

## **IC 34-18-15**

### **Chapter 15. Payment From the Patient's Compensation Fund**

#### **IC 34-18-15-1**

##### **Discharge of obligations**

Sec. 1. (a) The obligation to pay an amount from the patient's compensation fund under IC 34-18-14-3(c), IC 34-18-6-6, or section 3 of this chapter (or IC 27-12-14-3(c), IC 27-12-6-6, or IC 27-12-15-3 before their repeal) may be discharged as follows:

- (1) Payment in one (1) lump amount.
- (2) An agreement requiring periodic payments from the fund over a period of years.
- (3) The purchase of an annuity payable to the patient.
- (4) Any combination of subdivisions (1), (2), and (3).

(b) The commissioner may contract with approved insurers to insure the ability of the fund to make periodic payments under subsection (a)(2).

*As added by P.L.1-1998, SEC.13.*

#### **IC 34-18-15-2**

##### **Periodic payments; combined payments**

Sec. 2. Notwithstanding IC 34-18-6, the commissioner may:

- (1) discharge the possible liability of the patient's compensation fund to a patient through a periodic payments agreement (as defined in IC 34-18-14-2); and
- (2) combine money from the fund with money of the health care provider (or its insurer) to pay the cost of the periodic payments agreement with the patient (or the patient's estate). However, the amount provided by the commissioner may not exceed eighty percent (80%) of the total amount expended for the agreement.

*As added by P.L.1-1998, SEC.13.*

#### **IC 34-18-15-3 Version a**

##### **Demand in excess of policy limits; procedure**

*Note: This version of section effective until 7-1-2017. See also following version of this section, effective 7-1-2017.*

Sec. 3. If a health care provider or its insurer has agreed to settle its liability on a claim by payment of its policy limits of two hundred fifty thousand dollars (\$250,000), and the claimant is demanding an amount in excess of that amount, the following procedure must be followed:

- (1) A petition shall be filed by the claimant in the court named in the proposed complaint, or in the circuit or superior court of Marion County, at the claimant's election, seeking:
  - (A) approval of an agreed settlement, if any; or
  - (B) demanding payment of damages from the patient's compensation fund.

(2) A copy of the petition with summons shall be served on the commissioner, the health care provider, and the health care provider's insurer, and must contain sufficient information to inform the other parties about the nature of the claim and the additional amount demanded.

(3) The commissioner and either the health care provider or the insurer of the health care provider may agree to a settlement with the claimant from the patient's compensation fund, or the commissioner, the health care provider, or the insurer of the health care provider may file written objections to the payment of the amount demanded. The agreement or objections to the payment demanded shall be filed within twenty (20) days after service of summons with copy of the petition attached to the summons.

(4) The judge of the court in which the petition is filed shall set the petition for approval or, if objections have been filed, for hearing, as soon as practicable. The court shall give notice of the hearing to the claimant, the health care provider, the insurer of the health care provider, and the commissioner.

(5) At the hearing, the commissioner, the claimant, the health care provider, and the insurer of the health care provider may introduce relevant evidence to enable the court to determine whether or not the petition should be approved if the evidence is submitted on agreement without objections. If the commissioner, the health care provider, the insurer of the health care provider, and the claimant cannot agree on the amount, if any, to be paid out of the patient's compensation fund, the court shall, after hearing any relevant evidence on the issue of claimant's damage submitted by any of the parties described in this section, determine the amount of claimant's damages, if any, in excess of the two hundred fifty thousand dollars (\$250,000) already paid by the insurer of the health care provider. The court shall determine the amount for which the fund is liable and make a finding and judgment accordingly. In approving a settlement or determining the amount, if any, to be paid from the patient's compensation fund, the court shall consider the liability of the health care provider as admitted and established.

(6) A settlement approved by the court may not be appealed. A judgment of the court fixing damages recoverable in a contested proceeding is appealable pursuant to the rules governing appeals in any other civil case tried by the court.

(7) A release executed between the parties does not bar access to the patient's compensation fund unless the release specifically provides otherwise.

*As added by P.L.1-1998, SEC.13. Amended by P.L.233-1999, SEC.15.*

**IC 34-18-15-3 Version b**

**Demand in excess of policy limits; procedure**

*Note: This version of section effective 7-1-2017. See also preceding version of this section, effective until 7-1-2017.*

Sec. 3. If a health care provider or its insurer has agreed to settle its liability on a claim by payment of its policy limits established in IC 34-18-14-3(b) and IC 34-18-14-3(d), and the claimant is demanding an amount in excess of that amount, the following procedure must be followed:

(1) A petition shall be filed by the claimant in the court named in the proposed complaint, or in the circuit or superior court of Marion County, at the claimant's election, seeking:

(A) approval of an agreed settlement, if any; or

(B) demanding payment of damages from the patient's compensation fund.

(2) A copy of the petition with summons shall be served on the commissioner, the health care provider, and the health care provider's insurer, and must contain sufficient information to inform the other parties about the nature of the claim and the additional amount demanded.

(3) The commissioner and either the health care provider or the insurer of the health care provider may agree to a settlement with the claimant from the patient's compensation fund, or the commissioner, the health care provider, or the insurer of the health care provider may file written objections to the payment of the amount demanded. The agreement or objections to the payment demanded shall be filed within twenty (20) days after service of summons with copy of the petition attached to the summons.

(4) The judge of the court in which the petition is filed shall set the petition for approval or, if objections have been filed, for hearing, as soon as practicable. The court shall give notice of the hearing to the claimant, the health care provider, the insurer of the health care provider, and the commissioner.

(5) At the hearing, the commissioner, the claimant, the health care provider, and the insurer of the health care provider may introduce relevant evidence to enable the court to determine whether or not the petition should be approved if the evidence is submitted on agreement without objections. If the commissioner, the health care provider, the insurer of the health care provider, and the claimant cannot agree on the amount, if any, to be paid out of the patient's compensation fund, the court shall, after hearing any relevant evidence on the issue of claimant's damage submitted by any of the parties described in this section, determine the amount of claimant's damages, if any, in excess of the health care provider's policy limits established in IC 34-18-14-3(b) and IC 34-18-14-3(d) already paid by the insurer of the health care provider. The court shall

determine the amount for which the fund is liable and make a finding and judgment accordingly. In approving a settlement or determining the amount, if any, to be paid from the patient's compensation fund, the court shall consider the liability of the health care provider as admitted and established.

(6) A settlement approved by the court may not be appealed. A judgment of the court fixing damages recoverable in a contested proceeding is appealable pursuant to the rules governing appeals in any other civil case tried by the court.

(7) A release executed between the parties does not bar access to the patient's compensation fund unless the release specifically provides otherwise.

*As added by P.L.1-1998, SEC.13. Amended by P.L.233-1999, SEC.15; P.L.182-2016, SEC.11.*

#### **IC 34-18-15-4**

##### **Failure to pay settlement or judgment**

Sec. 4. If a health care provider or the health care provider's surety or liability insurance carrier fails to pay any agreed settlement or final judgment within ninety (90) days, the agreed settlement or final judgment shall be paid from the patient's compensation fund, and the fund shall be subrogated to any and all of claimant's rights against the health care provider, the health care provider's surety or liability insurance carrier, or both, with interest, reasonable costs, and attorney's fees.

*As added by P.L.1-1998, SEC.13.*