



# Compensation Recovery Program



## Frequently used terms

### The Advance Payment Option (APO)

An advance payment is a payment made by the compensation payer which is equal to 10 per cent of the total amount of compensation set at judgment or settlement. The amount must be sent to Medicare Australia within 28 days of judgment or settlement.

A compensation payer can make an advanced payment when:

- the amount of compensation set is more than \$5000 (including all costs)
- there is no valid *Notice of past benefits* in place.

By using the APO, the compensation payer is able to pay the balance of the compensation to the claimant before the past benefits or subsidies are known.

If the amount due to the Australian Government is less than the advance payment amount, Medicare Australia will refund the balance to the claimant within three months of receipt of the advance payment and the completed documents from the compensation payer.

### Compensation payer

The compensation payer is the person who is liable to make a payment of compensation fixed under a judgment or settlement, or under a reimbursement arrangement. A compensation payer may be a person, an insurance company or an authority of the Australian Government, a state or a territory.

### Compensation payment

A compensation payment is a sum of money paid to compensate a person who has been injured or suffered an illness due to negligence or lack of care by another person. The payment is usually made by an insurance company but can be made by an individual or a company.

### Apportionment of liability

Apportionment of liability negligence is a formal agreement or finding that a person contributed to their injury or illness. The amount payable to Medicare Australia on either a *Notice of charge* or *Notice of past benefits* (advance payment) is reduced by the percentage or fraction agreed to by all parties to proceedings, if accepted by Medicare Australia.

At the time of judgment or settlement, it may be considered that the claimant failed to take reasonable care for their own safety and is partly at fault for the injury or illness.

If that is the case:

- liability for the compensable injury can be apportioned between the compensation payer and the claimant
- the total amount of compensation is reduced by the percentage of liability apportioned to the claimant (the percentage can be referred to as an apportionment of liability).

If the amount of compensation has been reduced because of the claimant's contributory negligence, the amount owed to the Australian Government will be reduced by the percentage or fraction that has been apportioned to the claimant.

**Example:** if the parties agree that the claimant was 30 per cent responsible for their injury or illness, the debt owed to the Australian Government is reduced by 30 per cent. Medicare Australia would seek recovery of 70 per cent of the debt rather than the previous 100 per cent.

**Note:** the *Notice of charge* reflects the full amount of Medicare benefits, nursing home benefits or residential care subsidies owed to the Australian Government and is not amended to reflect the reduction due to contributory negligence.

Medicare Australia will not reduce the amount owed if the amount of compensation is reduced because:

- the amount originally sought or claimed by the claimant is reduced to reflect professional or commercial judgments about the prospects of success in the litigation, if the claimant does not establish liability

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- the amount paid in the settlement is reduced to reflect an advantage to the plaintiff in early payment of the claim (commercial agreement)
- the amount paid, sought or claimed by the plaintiff is reduced to reflect professional or commercial judgments about the probative value of evidence (risk of litigation).

These examples are not considered to be contributory negligence for the purpose of the *Health and Other Services (Compensation) Act 1995* (the Act) as the reduction is due to a commercial decision and not because the claimant contributed to their injury.

Notification of judgment or settlement must indicate if there has been an apportionment for contributory negligence and the percentage or fraction of liability attributed to the claimant.

If an apportionment is indicated on the Medicare Australia *Notice of judgment or settlement* form, then supporting documentation or evidence of the apportionment must be provided.

## Deemed

If a claimant fails to return a completed *Medicare claims history statement* and statutory declaration to Medicare Australia by the due date and no extension has been granted, then all Medicare services on the history statement will be taken as relating to your injury or illness. This means the claimant's Medicare claims history has been 'deemed'.

If a statement has been deemed, the amount listed on the *Notice of past benefits* will be the total value of all services listed, whether they relate to the compensable injury or illness or not. This is the amount that must be repaid upon settlement of a claim.

## Ex gratia payments

An ex gratia payment is a payment made by a compensation payer to a claimant as an act of grace and not because of the compensation payer's legal obligation to the claimant. Ex gratia payments are not considered to be compensation for the purpose of the Act.

However, if an ex gratia payment is intended by the compensation payer to be a settlement of a claim, with the claimant required to enter into an agreement with the compensation payer effectively extinguishing the claimant's legal right to a claim, then that payment will be considered to be a payment of compensation under the Act and not an ex gratia payment.

Similarly, if an ex gratia payment eventually forms part of any future compensation payment, then the claim is notifiable to Medicare Australia if compensation is set at more than \$5000 (including all costs).

## Medicare claims history statement

A notice issued by Medicare Australia to the claimant, under Section 17 of the Act, containing a list of the Medicare benefits provided to the claimant since the date of injury or illness, or the commencement of Medicare—whichever is later.

## Notice of charge

This is a notice issued after judgment or settlement indicating the amount owed to the Australian Government. The amount is payable within 28 days.

## Notice of past benefits

This is a notice issued before judgment or settlement, indicating the amount owed to the Australian Government for past medical services relating to the compensable injury or illness. The notice is valid for six months.

If the claim reaches judgment or settlement during those six months, the total amount on the notice will be the amount owing to the Australian Government.

## Notifiable person

Under the Act the notifiable person is the compensation payer—usually the insurer. They are required to notify Medicare Australia that the claim has reached judgment or settlement.

## Small amount

An amount of compensation is a small amount if it is equal to or less than \$5000 (including all costs).

If the amount of compensation set by a judgment or settlement is a small amount, and is the entire amount of the compensation payment for the compensable injury or illness, then under the Act Medicare Australia does not need to be advised, and no past Medicare benefits will be repayable.

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## Statement by claimant

This is the returned *Medicare claims history statement* where medical services relating to the compensable injury or illness have been identified and substantiated by a statutory declaration.

## Statement not substantially correct

A notice issued under Section 23B of the Act, to advise the claimant that the Chief Executive Officer, or their delegate, is satisfied that the statement by claimant, or the Section 23A statement, is not substantially correct. The notice requests the claimant to reassess the list of services that may relate to the compensable injury.

## Section 23A statement and statutory declaration

This is a statement made by the claimant and supported by the statutory declaration, declaring that:

- if a *Notice of past benefits* has never been issued, no medical benefits or subsidies have been paid in relation to the compensable injury or illness, or
- since the last *Notice of past benefits* was issued, no further health benefits or subsidies have been paid in relation to the compensable injury or illness.

If the claimant is declaring one of the above statements, then the statement and statutory declaration must be forwarded to Medicare Australia with the *Notice of judgment or settlement* form.

## For more information

Online [www.medicareaustralia.gov.au](http://www.medicareaustralia.gov.au)

Email [NSW.comp.mgr@medicareaustralia.gov.au](mailto:NSW.comp.mgr@medicareaustralia.gov.au)  
[QLD.comp.mgr@medicareaustralia.gov.au](mailto:QLD.comp.mgr@medicareaustralia.gov.au)

Call **132 127\***

TTY **1800 552 152\*\*** (Hearing and speech impaired)

TIS **131 450\*** (Translating and Interpreting Service)

If you need help translating this information call the TIS on **131 450\***.

Arabic - إذا احتجت لمساعدة في ترجمة هذه المعلومات، يمكنك الإتصال بخدمة الترجمة التحريرية والشفهية على الرقم 131 450\*

Korean - 본 정보의 이해를 위해 번역사의 도움이 필요하시면, 131 450\*번으로 TIS에 전화하십시오

Serbian - Ако вам је потребна помоћ да преведете информације, назовите TIS на 131 450\*

Spanish - Si necesita ayuda para traducir esta información, llame al TIS al 131 450\*

Turkish - Bu bilgiyi tercüme etmek için yardıma ihtiyacınız varsa 131 450\* numaradan TIS'i arayınız

Vietnamese - Nếu quý vị cần nhờ dịch thông tin này xin gọi cho TIS số 131 450\*

\* Call charges apply.

\*\* Call charges apply from mobile and pay phones only.