

# Nursing homes

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## Introduction

An employee may be required to reside in a *nursing home* or other similar facility. If an employee is maintained in one of these places as a result of their compensable injury for more than 12 months, their entitlements to compensation for incapacity may be affected (see: section 22 of the SRC Act).

In these circumstances you must ensure they are correctly determining liability for medical treatment, incapacity and any other benefits claimed by the employee or the employee's representative.

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## Interaction between the Aged Care Act 1977 and the SRC Act

The *Aged Care Act 1997* sets out matters relating to residential nursing home care. This Act itself does not have any impact upon the determining of benefits under the SRC Act.

Accommodation costs for nursing homes and aged care homes are provided via a subsidy under the *Aged Care Act 1997*. The subsidy is a payment by the Department of Health and Ageing to an approved provider for providing residential care to an approved care recipient as a certified service.

If an employee residing in a nursing home receives compensation payments under the SRC Act, this should not result in a reduction of any residential care subsidy payment the provider is entitled to under the *Aged Care Act 1997*. The subsidy should not be affected at all by any compensation benefits determined under the SRC Act.

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## What compensation benefits are payable when an employee is in a nursing home?

An employee maintained in a nursing home, hospital or other similar place may be entitled to compensation (in relation to their compensable condition) for:

- medical treatment (including nursing care)
- incapacity
- aids and appliances, and
- [permanent impairment](#) – for further guidance refer to the [Permanent impairment](#) page and the '[Non-economic loss](#)' section of the PI page.

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## What compensation benefits are not payable when an employee is in a nursing home?

An employee who is maintained in a nursing home is not eligible under the SRC Act for compensation in relation to:

- attendant care services
- household services (unless the employee is only in the nursing home for short-term respite care)
- nursing care provided as part of an overall package (i.e. it is included with the accommodation where the two services are not invoiced separately), see below, or
- any costs associated with the nursing care accommodation (including respite care), see below.

## Payment for nursing care services when employee is in a nursing home

When an employee is maintained in a nursing home, payment should only be made for nursing care where the service(s) provided are in addition to those normally provided by the nursing home facility (and for which no residential care subsidy has been paid), and specifically in the case of a nursing home or aged care facility, that no residential care subsidy has been paid under the AC Act that includes payment for the services.

Payment for nursing care received at a hospital, nursing home or other similar place would generally only be made where the nursing care was provided by a qualified nurse who is not employed by the hospital, nursing home or other similar place (e.g. the service is not ordinarily provided by the facility and is required in relation to the compensable condition).

## Compensation for nursing home accommodation

There is no provision under the SRC Act to pay nursing home accommodation and/or costs associated with nursing home accommodation, such as facilities and meals (refer section 4(1) of the SRC Act).

Medical treatment under section 4(1)(g) of the SRC Act does not include maintenance as a resident in a nursing home.

# Incapacity entitlements

When an employee is maintained in a hospital, nursing home or similar place for more than 12 months as a result of their compensable condition and there are no persons financially dependent on the employee, Comcare is obliged to consider reducing the employee's incapacity entitlements having regard to their present and probable future needs and expenses.

When considering whether to reduce an employee's incapacity payments you will need to establish that the employee has any other needs or expenses beyond those being met as a patient in a hospital or nursing home environment.

Other needs and expenses may include, but are not limited to:

- costs of the hospital/nursing home/nursing care
- mortgages, loans, insurance, rent and other expenses relating to major items owned by the employee, such as a house and car
- medical insurance
- clothing and toiletries
- books, magazines and periodicals
- entertainment/gifts, and
- any other personal needs.

Other expenses and needs an employee may have that should also be taken into account can include:

- those which may fall under 'enjoyment of life' expenses
- Other expenses the employee is required to continue to pay such as child support maintenance, and
- the period the employee is expected to remain in hospital or the nursing home.

You should only consider reducing an employee's incapacity entitlements when the employee's total expenses are significantly smaller than their total income, inclusive of workers' compensation payments.

Note: The SRC Act specifies the amount determined cannot be less than half of the employee's current incapacity payments.

**Example:** An employee is, and continues to be, hospitalised for 53 weeks following a work-related accident. Their Normal Weekly Earnings (NWE) is \$500.00. As the employee has been incapacitated for more than 45 weeks their entitlement is currently 75% of their NWE (\$375.00).

Under section 22 of the SRC Act the employee cannot receive less than half of their current entitlement ( $\$375.00 \times 0.5 = \$187.50$ ) per week. A CM should have regard to all the considerations above before reducing the employee's incapacity payments.

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## Procedure for requesting information from a Nursing Care Provider

When determining liability for nursing care (under section 16 of the SRC Act), you may need to request additional information from the nursing care provider before a determination of liability can be made.

An invoice from a nursing care provider should detail the specific nursing care provided and the amount of time the provider spent delivering the service. If the invoice (or any other documents) does not contain this information, you need to request this information from the service provider.

To obtain the necessary information follow the steps outlined below:

### Step 1: Contact the nursing care provider

Your telephone conversation should include:

- acknowledgement of the invoice received
- that the invoice contained insufficient information for Comcare to pay
- details of the information required (e.g. details of the provider, the company they are employed by, specific care provided, time taken etc.)
- a request that the information be provided within 14 days or as soon as possible.

## **Step 2: Telephone the employee**

Your conversation should include:

- that you have requested additional information from the nursing care provider
- that you have requested they provide the information within 14 days or as soon as possible
- a request for any further information you may require for future nursing care expenses.

## **Step 3: Update Pracsys**

Go to 'Manage Claim Comment' (MCOM) and enter a comment. Record all your conversations. Your comment should include you have requested information from the nursing care provider.

Go to 'Manage Action Plan' (MAP) and create an action plan. The 'Description' field should state that you have requested information from the nursing care provider. The 'Required Date' field should be set for 14 days (or an agreed date).

# Procedure for determining liability for Nursing Care

To determine liability for nursing care, follow the steps outlined below.

## **Step 1: Is the nursing care being provided at the direction of a legally qualified medical practitioner?**

If yes, continue (Step 3).

If no, consider whether the nursing care is reasonably required (Step 2).

## **Step 2: Is the nursing care required in relation to the employee's compensable condition?**

If yes, continue.

If no, proceed to rejecting the treatment. For further guidance see the page [Determining liability for medical treatment](#).

## **Step 3: Is nursing care ordinarily provided by the hospital or nursing home facility where the employee is maintained?**

If yes, proceed to rejecting the treatment. For further guidance see the page [Determining liability for medical treatment](#).

If unsure, you will need to collect more information from the nursing home. For further guidance refer to the 'Procedure for requesting information from a Nursing Care Provider set out previously.

If no, continue.

## **Step 4: Is the nursing care provided by a qualified nurse who is not an employee of the hospital or nursing home?**



If yes, proceed to considering and accepting liability for the nursing care. For further see the page [Determining liability for medical treatment](#).

If you are unsure, you may need to request further information from the nursing care provider. For further guidance refer to the '*Procedure for requesting information from a Nursing Care Provider*' set out previously.

If no, proceed to rejecting the treatment. For further see the [Determining liability for medical treatment](#).

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