

WorkCover Claims & Medical Records Guide

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Assisting patients with WorkCover claims can require a lot of resources. However, you can play a crucial role in getting their claim approved. If a patient pursues a claim, WorkCover (or their appointed insurer) will likely need access to their medical records. By signing the WorkCover claim form, patients give permission to the WorkCover insurer to obtain their medical. WorkCover insurers request these records to understand the patient's medical history and determine what may be relevant to the claimed injury, or if there is a history of similar injuries or conditions prior to the claimed injury. To ensure a smooth process for both you and the patient, here are some helpful tips for navigating WorkCover claims and providing medical records.

1. Know your legal obligations

Many members ask us whether they can decline to see WorkCover patients. While there is no common law or code of conduct obligation to consult with a patient (except in an emergency) you may be under a contractual obligation under a contract of employment in a hospital setting. Any decision to terminate (or refuse to enter into) a therapeutic relationship with a patient on the basis of their medical condition should be carefully considered and explained, as it may give rise to an Ahpra or unlawful discrimination complaint. If you are seeing the patient for the first time, you can apologise and say you don't do WorkCover claims, especially if your practice policy says so. However, the responsibility does fall on the doctor to help the patient find someone else who can assist them in relation to a WorkCover claim. Above all, if you have already assessed and consulted with a patient, you may still be under an obligation to produce records or give evidence if requested to do so by a Court.

2. Disclosing patient information to the insurer

If WorkCover, or its appointed insurer, asks for the patient's medical history, you should request a copy of your patient's authority, which must:

- be addressed to you and signed by the patient

- clearly indicate to whom the records need to be released, as agreed by the patient
- identify the records that are covered
- be contemporaneous and no more than 9-12 months old.

If the patient signs the WorkCover claim form or any other document that fulfills these requirements, then you can provide the requested records. However, you should always carefully check that any request for health information is within the scope of the authority. For example, the insurer might ask for the entire medical history file, even though the patient's authorisation may only permit the release of information specifically related to the WorkCover claim. If there is any uncertainty about the authority, you can decline to provide the records and ask WorkCover to obtain updated consent from the patient. Alternatively, you may choose to discuss the request with the patient and clearly document any verbal consent or refusal in the records.

It is important to remember that if the patient subsequently refuses to consent to you releasing their records to WorkCover, this overrides any prior signed authority. A prior authority simply indicates the patient's understanding and approval at the time it was given, but the patient's current wishes take precedence. Although this may have implications for their WorkCover claim, it is not your role to explain this to the patient. They should instead be directed back to WorkCover or their legal representative if they have one.

Similarly, if a patient consents to disclosure of only limited information to an insurer, you should only disclose the information to which the patient has given consent. However, disclosing less information than that which has been requested by the insurer may inadvertently mislead the insurer that you released what was requested. In such cases, it is not unreasonable to inform the WorkCover insurer that the patient has declined to consent to the release of all the information requested.

3. Full disclosure?

Your patient might not initially inform you that their injury is work-related, or they may provide you with conflicting stories about the circumstances leading to an alleged injury. This could be because they were primarily focused on seeking treatment and hadn't considered the possibility of their injury being compensable under a work-related injury scheme. It could be innocent, or it could raise suspicions.

Regardless of whether you have suspicions about the omission, you should document the history as given by the patient. If you have any questions about apparent inconsistencies in the history, you should seek to clarify these with the patient and document their response. It is generally not the treating doctor's role to investigate the veracity of a claimed injury. Instead, your role is to assess and treat your patient, to document that assessment and treatment and, if required, to provide factual evidence about the assessment and treatment.

4. Patients requesting their own records

If you are conducting an examination as part of a WorkCover claim (either as a treating practitioner or as an independent expert), the patient may request a copy of their medical record or any reports that you have prepared. It is important to remember that patients have the right to access their own health information unless granting access might give rise to a risk of harm to the patient or a third party or would unreasonably breach the privacy of a third party. The patient's right to access health information about themselves extends to information that was requested or paid for by a third party.

Therefore, a request or written direction by an insurer that you not disclose a report to a patient may not be lawful.

More information

If you have concerns about filing a WorkCover claim and would like medico-legal assistance, contact us on [1800 061 113](tel:1800061113).

Medical Indemnity Protection Society ABN 64 007 067 281 | AFSL 301912

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Information is only current at the date initially published.

If in doubt, contact our claims and 24-hour medico-legal advice and support team on 1300 698 573.

You should consider the appropriateness of the information and read the [Member Handbook Combined PDS and FSG](#) before making a decision on whether to join MIPS.

