

Workers Compensation and Injury Management Act 2023

Implementation proposals for regulations and administrative instruments

Implementation Consultation Paper 9: Medical and Health Expenses Compensation

October 2023

Public comment on the implementation proposals
should be submitted to:

consultation@workcover.wa.gov.au by **1 December 2023**

All submissions will be publicly accessible unless confidentiality is requested.

For further details on making a submission see:

<https://www.workcover.wa.gov.au/resources/modernising-was-workers-compensation-laws/>

*****Draft proposals only*****

The proposals in this consultation paper are in draft form to facilitate public comment and do not represent the final position of WorkCover WA, the Minister or Government.

Implementation Consultation – Medical and Health Expenses Compensation

Scope

This document outlines the health services that are medical and health expenses compensation and the proposed forms of health services and eligibility requirements intended to be prescribed in regulations under the *Workers Compensation and Injury Management Act 2023 (WCIMA23)*. There is no change to the scope of compensable medical and health services compared to the 1981 Act.

Background and intent

Compensation is payable for reasonable medical and health expenses incurred or to be incurred by a worker as a result of the worker's injury (medical and health expenses compensation). The *WCIMA23* provides for the types of medical and health services which are covered as medical and health expenses compensation.

Section 71 of the *WCIMA23* lists a number of core medical, surgical and hospital related services as medical and health expenses compensation. The medical and hospital services listed in the *WCIMA23* are the same as those listed in schedule 1 clause 17(1) of the 1981 Act.

Regulations will prescribe all other compensable health services by reference to the service, the class of person providing the service, and any provider eligibility requirements. The intention is to consolidate in one place:

- the allied health services currently listed in schedule 1 clause 17(1) of the 1981 Act (physiotherapy, chiropractic)
- the allied health services currently listed under the definition 'approved treatment' in section 5(1) of the 1981 Act (occupational therapy, clinical psychology, speech pathology)
- the allied health services currently approved by the Minister and published in the Gazette as 'approved treatment' under the 1981 Act (osteopathy, counselling psychology, exercise programs by exercise physiologists and physiotherapists, acupuncture).

It is intended the health provider eligibility requirements will link to the appropriate registration title for the profession under the *Health Practitioner Regulation National Law (Western Australia) Act 2010*, or to the eligibility requirements that apply to non-registered health service providers (exercise physiologists, speech pathologists) under the 1981 Act and regulations.

There is no intention to prescribe in regulations any additional health services, treatment modalities or health professions at the time the *WCIMA23* commences operation, however there is flexibility to do so if needed in the future.

Fees payable for compensable medical and health services are not covered by this paper and will be set by Ministerial fee order. The Ministerial fee order will be made closer to implementation and providers will be consulted in due course.

WCIMA23 key provisions

s. 70, s. 71(1)(h), s. 72, s. 74, s. 557

Regulations

Compensable medical and health expenses

It is intended the regulations will provide:

- a list of health services which are compensable medical and health expenses for the purposes of s.71(1)(h) of the *WCIMA23 (column 1)*
- the provider eligibility requirements that apply to the person providing the health service for the purposes of s.74 of the *WCIMA23 (column 2)*

Column 1: Health Service	Column 2: Provider Eligibility Requirements
Acupuncture services	The person's name is entered on the Register of Chinese Medicine Practitioners kept under the <i>Health Practitioner Regulation National Law (WA) 2010</i> in the Division of acupuncture; or A health practitioner registered under the <i>Health Practitioner Regulation National Law (WA) 2010</i> to practice a health profession and whose registration is endorsed for acupuncture.
Chiropractic services	The person has a current registration as a chiropractor with the Australian Health Practitioners Regulation Authority
Clinical psychology services	The person has a current registration as a psychologist with the Australian Health Practitioners Regulation Authority, with a practice endorsement in clinical psychology
Counselling psychology services	The person has a current registration as a psychologist with the Australian Health Practitioners Regulation Authority, with a practice endorsement in counselling psychology
Exercise program services (provided by physiotherapists or exercise physiologists)	The person has a current registration as a physiotherapist with the Australian Health Practitioners Regulation Authority. The person is an exercise physiologist with current accreditation by Exercise and Sports Science Australia.
Occupational therapy services	The person has current registration as an occupational therapist with the Australian Health Practitioners Regulation Authority
Osteopathy services	The person has current registration as an osteopath with the Australian Health Practitioners Regulation Authority
Physiotherapy services	The person has current registration as a physiotherapist with the Australian Health Practitioners Regulation Authority
Speech pathology services	The person is a practising member of Speech Pathology Australia

Reasonably necessary

For a medical and health expense to be reasonable under the *WCIMA23* it must be reasonably necessary for the worker to incur the expense and the amount and charging of the expense must be in accordance with the relevant Ministerial fee order.

The *WCIMA23* provides for regulations to provide for the principles to be applied in determining whether it is reasonably necessary for a worker to incur a medical and health expense.

There is no intention to make regulations on this matter as the concept of 'reasonableness' is well understood by industry, there is well established case law to assist with resolution of disputes, and the issue does not appear to require any prescription at this time.

Generally, the following matters should be taken into account when determining whether a service is reasonably necessary:

- first and foremost, whether the particular medical or health service is recognised by the *WCIMA23* and regulations
- whether the medical or health service is recommended by the worker's treating medical practitioner or by a specialist in a certificate of capacity or report
- in relation to particular modes of medical treatment or surgical interventions:
 - (i) whether the service is likely to alleviate, remedy or cure the worker's injury, restore the worker's health and increase their prospects of returning to work
 - (ii) evidence or industry acceptance of clinical appropriateness and cost effectiveness

These factors are not conclusive because what may be reasonably necessary for one worker may not be for another worker with a similar injury.

The need for future regulations will depend on any uncertainty or disputes as to what constitutes a reasonably necessary service following commencement of the *WCIMA23*.

Transitional arrangements

An entitlement to medical and health expenses under the 1981 Act becomes an entitlement to medical and health expenses compensation under the *WCIMA23* from commencement. Any compensation payable under the 1981 Act becomes payable under the *WCIMA23*.

This means medical and health treatment services provided to a worker under the 1981 Act when the *WCIMA23* commences operation will continue uninterrupted.

The *WCIMA23* does not renew or revive a liability for compensation under the 1981 Act that was discharged under the 1981 Act and does not renew or revive an entitlement that was extinguished under the 1981 Act.

However, the increase in the medical and health expenses compensation cap from 30% to 60% of the general limit will apply to injuries and claims made under the 1981 Act if the 30% cap under the 1981 Act was not exhausted before commencement of the *WCIMA23*.

In relation the cap, the savings and transitional provisions in the *WCIMA23* also provide:

- For the purposes of the application of section 557 (caps on compensation) to the compensation cap in respect of compensation under clause 17(1) of Schedule 1 to the 1981 Act, compensation paid under the 1981 Act for first aid, ambulance or other services to carry the worker to hospital or another place for medical treatment must not be counted as compensation paid under the *WCIMA23*.

Note: Compensation under section 85 for first aid and emergency transport expenses (which under the 1981 Act was subject to a compensation cap as part of medical and related expenses) is not subject to a compensation cap under the *WCIMA23*.

WorkCover WA expectations

WorkCover WA expects:

- all stakeholders note there are no changes to the types of compensable medical and health services from commencement of the *WCIMA23*
- all stakeholders continue to take a common sense and practical approach on the issue of what medical and health services are 'reasonably necessary'
- all stakeholders note workers with claims under the 1981 Act will be entitled to the increase in the medical and health expenses cap from 30% to 60% of the general limit from commencement of the *WCIMA23*, unless the medical and health expenses cap has been exhausted or the entitlement was extinguished before commencement day
- insurer and self-insurer systems for calculating the totals of medical and health expenses (as relevant to determining if a worker has reached the compensation cap) will be updated and reflect the cap applicable under the *WCIMA23* to ensure there is no disruption to compensation payable for these expenses from commencement of the *WCIMA23*.