



SCOTTISH EXECUTIVE

Health Department
Finance Directorate

Dear Colleague

NHS COST RECOVERY SCHEME

Introduction

1. The new NHS Cost Recovery Scheme will come into force on Monday 29th January 2007. This Scheme will replace the current Road Traffic Act (RTA) Scheme which recovers the cost of treating victims of road traffic accidents.

2. The new Scheme will expand the number of cases where the NHS can reclaim the cost of treating injured patients to almost all cases where personal injury compensation is paid. The Compensation Recovery Unit (CRU) of the Department of Work and Pensions will operate the Scheme on behalf of Scottish Ministers under an Agency Arrangement, as it currently does for the RTA Scheme.

3. A parallel Scheme for England and Wales is being introduced on the same day by Department of Health.

Background

4. Since its introduction in 1999, the RTA Scheme has recovered over £44 million of NHS costs which have been returned to the NHS boards that provided hospital treatment to the victims of road traffic accidents that made successful claims for personal injury compensation.

5. The Law Commission for England and Wales consulted in 1996 on whether this process of recovery should take place not just following road traffic accidents but in all cases where people claim and receive personal injury compensation. More than three quarters of the people who responded to the consultation agreed with the Commission's view. You may recall that the Health Department undertook a public consultation during the Autumn of 2002 on how an expanded Scheme might operate.

29 January 2007

Addressees

For action

Chief Executives, NHS boards

Chief Executive, Scottish Ambulance Service

Chief Executive, Golden Jubilee National Hospital

For information

Chief Executives, Special Health Boards (other than SAS and GJNH)

Chief Executive, National Services Scotland

Directors of Finance, NHS boards

Director of Finance, Scottish Ambulance Service

Director of Finance, Golden Jubilee National Hospital

RTA Liaison Officers

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Legislative Framework

6. Part 3 of the Health and Social Care (Community Health and Standards) Act 2003 makes provision for the establishment of such a Scheme and the Regulations for its operation are in:

- [SSI 2006/588](#) The Personal Injuries (NHS Charges) (Amounts) (Scotland) Regulations 2006;
- [SSI 2006/592](#) The Personal Injuries (NHS Charges) (General) (Scotland) Regulations 2006; and
- [SSI 2006/593](#) The Personal Injuries (NHS Charges) (Reviews and Appeals) (Scotland) Regulations 2006.

7. The Regulations can be found on the Office of Public Sector information (OPSI) website – <http://www.opsi.gov.uk/> by searching for SSI/2006/588, SSI/2006/592 and SSI/2006/593.

Changes

8. The new Scheme will operate in a like manner to the RTA Scheme but will introduce for the first time;

- The collection of ambulance charges. Ambulance service costs will be recoverable for all journeys in cases where NHS costs are recoverable. This will include for example the first journey to Accident and Emergency (A&E) and any subsequent transfers to other hospitals. It will not include, however, non-ambulance patient transport services to outpatient appointments (even if the patient transport service is provided by the Scottish Ambulance Service). Scottish air ambulance costs will also be recoverable but, as is the case with road ambulances, SAS will only benefit where patients are taken to Scottish hospitals because the location of the hospital which the patient is taken to determines which ambulance provider is reimbursed. **It will be the responsibility of the NHS board providing treatment to confirm whether the person received ambulance services.**
- Provisions to take contributory negligence into account where it has been a factor in the primary compensation claim. The recoverable costs will be reduced by the same percentage as the compensation payment was reduced for contributory negligence.
- The ability to waive repayment of NHS charges on the grounds of excessive hardship prior to appeal – generally, a compensator must pay NHS charges before being able to lodge an appeal to eliminate frivolous appeals and delaying tactics.

9. Other changes brought in by the expanded scheme are;

- Liability applies to all compensators, not just insurance companies. Any person who pays compensation to an individual – including private citizens – will become liable for repaying any associated NHS hospital and ambulance costs. However if the person does not, or cannot, pay compensation then the NHS costs cannot be recovered.
- It extends to foreign compensators - the Scheme provides for costs to be recovered from compensators based anywhere. The important fact is that treatment was given in an NHS hospital.

- Crown bodies are no longer exempt. An exception to this is where a NHS board is both the compensator and the provider of treatment in which case the board will be exempt from repaying their “own” NHS charges but will still be liable for ambulance costs. However, the board (as compensator) will be liable to repay NHS charges when another NHS board has given treatment to the injured party.

10. Guidance documents prepared by CRU and Department of Health have been issued to action officers in NHS boards and SAS.

Financial Implications

11. The Scheme is anticipated to generate additional income of £10m to £18m pa for NHSScotland over the sum generated by the RTA Scheme (currently around £7m pa). Boards should see an increase in the number of NHS2 forms issued by the CRU for completion almost immediately but should note that increased income from recoveries will not flow immediately as a typical compensation claim takes on average 18 months to settle.

NHS Cost Recovery Scheme Tariff

12. The tariff for the new expanded Scheme is based on the tariff introduced on 1st April 2006 for the RTA Scheme. The tariff is as follows:

Where the injured person was provided with NHS ambulance services for the purpose of taking him/her to a hospital for NHS treatment unless the injured person was dead on arrival (for each journey)	£159
Where the injured person received NHS treatment at a hospital in respect of his/her injury but was not admitted to hospital (flat rate)	£505
Where the injured person received NHS treatment at a hospital in respect of his/her injury and was admitted to hospital (daily rate).	£620
The cap (being the maximum amount that will be claimed from a compensator) in any one case resulting in admission to hospital	£37,100

13. Where the cap is breached, ambulance service costs will take precedence and the amount payable for hospital treatment will be reduced to the difference between the cap and the ambulance service costs.

14. The above amounts will be uprated annually at 1st April each year to take account of Hospital and Community Health Services (HCHS) inflation but so as not to cause confusion and disruption so soon after the introduction of the Scheme, the rates will not be increased until April 2008.

Action

15. Chief Executives should ensure that this HDL is brought to the attention of all staff involved in the recovery of NHS costs.

Yours sincerely



ALEX SMITH
Interim Director of Finance