

For the attention of: PERSONAL INJURY CLAIMS MANAGERS

THE HEALTH AND SOCIAL CARE (COMMUNITY HEALTH AND STANDARDS) ACT 2003

CHANGES ARISING FROM THE EXPECTED INTRODUCTION ON 29 JANUARY 2007 OF THE ABOVE ACT

Background

Compensation Recovery Unit (CRU), on behalf of the Departments of Health (DH), currently administers the Road Traffic (NHS Charges) Act 1999, which allows for the recovery of National Health Service (NHS) treatment charges as a result of a road traffic accident.

Part 3 of The Health and Social Care (Community Health and Standards) Act 2003 makes provision for the establishment of a scheme to recover the costs of providing treatment to an injured person in all cases where that person has made a successful personal injury compensation claim against a third party. It is envisaged that the main areas of liability will be motor, employer, public and product liability, but of course this list is not exhaustive. It should be noted that the provisions are not restricted to payments made as a result of insurance and it is the person making the payment in the primary compensation claim who will be liable for the NHS Charges. The new legislation will not extend to disease cases, unless the disease in question is attributable to the injury suffered by the injured person.

Regulations have been laid to enable this legislative framework to commence on **29 January 2007**.

The intention is that the scheme will operate as far as possible in the same way as the current road traffic scheme, with a few exceptions that are highlighted further on in this mailshot.

Changes

The above Act will also introduce for the first time;

- The collection of NHS motor ambulance charges. This will be a standard charge per journey. Any recovery of NHS ambulance charges will be repaid direct to the NHS ambulance trust connected to the NHS hospital. Charges will not be collected for charity funded air ambulances in England and Wales, however, they can be collected for the Scottish Ambulance service, if they transport a patient to a Scottish Health Board.
- Provisions to take into account contributory negligence in all cases where it is a factor in the primary compensation claim. Please visit www.opsi.gov.uk/si/si200633.htm Regulations 2 & 3 S.I. number 3388, set out what evidence compensators need to provide to show that all parties to the primary compensation claim have reached an agreement on contributory negligence. S.I. number 3398 and 3398 also refer.
- The ability to apply for a waiver on excessive hardship grounds against payment of NHS Charges being made prior to appeal.

Other changes brought in by this Act are;

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- It will apply to ALL compensators, not just insurance companies and those holding a security or deposit in accordance with the 1988 Act.
- It will extend to foreign compensators, accidents abroad etc. providing NHS treatment is provided in England, Scotland or Wales.
- NHS Trusts / Boards who are also the compensator will be exempt from repaying their “own” NHS charges. However, they will be liable to repay any other NHS Trusts NHS charges up to the maximum amount.

Unlike the 1999 Act, any compensation payments made under the Fatal Accidents Act 1976 in respect of a deceased person are exempt from the repayment of NHS Charges under the 2003 Act.

The introduction of the extended recovery scheme will result in new and revised procedures. This mailshot provides you with information to allow you to consider the implications for your business.

Procedures

From 29 January 2007, CRU will collect NHS charges from compensators on behalf of the Departments of Health.

Charges will be recoverable where: -

- A person makes a compensation payment in consequence of any injury suffered by an injured person

and the injured person has: –

- Received NHS treatment at a health service hospital as a result of the injury
- Been provided with NHS ambulance services as a result of the injury (unless the injured person was dead on arrival at hospital), or
- Received treatment at a health service hospital and been provided with ambulance services.

The new scheme will cover treatment received in NHS hospitals in England, Scotland and Wales. NHS details must be provided if the injured person attended a NHS hospital because of the injury.

Completion of form CRU1

Where the incident occurred on or after 29.01.2007, form CRU1 (initial notification of a claim for compensation) will be amended to take into account the requirements of the new legislation and must be completed to show the name and address of any hospital or trust that provided treatment to the injured person. The NHS Trust will be asked to provide the details to determine the appropriate NHS charges due, including any ambulance transport used.

Form CRU1 can be found on-line at WWW.dwp.gov.uk/cru/notification.doc. This will also be updated for incidents on or after 29.01.2007. When using this version to register a claim, print and post to the address shown on the head of this newsletter.

You may use your own computer-produced version of form CRU1. However, in order to avoid delays when we process the form, its size and format must be the same as the CRU1.

Please place orders for stocks of the new CRU1 form, to: James.White2@dwp.gsi.gov.uk

NHS Treatment Charges

As with the existing 1999 Act, the in-patient charge will supersede the outpatient charge, so that if someone receives both in-patient and outpatient treatment, only the in-patient charge will be recoverable. This is because the in-patient charge has been calculated to include an element for subsequent outpatient treatment.

The following table can be used as a quick reference guide:

Accident Date (on or after)	Out-patient	In-patient Per day	Cap	Maximum days in-patient
Pre 2.7.1997	£295	£435	£3,000	6.9
02.07.1997	£354	£435	£10,000	23.0
01.01.2003	£440	£541	£30,000	55.5
01.04.2003	£452	£556	£33,000	59.4
01.04.2004	£473	£582	£34,800	59.8
01.04.2005	£483	£593	£35,500	59.9
01.04.2006	£505	£620	£37,100	59.8

As with the existing scheme, the charges and caps will be up-rated annually in line with Hospital and Community Health Service inflation. Compensators are normally notified of the new charges and caps in the November or December prior to the application of the up rating in April.

NHS Ambulance Charges

One of the new elements of the expanded scheme is that it allows for the recovery of the costs of ambulance services to take the injured person to hospital, or transfer them between hospitals. The cost will be £159 per person, per journey.

Charges will be recoverable for each ambulance journey to hospital, or transfer between hospitals, that are needed for treatment of the injuries for which compensation is awarded. So for example if a patient is taken by ambulance to Accident and Emergency at hospital A, transferred and admitted to hospital B and then transferred again to a specialist unit in hospital C then 3 ambulance journey charges would be recoverable.

Certificate of NHS Charges

Like the RTA Act it is not mandatory for the compensator to apply for a Certificate of NHS Charges **prior** to making a compensation payment. Compensators are encouraged to request a Certificate of NHS Charges before settlement to mirror benefit recovery procedures. However, once compensation has been paid the Compensator **must** apply for a Certificate of NHS Charges in all injury cases.

A NHS certificate will show both NHS charges and any Ambulance charges and the NHS certificate will be valid for life, from the date of the injury to the date the final compensation payment is made.

Payments to CRU

Any payments due in respect of either a Certificate of NHS Charges or a Certificate of Recoverable Benefit should be included in the same cheque, wherever possible. Where a certificate of NHS charges is issued before the settlement date the NHS charges must be paid within 14 days of

making a compensation payment. If the certificate is issued after the settlement date the NHS charges must be paid within 14 days from the date the certificate is issued.

Reviews and Appeals

Legislation provides for Review and Appeal rights where NHS charges are recoverable. Generally an appeal may only be made once final compensation has been paid and full payment of the charges set out on the certificate has been made. However, in cases where payment of the amount specified in the certificate would cause exceptional financial hardship the requirement to repay prior to appeal may be waived.

An appeal against a certificate may be made on one or more of the following grounds: -

- a) The amount specified in the certificate is incorrect;
- b) The amount on the certificate is in respect of treatment which is not NHS treatment received at a health service hospital, ambulance services that are not NHS ambulance services, as a result of the injury, or both.
- c) The payment on the basis of which the certificate was issued is not a compensation payment.

Any Questions

Any questions in relation to the legislation contained in Part 3 of The Health and Social Care (Community Health and Standards) Act 2003, contact:

Steve Dibdin
NHS Injury Costs Recovery
Room 4W04, Quarry House
Quarry Hill, Leeds
LS2 7UE
E-mail: steve.dibdin@dh.gsi.gov.uk
Tel: 0113-2545819 Fax No: 0113-2547350

Any questions in relation to the administration of Part 3 of The Health and Social Care (Community Health and Standards) Act 2003, contact:

Sam Gunter (NHS Operations Manager)
Compensation Recovery Unit
M0135
Durham House
Washington
Tyne and Wear
NE38 7SF
E-mail: sam.gunter@dwp.gsi.gov.uk
Tel: 0191 2252043

Any questions in relation to the administration of the current Road Traffic (NHS Charges) Act 1999 or queries on individual cases contact:

Ann Smith Tel No: 0191-2252576.
E-mail: ann.smith@dwp.gsi.gov.uk

Carolyn Jackson Tel: 0191 2252310 Fax No: 0191-2252590
E-mail: Carolyn.jackson1@dwp.gsi.gov.uk