Department of Health & Social Care

NHS Injury Cost Recovery Scheme 2018-19

Guidance on the application of the NHS Injury Cost Recovery Scheme for 2018-19

October 2018

DH ID box
Title: NHS Injury Cost Recovery Scheme 2018-19
Author: Acute Care and Workforce/Provider Efficiency Performance/Cost Recovery
Document Purpose: Guidance
Publication date: October 2018
Target audience: NHS foundation trust finance directors NHS trust finance directors Scottish NHS bodies Welsh NHS bodies
Contact details: NHS Injury Cost Recovery Team 2S15 Quarry House Quarry Hill Leeds LS2 7UE Email: nhs.injurycostrecovery@dhsc.gov.uk

Published to gov.uk, in PDF format only.

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Executive summary

This guidance is primarily for NHS trusts and NHS foundation trusts who provide treatment for injuries whose costs are recoverable under the NHS Injury Cost Recovery scheme (ICR).

It sets out the circumstances where costs can be recovered and the process under which this is undertaken, as well as giving some guidance on how ICR payments should be recorded in annual accounts.

1. NHS Injury Cost Recovery Scheme

Guidance on the application of the NHS Injury Cost Recovery Scheme for 2018-19

Introduction

1.1. The fundamental principle behind the Injury Cost Recovery Scheme (ICR) is that those responsible for causing injury to others should meet the cost of NHS treatment. NHS costs are recovered only where personal injury compensation is paid, for example after a road traffic accident. Funds recovered come primarily from a third-party compensator/insurer.

1.2. The scheme includes the recovery of ambulance journey costs, and enables contributory negligence (where the person accepts or is found to have, an element of responsibility for the injury sustained) to be taken in to account when calculating the charges due.

1.3. This money goes directly to the trust which provided the treatment, whether NHS trust, NHS foundation trust (FT) or an ambulance trust, for reinvesting in improving patient services. The monies recovered are not “additional” funding but the recovery of resources already expended.

1.4. The scheme is based on a simple average cost tariff system to allow the efficient and cost-effective recovery of monies whilst also keeping running costs down in order to maximise the benefits for NHS services.

The process

1.5. The legislation places a legal obligation on insurers and solicitors to inform the Secretary of State (or the Scottish Ministers) whenever a claim is made for personal injury compensation. Day-to-day operation of the scheme is carried out on behalf of the Secretary of State (for England and Wales) and the Scottish Ministers by the Compensation Recovery Unit (CRU) part of the Department for Work and Pensions, so in practice notification is made to them.

1.6. CRU will send details of claims to NHS providers using form NHS2. This form asks the NHS trust or FT to confirm basic treatment details, for example date of arrival, whether the patient was treated as an outpatient, or if they were admitted, then for how many days (this excludes the day of discharge). The form also requires providers to note if the patient arrived by ambulance and whether the patient has been transferred to another unit, and again, whether that was by ambulance.

1.7. Once the form is saved on the system, CRU can calculate how much will be payable in NHS charges if the compensation claim for the patient is successful. They use a simple average tariff system, currently standing at £846 per day for inpatient treatment (which includes an element for subsequent outpatient treatment) and a one-off charge of £688 for outpatient treatment, irrespective of how many outpatient appointments are needed.

1.8. Inpatient treatment always supersedes outpatient, so for example, someone who spends, say, four nights in hospital and then subsequently has three related outpatient appointments, will only accrue charges for the inpatient treatment, i.e. 4 x £846. There is also an overall cap on the amount that can be recovered in NHS charges for any one

injury, currently standing at £50,561. This equates to roughly 60 days' inpatient treatment. The tariffs are uprated annually.

1.9. Once CRU calculates the amount of NHS charges due, they will issue a certificate to the person or body liable to pay the compensation (the "compensator") confirming that amount. Compensators are required to pay CRU within 14 days of the compensation claim being settled, or within 14 days of receiving the certificate if the claim has already been settled. CRU then forwards the funds recovered to the NHS Trust that treated the injured person.

1.10. If the patient named on the form cannot be traced or the information held differs from that given, for example a different date of treatment, then the form should be returned to CRU with suitable annotation for them to make further enquiries. Initially CRU can only supply Trusts with information they receive from insurers. It is inevitable that some details will be wrong or circumstances, for example a name or address may have changed since the date of the accident. It is important however that providers search thoroughly for a case before returning it untraced as further enquiries are costly and time consuming. Experience shows that many untraced cases were traceable but the initial search had been insufficiently thorough.

The tariff

1.11. A simple tariff is in place, which increases each year at 1 April to take account of Hospital and Community Health Services (HCHS) inflation. The rates are shown in the table below. Earlier rates are available on request from nhs.injurycostrecovery@dhsc.gov.uk.

NHS TREATMENT AND AMBULANCE JOURNEY CHARGES

Accident Date (on or after)	Out-Patient	In-Patient	Cap	Ambulance Charges (per person per Journey
01.04.2018	£688	£846	£50,561	£208
01.04.2017	£678	£833	£49,824	£205
01.04.2016	£665	£817	£48,849	£201
01.04.2015	£647	£796	£47,569	£195
01.04.2014	£637	£783	£46,831	£192
01.04.2013	£627	£770	£46,046	£189
01.04.2012	£615	£755	£45,153	£185

1.12. The tariff is supported by two simple rules:

- In-patient and out-patient charges are mutually exclusive with in-patient taking precedence i.e. if a patient receives both in-patient and out-patient treatment then only the in-patient treatment tariff is recovered.
- Money recovered is paid to NHS providers in chronological order, for example a patient transported by ambulance who spends five days in provider A, followed by ten days in provider B and has subsequent outpatient treatment at provider A

would mean 1 x £208 for the ambulance journey, 5 x £846 for provider A and 10 x £846 for provider B with no recovery in respect of the outpatient treatment. Once the cap is reached, subsequent treatment costs are not recoverable.

Accruing the income

1.13. The use of the tariff means that in the majority of cases the provider will know, when it has verified the details, what it may expect to receive once the insurance claim is settled. Some of these claims however will not reach payment, for example, it may later emerge that the compensator is exempt from payment of NHS charges. Statistics provided by CRU on the number of such claims that are withdrawn show that approximately 21.89% of claims do not reach payment for one reason or another. NHS providers are sent monthly schedules of all withdrawn claims with the reason for withdrawal. NHS providers are therefore advised to accrue 78.11% of income with CRU as a debtor.

1.14. The remaining 21.89% of income should be included in the provision for irrecoverable debts (under the "bad debts" heading within operating expenses in the annual accounts). In the absence of better information as to which claims will be paid out quickly and which not, Trusts should initially include their accruals in long-term debtors, bringing them into short-term debtors after one year. This statistic will be reviewed annually.

1.15. The point at which to accrue the income is when the NHS2 form has been received and it has been confirmed from the NHS provider's records that treatment has been given. The NHS2 form, the provider's response to it and the calculation of the amount due will form the prime documents for auditing purposes. Clearly, if the provider's records do not show treatment or if there are discrepancies that need investigating, income should not be accrued.

Receiving payment

1.16. All NHS providers have supplied CRU with bank account details. At the end of every calendar month, CRU will pay the amount received in respect of treatment given at the provider direct to the relevant account. A payment schedule will be sent separately to each provider indicating which cases have been included and how much has been paid. NHS providers should check the schedules on receipt and inform CRU of any discrepancy between what they expected to receive and what has been received.

Discrepancies

1.17. There are two main reasons why discrepancies may occur. The first is where the injured person accepts or is found to have, an element of responsibility for the injury sustained (contributory negligence). Where contributory negligence is agreed, then the proportion of that agreement (for e.g. 75/25) is also applied to the recovery of NHS costs so the certificate of charges will be reduced by the same amount. The second is where an error has been made at CRU and the insurer has been issued with an incorrect demand. It may not always be possible, for legal reasons, to make corrections in these cases but it is important that they are recorded at CRU and in the trust.

Reviews and appeals

1.18. Insurers have the right of review and appeal against NHS charges. The grounds on which an appeal can be made are:

- the amount claimed is wrong
- the amount claimed takes into account treatment which is not NHS treatment needed as a result of the injury
- the payment of compensation was not one which attracted NHS charges.

1.19. Appeals against NHS charges will be heard by an independent tribunal. CRU are experienced in this kind of work and used to looking at cases involving medical issues.

1.20. CRU will subject any appeal to internal review and attempt to resolve the problem using the data which is already available to them. If this is not possible a copy of the grounds of appeal will be sent to the relevant provider and the provider will be asked to consider and confirm or amend the information submitted on the original NHS2 or may be required to provide a report outlining why all the treatment provided was appropriate.

1.21. Should it not prove possible to resolve the case in this way then it will go forward for formal appeal. At this stage, the hospital may be requested to provide additional information relating to the patient's treatment received as a result of the injury. The release of this information is provided for in the Health and Social Care (Community Health and Standards) Act 2003 and the supporting regulations, The Personal Injuries (NHS Charges) (Reviews and Appeals) Amendment Regulations 2007. The Act also contains safeguards so that the tribunal can withhold medical advice or evidence which is submitted to it if it is necessary to protect the patient.

1.22. Experience with the benefit recovery scheme is that the majority of appeals can be dealt with on paper and oral hearings are rare.

Under/over payments

1.23. As a result of review or appeal, it may be established that either too much or too little has been paid by a compensator in any particular case. Where too little has been paid CRU will recover the balance from the insurer and include the amount with the next scheduled payment to the hospital. Where too much has been paid CRU will, in most cases, repay the amount to the insurer, reducing the next month's payment to the NHS provider by the same amount. In cases where a provider does not receive regular payments from CRU, CRU may either require the provider to repay the insurer directly or may seek recovery from the provider itself at the end of the financial year.

1.24. A de minimis level of £25.00 applies to CRU recovery and will also apply to NHS charges. Therefore, in instances where NHS charges are up to £25.00 short from the Compensator, no demands will be issued for the shortfall.

Responsibilities of NHS providers

1.25. NHS providers are asked to co-operate with CRU as fully as possible to help the scheme run smoothly and ensure that income is collected as efficiently as possible. There are a number of things that providers can do to help:

- providers should limit the number of cases which are returned to CRU from them as "no trace". If a patient's details cannot immediately be found on the PAS or other computerised system, the provider should firstly also check manual health

records such as those in x-ray departments or physiotherapy clinics before going back to CRU
- CRU should be given advance warning of possible mergers between NHS providers. Full details of the new structure and relevant contact details should be provided to CRU within 14 days of the merger
- providers should notify CRU of any changes to bank account details within 10 working days
- providers should report any discrepancies in payments to the NHS Operations Team at CRU within 14 days of receipt of payment
- providers should endeavour to reply to any enquiry from CRU within 14 working days
- providers should, when requested, supply CRU with additional information relating to a patient's treatment received as a result of an injury for appeals within 5 working days.

Contacts and addresses

The contact in the Department of Health: nhs.injurycostrecovery@dhsc.gov.uk.

The contacts at the Compensation Recovery Unit (Fax: 0191 225 2309) are:

NHS Operations Team

Cheryl Low 0191 224 7612

If you need to write to CRU the address is:

DWP CRU

Post Handling Site B

Wolverhampton

WV99 2FR