

QBE INSURANCE ISSUES BRIEF

JANUARY 2007



QBE

European
Operations

COMPENSATION AND NHS TREATMENT – A NEW SCHEME, NEW COSTS

CONTEXT

For over seventy years hospitals have been able to recover the cost of treating those injured in road traffic accidents where the injured person has gone on to make a successful claim for personal injury compensation. Since the passing of the Road Traffic (NHS Charges) Act 1999 the system of collection has been centralised under the control of the Compensation Recovery Unit (CRU) and as at 2006 brought about £105 million a year back to the NHS from the insurers of negligent drivers. The Department of Health (DoH) has extended this scheme to the recovery of costs arising from all cases of personal injury where compensation is paid, to include employers' and public liability claims. The obvious consequence is that non motor personal injury claims costs will rise significantly. There are also important changes for motor claims handlers, new charges but also opportunity to gain discounts from sums payable.



THE NEW SCHEME

Following a period of consultation legislative provision for the expanded scheme was made in the Health & Social Care (Community Health & Standards) Act 2003 and amended by the Health Act 2006, which received Royal assent in June 2006. The updated scheme will be known as the NHS Injury Costs Recovery scheme (ICR).

The introduction of the ICR was postponed a number of times before and since its planned launch date of 1st April 2005. However, with the Health Act in force and the "The Personal Injuries (NHS Charges) (General) and Road Traffic (NHS Charges) (Amendment) Regulations 2006" signed on 12th December 2006 (The Regulations) everything is in place to permit effective operation of the ICR in respect of accidentally induced injury arising on or after the **29th of January 2007**.

SCOPE

The ICR is designed to recover the cost of treatment incurred by the NHS in respect of accidents where compensation is paid. The ICR does not capture payments of compensation in respect of disease, unless the disease is directly attributable to an initial and identifiable traumatic injury such as septicaemia resulting from a wound.

The following are definitively **not** covered by the scheme:

- Hospital acquired infections
- Work related Stress
- Occupational Asthma
- Dermatitis
- Generally recognised "long and short tail" conditions such as cancer, emphysema etc.
- Psychological conditions such as PTSD

COST?

There are three classes of NHS expenditure that will be recoverable from compensators under the ICR being:

- i) A **one off fee** for all outpatient treatments, that is without admission to hospital, at £505
- ii) A **daily** rate for inpatient treatment with admission to hospital at £620 per day
- iii) Charges for **ambulance journeys** at £159 per journey to include inter hospital transfers

All of the above cumulatively subject to a **ceiling of £37,100** per personal injury claim.

The recovery of ambulance charges is new and will add to the overall cost burden. All charges are reviewed each April and increase in line with the Hospital and Community Health Service inflation index. As a rough indication of likely future rises, the increase in April 2006 was 4.5%. The DoH aims to provide notification of the annual increase in charges by the preceding November, but historically has not always been able to meet that deadline.

The DoH estimates that the introduction of the scheme will cost insurers in the region of an additional **£150million a year**. QBE analysis in respect of workplace accident injuries suggests an increase in overall claims spend of approaching 5% across the board but with a greater impact in respect of significant injury cases.

WHO PAYS?

The scheme specifically provides that even in cases where an insured has an excess on their policy, provided an insurer covers liability to some extent, **the insurer**, rather than the insured, will pay the charges thereafter making such recoveries as are appropriate.

A loophole in the original RTA scheme that allowed self-insured and insurance exempt vehicle drivers to avoid paying charges has been closed.

If compensation is paid to a claimant the compensator, usually an insurer, must at the same time repay the recoverable charges to the CRU which then forwards them on to the treating hospital, ambulance Trust or NHS Primary Care Trust as appropriate. In cases where there is split liability for the accident there will be identical apportionment of the charges between the paying parties.

DISCOUNTING

A new feature is the introduction to the scheme of the concept of contributory negligence discounting. The historic motor arrangements had required full payment of relevant charges by a compensator even if the injured party had been partly to blame for causing the injury. Under the ICR, if a contributory negligence discount has been agreed between the parties or ordered by the Court, a reduction by the same percentage is applied to the treatment charges that would otherwise be payable. An outline of the steps necessary for capture of the discount is set out in the Regulations to include:

- The compensator must send the CRU a report, effectively signed by the parties to the agreement, setting out the terms of the agreement
- The report must state that agreement has been reached between the compensator and the injured party (or on their behalf) and that the settlement has been reduced to take into account contributory negligence
- It must explain how the agreement has been reached, for instance, by negotiation, court order or judgment
- It must state the amount of damages that would have been payable on a full liability basis
- The amount or proportion by which the full value has been reduced ideally in percentage terms
- The net sum payable to the claimant after application of the discount

- The names of those involved in the settlement process or negotiation
- Application for a discount must be made before or within 14 days of settlement being made at the latest

WHO OPERATES THE SCHEME?

QBE acting as your insurer will obtain the necessary Certificate of Charges and make payment on your behalf subject to appropriate future reimbursement if a policy excess is in place. This mirrors the original motor scheme and the scheme for payment of benefits arising relating to compensatable injuries as operated by the CRU for the Department of Work and Pensions.

WHAT CAN BE DONE TO KEEP COSTS DOWN?

Risk Management - While it is stating the obvious a reduction in workplace or occupiers liability accidents will in turn keep down aggregate claims costs to include the treatment costs repayable. The ICR continues to apply to the results of injuries sustained in road traffic accidents. These costs are also borne by employers and corporations with vehicle fleets.

Fundamentally, a reduction in accidents and RTAs will mitigate overall cost. The cost of getting it wrong has got higher. As ever prevention is better than cure. The QBE risk management team is available to work with policyholders to ensure that best practice systems are in place.

Rehabilitation - QBE already takes a proactive approach to injury management through its Minor Injury Management and Rehabilitation programmes under the auspices of the Rehabilitation Team. Designed to control expenditure on clinical and rehabilitative treatment, as well as limit employees' lost time through absence from work and contain claim costs, these schemes should also serve to contain hospital attendances, and thus NHS charges.

Liability - QBE has a distinctive approach to liability and motor claims handling. With access to an in house team of claims inspectors and adjusters cases are investigated, facts and evidence captured and defences explored, to include contributory negligence discounting. Where pertinent, defences will be raised to ensure that only appropriate compensation is paid to include proportionate treatment charges.

Insured businesses with self insured retentions will wish to monitor the increased costs arising so as to make provision for new and future liabilities. QBE and Ensign claim handlers are capturing the specific cost of NHS treatment in case estimates and as items of expenditure.

Whilst the ICR presents a new burden, especially for Employer's and Public Liability premium payers, at QBE we are confident that by deploying effective risk management, rehabilitation and claims handling controls expenditure can be contained to a necessary minimum.

Jonathan Coatman – January 2007

MORE INFORMATION

1) The Regulations - The Personal Injuries (NHS Charges) (General) and Road Traffic (NHS Charges) (Amendment) Regulations 2006 can be viewed at:

<http://www.opsi.gov.uk/SI/si2006/20063388.htm>

2) A one page ICR Key Features document is attached

3) For more specific enquiries please contact us on at - enquiries@qbe-europe.com

About the author: Jonathan Coatman is a liability specialist within the QBE Strategic claims team based in London. His role primarily involves the management of claims with significant financial value in the areas of employers' liability, public liability and professional indemnity. Jonathan also provides technical input to the risk management, underwriting and actuarial functions within QBE and on behalf of external clients through briefing documents, articles and consultancy.

NHS INJURY COSTS RECOVERY SCHEME - KEY FEATURES

Application - traumatic accident injuries occurring on or after 29th January 2007

Charging Rates and Cap

- Out patient treatment(s) - £505 one off payment
- In patient treatment - £620 per day
- Ambulance transfers - £159 per journey to include inter hospital transfers
- Charges are capped at a combined total of £37,100
- The cap and rates will be adjusted in line with Hospital and Community Health Service inflation index with effect from 1st April 2007 annually

Exemptions

- Accidents involving immediately fatal injuries
- Diseases including hospital acquired infection unless arising directly from an accident
- Injuries limited to psychological consequences only such as PTSD/work place stress
- Charity funded air ambulance charges are exempt except in Scotland
- A waiver may be granted on grounds of excessive hardship in exceptional circumstances. The CRU see this provision as intended for individuals and "single-handed" businesses but it has yet to be tested

Notification

- Compensators will supply details of any treating hospitals to the CRU having obtained information from the claimant or their representatives
- Compensators are not obliged to apply for a certificate of NHS charges before making a compensation payment but must do so once a payment is made
- The CRU will issue a certificate of NHS charges "as soon as reasonably practical"

Payment of Charges

- NHS charges must be paid within 14 days of paying compensation, including interim payments, if a certificate of NHS charges is to hand or within 14 days once available
- Where a Part 36 offer or payment is accepted within 21 days the compensation payment date is deemed to be the date of the offer or notification that the payment has been made
- Where payment into court has been accepted after 21 days, the date of payment is the date on which an application is made to the court for the funds to be paid out
- Where payment is made in accordance with an order of the court, then the date of the order is the relevant date
- Where a payment in is accepted by consent the date of the consent order is relevant
- The compensator may ask the CRU to review any aspect of the Certificate of NHS charges at any time
- The compensator may appeal against the certificate of NHS charges within three months of the charges being paid

Obtaining a Contributory Negligence Discount

- Application for a discount must be made no later than 14 days of settlement
- The compensator must send the CRU a report signed by the parties to the agreement
- The names of those involved in the settlement negotiation must be shown
- The report must state that the agreement has been reached between the injured party, or on their behalf, and the compensators and that the settlement has been reduced to take into account contributory negligence
- It must explain how the agreement was reached
- It must state the amount of damages on a full liability basis and the proportion by which this figure has been reduced