



Australian Government
Department of Health

Ms Pauline O'Neill
National Manager
Population Health
Health Programmes
Services Australia
s47E(d)

Dear Pauline,

Resolution of COVID-19 Vaccine Claims Scheme implementation issues

Thank you for meeting with the Department on Tuesday 5 April 2022 to discuss the operation of the COVID-19 Vaccine Claims Scheme (the Scheme). This letter confirms the agreed approach for the five implementation issues listed below, as identified by Services Australia and the Medical Benefits Division's (MBD) medical advisor, s47F(T):

1. Pain and suffering percentages being estimated by reporting practitioners
2. Unwillingness of some practitioners to quantify the likely period of future losses
3. Clarification of the hospitalisation and waiver requirements
4. Simplification of the claims process for claims between \$1,000 and \$5,000
5. Clarification of the definition of COVID-19 Vaccine Administration Related Harm.

The Department will also review the Scheme Policy in relation to calculating the value of care services and funeral expenses not yet incurred, and provide you with further guidance as soon as practicable.

1. Pain and suffering percentages being estimated by reporting practitioners

Issue

Question 51 of the current medical report (Form MO063) asks reporting practitioners "in your medical opinion, what is the severity of the pain and suffering (include as a percentage of the most extreme case?)" Services Australia has advised that some reporting practitioners are including percentages as high as 90%, in contravention of the Scheme objective, which is designed to align these payments with similar court assessed damage.

Resolution

Services Australia will:

- remove question 51 of the medical report (Form MO063) to remove the quantitative aspect (seeking the reporting practitioner to specify pain and suffering as a percentage of the most extreme case;
- formally advise the Legal Panel that it is required to make a judgement on the percentage of compensation for the pain and suffering component of the assessed damages, based on the Legal Panel's expertise in personal injury litigation (in line with the objective of the Scheme), taking into account the following:
 - a) the qualitative information provided in the practitioner's responses to questions 48-50 and 52-53 that:
 - outlines the nature of the claimant's pain and suffering;



Australian Government
Department of Health

- outlines the nature of the impairment to the patient's ability to lead a normal life including the impact on their pre-existing earning capacity;
 - the likely duration of the harm, pain and suffering and impairment;
 - any other relevant information that needs to be considered to determine the patient's pain and suffering; and
 - any other supporting documents considered relevant to assess the claim, including medical reports or opinions from other practitioners; and
- b) the information provided by the claimants themselves in relation to their pain and suffering (as required in section 20 of the Scheme Policy).
- Amend the medical report (Form MO063) to delete question 51.
 - amend the application (Form MO062) to include a question asking the claimant to describe their pain and suffering in more detail.

2. Unwillingness of some medical practitioners to provide an opinion on the duration of the harm needed to quantify the likely period of future losses

Issue

Services Australia has advised that some claimants have been unable to provide evidence to substantiate their expected future losses because their reporting practitioner is unable or unwilling to estimate a period of future impact, as the duration of their injury is uncertain.

Resolution

Services Australia will:

- Seek advice – either directly from the claimant's reporting practitioner or via the claimant – to request that the doctor provide a best estimate of the likely duration of the condition based on their professional opinion to enable the claimant's future costs to be determined and their claim to be finalised.
 - If contacting the practitioner direct this would be subject to the consent arrangements set out in clauses 15 (1)(b) and clause 15 (2) being met; and
- if the reporting practitioner maintains the view that they cannot provide an opinion on the duration of the harm, Services Australia will advise the claimant that they will be required to obtain a new medical report to support their claim. The claimant should make it clear to the second practitioner in booking the appointment that all questions in the medical report, including the duration of their condition, must be addressed for the claim to proceed. In this instance, the first incomplete medical report would be disregarded and the totality of the second medical report would be considered in determining the compensation payable.

Reimbursement for a second medical report for Tier 2 claims

- Section 24(1)(d) of the Scheme Policy provides that if further information or evidence is required to manage a Tier 2 claim, Services Australia, a Medical Officer, the Assessor or the Decision Maker may request a further medical examination of the claimant, with the costs of the examination to be covered by the Scheme.
- This power may be exercised in circumstances where additional information is required to support a claim and in circumstances where a claim is incomplete.



Australian Government

Department of Health

- A second medical report should only be sought in circumstances where the claim is otherwise eligible for compensation under the Scheme (as there is no mechanism in place to reimburse an ineligible claimant for the cost of a second medical report through the Scheme).

The Department will:

- write to the Australian Medical Association and the Royal Australian College of General Practitioners to bring this issue to their attention and to request their member's support to complete the medical form required to determine compensation under the Scheme.

3. Clarification of the hospitalisation and waiver requirements

Issue

Services Australia has sought clarification of the definition of *outpatient care setting* to assist in determining whether a claimant meets the conditions for the waiver of the hospitalisation requirement.

Resolution

The Department will:

- remove any ambiguity for claimants by updating the Scheme Policy to:
 - make it explicit that presentation at the emergency department is not considered to meet the Hospitalisation Requirement as defined in the Scheme Policy;
 - define “outpatient care setting” as any specialist consultation that occurs outside of a hospital admission, which may include hospital out-patient clinics, private clinics or primary care centres; and
 - clarify that if the patient presents in an emergency department and is only seen once, this does not constitute outpatient care, and the claimant would be ineligible to bring a claim unless they have been subsequently seen in an outpatient care setting. These patients, if seen in an outpatient care setting would then most likely be eligible under the waiver arrangements.
- update the description of “outpatient care setting” in the Scheme Overview document at page 3; and
- update the information on when the hospitalisation requirement may be waived in FAQ No 6 at page 3.

Services Australia will:

- update Question 24 in the application (Form MO062) to ask the claimant to provide evidence of treatment received in an outpatient care setting if they are seeking to be eligible under the hospitalisation waiver requirements.

4. Simplification of the claims process for claims between \$1,000 and \$5,000

Issue

Services Australia has advised that it will develop a proposal for the Department's consideration to simplify the processing of smaller claims between \$1,000 and \$5,000, which currently require the same administrative process and evidentiary process as the higher value claims. Services Australia has also questioned whether the Deed of Settlement is necessary for claims within this range.



Australian Government

Department of Health

Resolution

Services Australia will submit a proposal to the Department for consideration, noting that a Deed of Settlement must be signed by the claimant in each case in accordance with section 35(1) of the Scheme Policy in order to access compensation under the Scheme.

5. Update the Scheme Policy to clarify the definition of COVID-19 Vaccine Administration Related Harm

Issue

Following medical advisor review of claims relating to *COVID-19 Vaccine Administration Related Harm*, it has become apparent that there is misunderstanding by some claimants in the types of injuries that may be claimable under the Scheme for administration harm.

Resolution

The Department will:

- amend the definition COVID-19 Vaccine Administration Related Harm in the Scheme Policy to include the words to the following effect highlighted in bold below:

COVID-19 Vaccine Administration Related Harm will be changed to:

- (a) *either a clinically diagnosed:*
 - (i) *shoulder injury; or*
 - (ii) *other moderate to significant physical injury giving rise to permanent impairment or the need for an extended period of medical treatment but excluding psychological distress (e.g. shock); and*
 - (b) *that was sustained during the **physical act of performing** the administration of a COVID-19 Vaccine; and*
 - (c) *that was most likely caused by the administration of the COVID-19 Vaccine and less likely caused by any of the COVID-19 Vaccine Recipient's other circumstances.*
- amend the current exclusion list covered under COVID-19 Vaccine Administration Related Harm to clarify that any clinical condition developed that is not currently covered under COVID-19 Vaccine Related Harm is not 'administration harm';
 - update the Scheme Overview document at page 2 (item 8); and
 - update the wording in FAQ Nos 3 and 5.

Timing

The Department is working with its internal lawyers to update the Scheme Policy and associated documents to achieve the outcomes set out in this minute. We will provide a marked-up version of the Scheme Policy amendments to Services Australia for your review. It is suggested that we agree a publishing date for these changes, and any flow-on changes to Services Australia's website and forms, at our next meeting. We appreciate Services Australia bringing these issues to our attention and would



Australian Government
Department of Health

like to express our thanks for the collaborative approach that Services Australia has taken to assist the Department in resolving these issues.

Kind regards

(signed)

Nigel Murray
Assistant Secretary
MBS Policy and Specialist Services Branch
11 April 2022

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