall consider the agency's request for WCSRF allocation for that claim no later than fourteen (14) calendar days from receipt of the memo.

10. OSHR will consider funding requests once all required information has been received on a continuous, ongoing basis. OSHR may approve, deny, or defer a WCSRF allocation for each individual claim.

11. OSHR anticipates that individual claims may be awarded up to thirty-five percent (35%) of the total settlement cost including Medicare Set Aside (MSA) amount. Requests for full funding of a claim settlement will be considered on an individual basis.

12. OSHR's review of agency WCSRF requests shall consider the following claim elements included but not limited to the following:

- a. Employee's agency.
- b. Employee's name.
- c. Employee's home address.
- d. Employee's date of injury.
- e. Employee's age and statutory life expectancy based upon NCGS §8-46  
[http://www.ncga.state.nc.us/EnactedLegislation/Statutes/pdf/ByArticle/Chapter\\_8/Article\\_5.pdf](http://www.ncga.state.nc.us/EnactedLegislation/Statutes/pdf/ByArticle/Chapter_8/Article_5.pdf).
- f. Number of workers' compensation claims filed by the employee while employed by the State.
- g. Employee's pre injury position title and brief job description.
- h. Employee's average weekly wage and weekly compensation rate for this claim.
- i. Length of employee's entitlement to ongoing workers' compensation disability benefits if claim is not settled.
- j. Description of agency's documented efforts to return the employee to work.
- k. Description of employee's return to work potential.
- l. Description of employee's current medical condition related to the workers' compensation claim.
- m. Description of employee's comorbidities or other medical conditions unrelated to the workers' compensation claim, if applicable.
- n. Description of employee's projected future medical treatment related to the workers' compensation claim.
- o. Will the claim settlement include the employee's resignation, if still employed with the State?
- p. Is the employee receiving retirement benefits?
- q. Is the employee eligible for or receiving Long-Term Disability benefits?
- r. Is the employee currently receiving, has applied for, is appealing a denial, or plans to apply for Social Security Disability (SSDI) benefits in the near future?

- s. Whether Medicare Set Aside Agreement (MSA) will be required and dollar amount to be included in the claim settlement, if already calculated.
- t. Description of any prior Industrial Commission Orders, Opinions and Awards, Consent Agreements, or Consent Orders on record for the claim.
- u. Description of any pending current litigation and issues to be determined included on the Industrial Commission Form 33 Request for Hearing and/or Form 33R Response to Request for Hearing.
- v. Description of any projected future litigation.
- w. Total dollar amount of expenditures already paid for the claim including breakdown into separate amounts spent for Indemnity costs (IND), Medical costs (MED), and Allocated Expenses (ALE) costs.
- x. Total dollar amount of current claim reserves including breakdown into separate amounts projected to be paid for future indemnity (IND), medical (MED), and allocated expenses (ALE) costs.
- y. Projected total dollar amount of lifetime exposure for all potential future costs related to claim.
- z. Total dollar amount of proposed claim settlement denoting any amount included for Medicare Set Aside Agreement (MSA).
- aa. Dollar amount of funds for proposed claim settlement agency is requesting from Workers' Compensation Settlement Reserve Fund.
- bb. Name of employee's attorney and whether the attorney is currently receiving an ongoing attorney's fee.
- cc. Other pertinent information.

13. An injured employee must already be separated from State employment or the employee's resignation must be included as part of the settlement for a claim to be eligible for WCSRF allocation.

14. If the parties agree to settlement terms for the claim prior to WCSRF allocation, the claim is ineligible for any WCSRF allocation.

15. OSHR shall send notice of individual WCSRF allocation decisions via email to the agency contact person listed on the OSHR Workers' Compensation Settlement Reserve Fund Application Form, assigned Attorney General, and adjuster. If OSHR denies an individual claim application for WCSRF funds, the agency may reapply again for funds for that same claim.

16. The agency shall have ninety (90) days after receiving notice from OSHR of approved WCSRF allocation for an individual claim for the parties to reach an agreement on full and final settlement terms for that claim. Submission of a written, signed Compromise Settlement Agreement (Clincher Agreement) to the Industrial Commission is not required during this ninety (90) days' time period; it is only required that the parties agree on the settlement terms.

17. OSHR shall remind agencies with WCSRF allocations that the ninety (90) days period is about to expire approximately fifteen (15) days prior thereto via email to the person listed on the OSHR Workers' Compensation Settlement Reserve Fund Application Form, assigned Attorney General, and adjuster. This deadline may be extended one time for a maximum of thirty (30) days upon receipt of a written request from the Attorney General assigned to the claim sent to [workerscomp@nc.gov](mailto:workerscomp@nc.gov).

18. If the agency does not obtain a written settlement agreement for the claim during the ninety days (90) period plus any OSHR approved extensions, OSHR shall send written notice to the person

listed on the OSHR Workers' Compensation Settlement Reserve Fund Application Form, assigned Attorney General, and adjuster that the WCSRF allocation for that claim is no longer available.

19. If the agency decides not to settle or is unable to settle a claim for which a WCSRF allocation has been approved by OSHR, the agency, assigned Attorney General, or adjuster shall notify OSHR via email to [workerscomp@nc.gov](mailto:workerscomp@nc.gov) as soon as this determination is made.

20. Whenever OSHR determines that a WCSRF allocation will not be used for settlement of an individual claim, OSHR will reallocate those funds to other claim(s) on a continuous and ongoing basis.

21. When the adjuster receives notice from the assigned Attorney General that a Compromise Settlement Agreement/Clincher for a claim for which WCSRF has been approved has been submitted to the Industrial Commission, the adjuster will request the agency transfer any large payment required for settlement in accordance with the usual procedure taking into consideration the amount of WCSRF OSHR has allocated in partial payment of the claim settlement.

22. When OSHR receives an Industrial Commission Order Approving Compromise Settlement Agreement from the adjuster or Attorney General assigned to the claim sent to [workerscomp@nc.gov](mailto:workerscomp@nc.gov), OSHR shall send written notification to transfer WCSRF in the approved amount to OSC for utilization in payment of the claim settlement amount.



# OSHR SETTLEMENT RESERVE FUND APPLICATION

**VERY IMPORTANT: THIS FORM MUST BE SUBMITTED WITH AN UPDATED "SETTLEMENT EVALUATION" REPORT PREPARED BY CORVEL STAFF NO MORE THAN 30 DAYS PRIOR TO THE DATE APPLICATION IS FILED. ANY REQUESTED FUNDS MUST BE APPLIED FOR AND APPROVED PRIOR TO THE PARTIES' AGREEMENT TO ANY CLAIM SETTLEMENT. INCOMPLETE APPLICATIONS WILL NOT BE REVIEWED AND WILL BE RETURNED TO THE AGENCY.**

## SECTION 1

Employee: \_\_\_\_\_ Agency: \_\_\_\_\_ Claim Number: \_\_\_\_\_  
Employee Home Address: \_\_\_\_\_ Date of Injury: \_\_\_\_\_  
Funding source for employee's salary: State Funds: \_\_\_\_\_% Federal Funds: \_\_\_\_\_%  
Employer/WCA Contact Name: \_\_\_\_\_ Phone #: \_\_\_\_\_ Email: \_\_\_\_\_

## SECTION 2

**Work Status:** Mark an X in all boxes that apply and provide specific dates where applicable.

Date Last Worked: \_\_\_\_\_  
Resigned  Retired  Separated from Job  Agency unable to accommodate work restrictions   
Returned to Work: Full Duty  Modified Duty  Date Returned: \_\_\_\_\_

## SECTION 3

**Disability Status:** Mark an X in all boxes that apply and provide specific information.

Short-term disability:	Applied for <input type="checkbox"/>	Receiving <input type="checkbox"/>	Not Eligible to Apply <input type="checkbox"/>
Long-term disability:	Applied for <input type="checkbox"/>	Receiving <input type="checkbox"/>	Not Eligible to Apply <input type="checkbox"/>
Social Security Disability:	Applied for <input type="checkbox"/>	Receiving <input type="checkbox"/>	Not Eligible to Apply <input type="checkbox"/>
Medicare:	Applied for <input type="checkbox"/>	Receiving <input type="checkbox"/>	Not Eligible <input type="checkbox"/>

Description of agency's efforts to return employee to work: \_\_\_\_\_  
\_\_\_\_\_

Other pertinent information: \_\_\_\_\_

## SECTION 4

**Settlement Details:** Mark an X in all boxes that apply and provide specific dollar amounts.

Medicare Set Aside (MSA) Agreement required for settlement: YES  NO  Proposed MSA Amount: \$ \_\_\_\_\_  
Total Estimated Settlement Cost (including MSA): \$ \_\_\_\_\_  
Amount Agency is Requesting from Settlement Reserve Fund: \$ \_\_\_\_\_  
Is employee currently separated from job? YES  NO   
If still employed, will claim settlement include employee's resignation?: YES  NO

Signature of Agency Secretary or Designee with Claim Settlement Authority \_\_\_\_\_ Date \_\_\_\_\_

**SEND COMPLETE APPLICATION FORMS TO: [WORKERSCOMP@NC.GOV](mailto:WORKERSCOMP@NC.GOV)**

**Questions: Email [WORKERSCOMP@NC.GOV](mailto:WORKERSCOMP@NC.GOV) or call (919) 807-4858**



## OSHR Workers' Compensation Settlement Reserve Fund Application Form Effective 7/1/16 Instructions For Completion

**DOWNLOADABLE, FILLABLE PDF FORM AVAILABLE AT**  
**[WWW.WORKERSCOMP.NC.GOV](http://WWW.WORKERSCOMP.NC.GOV)**

### **SECTION 1: Claim and Agency Information**

1. Employee: Insert name of employee.
2. Agency: Insert name of agency.
3. Claim Number: Insert claim number(s) assigned by CorVel for all of the employee's open claim(s).
4. Employee Home Address: Insert employee's current home address – PO Box or street address.
5. Date of Injury: Insert employee's date of injury for all open claim(s).
6. Funding source for employee's salary: Insert percentage of State funds and Federal funds used to pay employee's salary on lines provided.
7. Employer/WCA Contact Name: Insert name of agency contact person for this application.
8. Phone #: Insert phone number of agency contact person for this application.
9. Email: Insert email address of agency contact person for this application.

### **SECTION 2: Work Status**

1. "Date Last Worked": Provide date on which the employee last worked.
2. Mark the appropriate box, if applicable, indicating employee's current out of work status:
  - a. Resigned
  - b. Retired
  - c. Separated from Job
  - d. Agency unable to accommodate work restrictions
3. Mark the appropriate box if employee has returned to worked:
  - a. Full Duty
  - b. Modified Duty
4. "Date Returned": Provide date on which the employee returned to work.

### **SECTION 3: Disability Status**

Mark the appropriate box if any of the following has occurred with regards to this employee:

- a. Short Term Disability: Employee has applied for, is receiving, or is not eligible to apply
  - b. Long Term Disability: Employee has applied for, is receiving, or is not eligible to apply
  - c. Social Security Disability: Employee has applied for, is receiving, or is not eligible to apply
  - d. Medicare: Employee has applied for, is receiving, or is not eligible to apply
1. Description of agency's efforts to return employee to work: Describe agency's efforts to return employee to work on lines provided.
  2. Other pertinent information: Describe other pertinent information regarding the claim or claim settlement on lines provided.

#### **SECTION 4: Settlement Details**

1. Medicare Set Aside (MSA) required for settlement: Mark the appropriate box, “YES” or “NO”.  
**(See pages 6-7 of this document for detailed explanation of when Medicare Set Aside (MSA) is required for claim settlement and how to obtain an MSA.)**
2. Insert dollar amount from MSA estimate on “Proposed MSA Amount” line provided if MSA is needed for claim settlement. If not, leave this line blank.
3. Total Estimated Settlement Cost (including MSA): Insert dollar amount of estimated cost to settle the claim including MSA estimate amount, if applicable, on line provided.
4. Amount Agency is Requesting from Settlement Reserve Fund: Insert dollar amount agency is requesting to aid in funding this settlement on line provided.
5. Employee Separated from Job: Mark the appropriate box, “YES” or “NO” indicating whether the employee has already been separated from state employment.
6. If still employed, will claim settlement include employee’s resignation?: Mark the appropriate box, “YES” or “NO” indicating whether claim settlement will include the employee’s resignation.

#### **Agency Signature**

1. Signature of Agency Secretary or Designee with Claim Settlement Authority: Need written or digital signature of agency secretary or designee with claim settlement authority.
2. Date: Insert date application form was signed by agency secretary or designee



## INFORMATION ON MEDICARE SET ASIDE (MSA) AMOUNTS

**What is a Medicare Set Aside and why is it required?** Federal law precludes Medicare from paying a Medicare beneficiary's medical expenses when payment has been made or can reasonably be made under a workers' compensation plan, automobile or liability insurance policy or plan, or under no fault insurance. Medicare has a priority right of recovery over any other entity to the proceeds of a workers' compensation settlement. Therefore, Medicare's interest must be protected in any settlement of a workers' compensation claim. To comply with these requirements, the parties to a workers' compensation claim settlement wherein the employee is currently a Medicare beneficiary or has a "reasonable expectation" of such are required to "set aside" monies for an individual's future medical expenses that are attributable to the injury and would otherwise be payable by Medicare.

**When is a Medicare Set Aside (MSA) required to settle a claim and when must it be approved by the Center for Medicare Services (CMS) to settle a claim?**

**Situation 1: Employee is currently a Medicare beneficiary (i.e. at least 65 years old or otherwise currently in receipt of Medicare benefits):**

1. If claim settlement exceeds \$25,000 and future care related to the claim is needed, MSA must be obtained and may be submitted to CMS for approval. If approved, CMS will not request employer reimbursement for future claim related treatment that exceeds approved MSA amount.
2. If claim settlement is \$25,000 or less, MSA must be obtained but may not be submitted to CMS for approval.

**Situation 2: Employee is NOT currently a Medicare beneficiary (not at least 65 years old and not otherwise currently in receipt of Medicare benefits):**

1. Employee has a "reasonable expectation" of Medicare entitlement within the next 30 months, settlement is greater than \$250,000, and future care related to the claim is needed, MSA must be obtained and may be submitted to CMS for approval. If approved, CMS will not request employer reimbursement for future claim related treatment that exceeds approved MSA amount.
2. Employee has a "reasonable expectation" of Medicare entitlement within the next 30 months, and settlement is \$250,000 or less, MSA must be obtained but may not be submitted to CMS for approval.
3. Employee DOES NOT have a "reasonable expectation" of Medicare entitlement within the next 30 months, MSA is not needed.

**When does an employee have a "reasonable expectation" of Medicare entitlement within the next 30 months?**

1. Employee is at least 62.5 years old (i.e. 30 months away from automatic Medicare entitlement when they reach 65 years old); or
2. When the employee has applied for Social Security Disability (SSD) benefits (Medicare entitlement begins 24 months after date of entitlement to SSD benefits. SSD entitlement date is often backdated prior to date of actual approval); or

3. Employee anticipates appealing denial of SSD benefits; or
4. Employee is in the process of appealing and/or refiling for SSD benefits; or
5. Employee has End Stage Renal Disease.

**How does an agency obtain an MSA for a claim?** Contact your adjuster who will assist you throughout this process. The adjuster will explain MSA options as to delivery date, cost, and other pertinent information. If the agency desires to move forward with obtaining an MSA, your adjuster will send the required claim records to the agency's selected third party vendor for MSA preparation. It may take up to twenty-one (21) days to obtain an MSA from the date of request to date of receipt. **The agency will be billed for the MSA whether the claim settles or not.**

**What is the cost of an MSA?** Depends upon third party vendor; fees subject to change at any time.

1. Approximately \$2,000-\$3,000 for the MSA report which includes the estimated amount of the settlement to be set aside for future medical treatment related to the claim; and
2. Approximately \$500-\$1,000 for formal submission to CMS.

**How is an MSA created?**

Third party vendor MSA provider staff review the employee's last two (2) years of medical records to make a reasonable estimate of the dollar value of future medical treatment related to the compensable injury that will be needed for the remainder of the employee's lifetime. Future medical treatment includes physician visits, procedures, diagnostic testing, surgeries, drugs, etc.

**How long is an MSA valid?**

From six (6) months to one (1) year from the date of issuance by the third party vendor MSA provider dependent upon the circumstances. Consult with the Attorney General's office to determine the validity of an already obtained MSA.