

## PATIENT INJURIES ACT (1996:799)

Updated through SFS 2021:364

### Introductory provisions

Section 1 This law contains provisions on right to compensation for injury received during treatment and on the obligation for healthcare providers to have insurance which covers such compensation (patient insurance).

Section 2 In this law, a patient is equated to anyone who voluntarily participates as a subject in medical research or who donate organs or other biological material for transplantation or other medical purposes.

Section 3 The law only applies to injuries which have occurred in connection with healthcare in Sweden.

Section 4 The right to patient compensation may only be restricted due to circumstances which have occurred after the claim event and which, according to the Insurance Contracts Act (2005:104), can result in a limitation of the insurer's obligation to issue insurance amount. *Act (2005:118)*.

Section 5 In this Act,

healthcare is referred to: such activities covered by the Health and Medical Services Act (2017:30), Dental Services Act (1985:125), The Circumcision of Boys Act (2001:499), the Act (2018:744) on insurance medical investigations or the Act (2019:1297) on coordination interventions for sick patients, other similar medical activities as well as activities in the retail trade of pharmaceuticals, and activities covered by the Act (2021:363) on aesthetic surgical procedures and aesthetic injection treatments all on the condition that it is a question of activities carried out by personnel covered by Chapter 1. the Patient Safety Act (2010:659),

health care provider: state authority, region or municipality in the case of healthcare for which the authority, region or municipality is responsible (public sector) as well as an individual who provides healthcare (private healthcare provider).  
*Act (2021:364)*.

### The right to patient compensation

Section 6 The right to patient compensation is left for personal injury to the patient if there is an overwhelming probability that the injury is caused by

1. examination, care, treatment or similar action on the condition that the damage could have been avoided either through a different performance of the chosen procedure or by choosing another available procedure which, according to a retrospective assessment from a medical point of view, would have met the need for care in a less risky way,
2. failure of the medical device or healthcare equipment used for examination, care, treatment or similar actions or incorrect handling thereof,
3. incorrect diagnosis,
4. transmission of an infectious agent which led to infection in connection with

examination, care, treatment or similar measures,

5. accidents in connection with examination, care, treatment or similar measures or during medical transport or in connection with fire or other damage to healthcare premises or equipment, or

6. prescribing or dispensing medicines contrary to regulations or instructions.

When examining the right to compensation pertaining to the first paragraph 1 and 3 the standard of action that applies to an experienced specialist or other experienced professional in the field must be applied.

The right to compensation pertaining to the first paragraph 4 is excluded in cases where the circumstances are such that the infection must reasonably be tolerated. In doing so, consideration must be given to the nature and severity of the illness or injury for which the measure is intended, the patient's general state of health and the possibility of predicting the infection.

### **Exceptions to the right to patient compensation**

Section 7 Patient compensation is not remitted if

1. the injury is a consequence of a necessary procedure for the diagnosis or treatment of a disease or injury which, without treatment, is directly life-threatening or can lead to severe disability, or
2. the injury was caused by medication in cases other than those referred to in section 6, first paragraph 6.

### **How patient compensation is determined**

Section 8 Patient compensation is determined pursuant to Chapter 5. Sections 1-5 and Chapter 6 Sections 1 and 3 of the Tort Liability Act (1972:207) with the limitations stated in Sections 9-11 of this Act. Act (2010:668).

Section 9 When patient compensation is determined, an amount of one twentieth of the price basic amount is deducted according to Chapter 2. Sections 6 and 7 of the Social Insurance Code that apply when compensation is determined. Act (2010:1265).

Section 10 Patient compensation is limited to a maximum of 1,000 times the price basic amount pursuant to Chapter 2 for each claim. Sections 6 and 7 of the Social Insurance Code that apply when the compensation is determined. For each injured patient, however, patient compensation is provided with a maximum of 200 times this price basic amount for each claim.

The amounts stated in the first paragraph do not include interest or compensation for legal costs. Act (2010:1265).

Section 11 If the amount of liability applied pursuant to Section 10, first paragraph, first sentence, is not sufficient to indemnify those who are entitled to compensation, their compensation will be reduced by the same quota part for each.

If, after an incident of damage has occurred, it is feared that a reduction pursuant to the first paragraph will be required, the government or the authority which has been determined by the government can prescribe compensation for the time being be provided only with a certain quota part.

### **Liability for insurance, etc.**

Section 12 Caregivers must have patient insurance which covers compensation for damages covered by this law. If the business activities are run by a private healthcare provider under an agreement with a public provider of healthcare, it is the public healthcare provider that must have the insurance.

Section 13 The patient compensation is issued by the insurer. If multiple patient insurances cover the same damage, the insurers are jointly and severally liable for the compensation. In such a case, the insurers must take an equal share in the responsibility for compensation.

Section 14 If there is no patient insurance, the insurers who are part of the Patient Insurance Association pursuant to Section 15 are jointly and severally liable for the patient compensation which would have been provided if there had been patient insurance. In cases as such, the association represents the insurers.

The mutual compensation liability of the insurers is distributed according to the ratio between the amounts of the premiums for patient insurance that each of them amounts to in the immediately preceding calendar year.

### **Patient Insurance Association**

Section 15 The insurers who issue patient insurance must be part of a patient insurance association.

The government or the authority designated by the government lays down statutes for the association.

### **Patient insurance fee**

Section 16 The Patient Insurance Association is entitled to compensation (patient insurance fee) from the care provider for the time the care provider lacked insurance pursuant to this law.

Patient insurance fee calculated for the year may be charged at most with an amount which corresponds to fifteen percent of the price basic amount in pursuant to Chapter 2, Sections 6 and 7 of the Social Insurance Code which is in force when the fee is determined. If the amount corresponding to twice the annual insurance premium which applies to caregivers in the corresponding category when the fee is determined is higher, the fee may instead be calculated on the basis of this amount. Act (2010:1265).

### **The Patient Claims Panel**

Section 17 The insurers who are part of the patient insurance association will jointly maintain and pay for a patient claims panel. The panel must include representatives for the interests of the patients. Further regulations on the panel's composition are provided by the government, which will also approve the panel's rules of procedure.

At the request of a patient or other injured party, healthcare provider, insurer or court, the panel must voice an opinion on compensation cases.

Section 17 a A patient or other injured party who wishes to obtain an opinion from the Patient Claims Panel must request it no later than one year from when they received the insurer's final position on the compensation claim. Act (2013:1091).

## Damages

Section 18 Despite the fact that patient compensation can be provided in pursuant with this law, the injured party may instead claim compensation in accordance with what applies thereto.

Section 19 Anyone who has paid damages due to damage referred to in this law enters into the injured party's right to patient compensation up to the amount paid. However, this does not apply if the patient compensation could have been claimed back by the person liable for damages pursuant to section 20, first paragraph.

## Recovery

Section 20 If patient compensation has been provided for an injury which was caused intentionally or through gross negligence, the insurer enters into the injured party's right to compensation up to the amount issued.

If patient compensation has been paid for an injury covered by the Product Liability Act (1992:18), the insurer enters to the amount issued in the claimant's right to damages under that Act.

If an injury is covered by traffic insurance pursuant to the Motor Traffic Damage Act (1975:1410) and patient compensation has been given for the damage, the insurer enters into the claimant's right to traffic damage compensation next to the issued amount.

Section 21 If patient compensation has been given in pursuant to Section 14, first paragraph, the compensation may be recovered from the healthcare provider who was obliged to take out patient insurance. In cases as such, the Patient Insurance Association represents the insurers.

Section 22 A healthcare provider who has been claimed for an amount pursuant to Section 21 enters next to the issued amount in the right that according to Section 20 accrues to the insurer.

## Period of limitation

Section 23 Anyone who pursues compensation under this law must bring an action within ten years from the time the damage was caused. If the injured party requests a review pursuant to Chapter 5, Section 5 of the Tort Liability Act (1972:207), the action may be brought within three years from the time when the situation that is the basis for the reconsideration of the claim occurred.

If the claimant who wants compensation has reported the damage to the healthcare provider or the insurer within the time specified in the first paragraph, the deadline for bringing action is always at least six months from when they received the insurer's final position on the claim.

In the case of a recovery between insurers and in the case of a claim against a healthcare provider pursuant to Section 21, the deadline for bringing an action is always at least one year from the payment that is the basis for the claim.

In terms of premium requirements and requirements for health insurance contributions, the Limitations Act (1981:130) is applied. Act (2013:1091).

Section 24 A claim may be brought after the time specified in Section 23, first paragraph, only if there are exceptional circumstances. In the assessment, particular consideration must be given to whether the injured party has been prevented from

making the claim in time. Act (2013:1091).

Section 25 If the action is not brought pursuant to Section 23 or 24, the right to compensation is lost.

In relationships between insurers, other terms may be agreed on prescription than what follows from this Act. Act (2013:1091).

Section 26 What is said about insurers in Section 23, second and third paragraphs and in Section 25, second paragraph shall, in a case referred to in Section 14, first paragraph, apply to the Patient Insurance Association. Act (2013:1091).

## ENTRY INTO FORCE AND TRANSITIONAL PROVISIONS

### **SFS 1996:799**

This law enters into force on January 1. 1997.

### **SFS 1998:535**

This law enters into force on January 1. 1999.

### **SFS 2001:501**

This law enters into force on October 1. 2001.

### **SFS 2005:118**

This law enters into force on January 1. 2006.

### **SFS 2010:668**

This law enters into force on January 1. 2011.

### **SFS 2010:1265**

This law enters into force on January 1. 2011.

### **SFS 2013:1091**

1. This law enters into force on January 1. 2015.

2. Older provisions apply to a claim arising from damage, if the damage had occurred before the entry into force. For a claim that is not due to an injury, the new provisions do not apply if the agreement on patient insurance had been entered into before the entry into force and was not renewed afterwards.

3. Section 17 a is applied only in the case of compensation claims as a result of damage which has been caused after the entry into force.

### **SFS 2017:43**

This law enters into force on April 1, 2017.

### **SFS 2018:746**

1. This law enters into force on January 1. 2019.

2. The new provisions shall be applied to insurance medical investigations requested by the Swedish Social Agency as of the entry into force.

### **SFS 2019:1298**

This law enters into force on February 1. 2020.

### **SFS 2021:364**

This law enters into force on 1 of July, 2021.