

**August 2000**

**Carl Espersson, Legal Adviser**  
**The Swedish Patient Insurance Association/Patientförsäkringsföreningen**  
**S- 115 87 Stockholm, Sweden**

**Phone: + 46-8-783 71 44, direct + 46-8-783 71 40**

**Fax: + 46-8- 661 37 02**

E-mail: carl.espersson@pff.se

## **The Patient Injury Act**

issued on 19 June 1996.

### **Introductory provisions**

#### Section 1

This Act contains provisions governing the right to patient injury compensation and the obligation of health care providers to have an insurance covering such compensation (patient insurance)

#### Section 2

Under this Act a person who voluntarily participates as an experimental subject in medical research or who donates an organ or other biological material for transplantation or for other medical purpose is considered to be equivalent to a patient.

#### Section 3

This Act only applies to injuries which have arisen in connection with health and medical care services in Sweden.

#### Section 4

The right to patient injury compensation may only be limited on the basis of circumstances which have occurred after the event during which the injury was incurred and which, according to the Insurance Contracts Act (1927:77), may entail a limitation of the insurer's obligation to pay the amount insured.

#### Section 5

In this Act

*health and medical care services means:* such activities as are subject to the Public Health and Medical Care Services Act (1982:763) or the Dental Services Act (1985:125), or other similar medical activities and activities

within the retail trade with pharmaceuticals, always subject to the precondition that it is the matter of activities carried out by staff subject to Chapter 1 of the Act (1998:531) on Professional Activity In Public Health and Medical Care.

*care providers means:* state authority, county council and municipality as regards such health and medical care services as the authority, county council or municipality is responsible for (public care providers) as well as private persons who provide health and medical care services (private care providers). Act (1998:535)

### **Entitlement to patient injury compensation**

#### Section 6

Patient injury compensation is paid for personal injury to patients if the injuries with preponderant probability were caused by

1.  
examination, care, treatment or similar measure provided that the injury could have been avoided either by a different performance of the chosen procedure or by choosing some other available procedure which according to an assessment made retroactively from a medical point of view would have satisfied the need of treatment in a less hazardous way.
2.  
defects in the medico-technical products or hospital equipment used in the performance of an examination, care, treatment or similar measure, or improper use thereof.
3.  
an incorrect diagnosis.
4.  
transfer of a contagious substance entailing infection in connection with an examination, care, treatment or similar measure.
5.  
accidents in connection with an examination, care, treatment or similar measure or during a patient transport or in connection with a fire or other damage to health care premises or equipment, or
6.  
prescription or provision of pharmaceuticals in contravention of regulations or instructions.

When considering the right to compensation in accordance with the first paragraph, items 1 and 3, the guiding principle of action applicable is that of an experienced specialist or other experienced practitioner within the field.

There is no right to compensation in accordance with item 4 of the first paragraph in those cases where the circumstances are such that the infection must reasonably be tolerated. In that connection regard shall be paid to the

nature and degree of severity of the illness or injury which the measure is related to, the patient's health status in other respects and the possibility of anticipating the infection.

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

#### Section 7

Patient injury compensation is not paid if

1. the injury is a consequence of a necessary procedure for the diagnosis or treatment of an illness or injury which without treatment is downright life-threatening or entails severe disability, or
2. the injury is caused by pharmaceuticals in cases other than those mentioned in Section 6, first paragraph, item 6.

### **How the patient injury compensation is determined**

#### Section 8

Patient injury compensation is determined in accordance with Chapter 5, Sections 1-5 and Chapter 6, Section 1 of the Tort Liability Act (1972:207) with the limitations stated in Sections 9-11 of that Act.

#### Section 9

When patient injury compensation is determined, a sum shall be deducted which is equal to one twentieth of the base amount according to the National Insurance Act (1962:381) applicable when the compensation is determined.

#### Section 10

Patient injury compensation is for each event limited to at most 1,000 times the base amount under the National Insurance Act (1962:381) applicable when the compensation is determined. However, for each injury event the patient injury compensation is limited for each injured patient to at most 200 times this base amount.

The amounts stated in the first paragraph do not include interest or compensation for litigation costs.

#### Section 11

If the liability sum applicable under Section 10, first paragraph, first sentence is not sufficient to satisfy those who are entitled to compensation, their compensation is to be reduced by the same quotient portion for each of them.

If, after the occurrence of a case of injury there is a risk that a reduction under the first paragraph will be required, the Government or an authority appointed by the Government may order that for the time being only a certain quotient portion of the compensation shall be paid out.

**Insurance obligations etc.**

## Section 12

Health care providers shall have a patient insurance that provides compensation for injuries covered by this Act. If an activity is conducted by a private health care provider under an agreement with a public health care provider, it is the public health care provider which must have the insurance.

## Section 13

Patient injury compensation is to be paid out by the insurer. If several patient insurances cover the same loss, the insurers are liable jointly for the compensation. In such a case the insurers shall among themselves incur equal parts of the compensation liability.

## Section 14

In the absence of patient insurance, the insurers affiliated to the Patient Insurance Association in accordance with Section 15 are jointly liable for the patient injury compensation which would have been paid if a patient insurance had existed. In such a case the Association will represent the insurers.

The insurers' compensation liability among themselves is to be distributed according to the relationship between the patient insurance premium amounts that apply for each of them to the next preceding calendar year.

**Patient Insurance Association**

## Section 15

Those insurers who issue patient insurance shall be affiliated to a patient insurance association.

The Government or an authority appointed by the Government is to determine the by-laws of the Association.

**Patient insurance fee**

## Section 16

The Patient Insurance Association is entitled to compensation (patient insurance fee) from the health care provider for the period during which the health care provider did not have insurance in accordance with this Act.

The patient insurance fee charged may at most amount to a sum which equates per year to fifteen percent of the base amount applicable under the National Insurance Act (1962:381) in force when the fee is decided. If the amount which equates to two times the annual insurance premium applicable to health care providers of an equivalent category when the fee is

determined, is higher, then the fee may instead be computed on the basis of that sum.

### **Patient Claims Panel**

#### Section 17

The insurers affiliated to the Patient Insurance Association shall together maintain and finance a patient claims panel. The Panel shall include representatives of the patients' interest. Further regulations concerning the Panel's composition will be issued by the Government, which shall also approve the rules of procedure of the Panel.

The Panel shall at the request of a patient or other person suffering loss, a health care provider, an insurer or a court pronounce its opinion in compensation cases.

### **Damages**

#### Section 18

Although patient injury compensation may be paid under this Act the person suffering the loss may instead demand tort damages in accordance with the rules applicable thereto.

#### Section 19

A person who has paid tort damages by reason of an injury referred to in this Act assumes, up to the sum paid, the rights of the injured person to patient injury compensation. However, this does not apply if the patient injury compensation could have been re-claimed by the party liable for tort damages in accordance with Section 20, first paragraph.

### **Re-claim**

#### Section 20

If patient injury compensation has been paid for a loss caused intentionally or by gross negligence, the insurer assumes, the rights of the injured party to tort damages up to the sum paid.

If patient injury compensation has been paid for an injury covered by the Product Liability Act (1992:18), the insurer assumes, up to the sum paid, the rights of the injured party to damages under that Act.

If an injury is covered by traffic insurance in accordance with the Traffic Damages Act (1975:1410) and if patient injury compensation has been paid for the injury, the insurer assumes the right of the injured party to traffic damages compensation up to the sum paid.

#### Section 21

If patient injury compensation has been paid under Section 14, first paragraph, the compensation may be re-claimed from the health care

provider who was liable to take out a patient insurance. In that case the Patient Insurance Association represents the insurers.

#### Section 22

A health care provider from whom a sum has in accordance with section 21 been demanded, assumes, up to the amount paid, the rights which under Section 20 accrue to the insurer.

#### **Statutory limitation**

#### Section 23

A person who wishes to obtain patient injury compensation under this Act loses his right to compensation if he does not institute proceedings within three years from learning that a claim could be made and in any case within ten years from the time when the injury was caused.

If a person who wishes to obtain compensation has reported the injury to the health care provider or the insurer within the time stated in the first paragraph, he always has six months within which to institute proceedings after having received the insurer's final decision concerning the matter.

That which is stated in the second paragraph concerning the insurer shall, in the cases mentioned in section 14, first paragraph, apply to the Patient Insurance Association.