STATUTORY INSTRUMENTS

2015 No. 295

NATIONAL HEALTH SERVICE, ENGLAND AND WALES

The Personal Injuries (NHS Charges) (Amounts) Regulations 2015

Made - - - -	*12th February 2015*
Laid before Parliament	*20th February 2015*
Coming into force in accordance with regulation 1	

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 153(2), (5), (7), (8) and (12), 163(1) and 195(1) and (2) of the Health and Social Care (Community Health and Standards) Act 2003(**1**).

In accordance with section 195(3) of that Act, the Secretary of State has consulted the Welsh Ministers(**2**).

Citation, commencement, application and interpretation

1.—(1) These Regulations may be cited as the Personal Injuries (NHS Charges) (Amounts) Regulations 2015 and come into force on 1st April 2015, with the exception of regulation 4(c) which comes into force on 6th April 2015, immediately after the coming into force of the National Health Service (Charges to Overseas Visitors) Regulations 2015(**3**).

(2) These Regulations apply to England and Wales.

(3) In these Regulations—

"the Act" means the Health and Social Care (Community Health and Standards) Act 2003;

"certificate" means a certificate issued under Part 3 of the Act (recovery of NHS charges);

(**1**) 2003 c. 43. By section 167(1), the powers are exercisable in relation to England and Wales by the Secretary of State. *See* section 168 for the definition of "prescribed". Section 195 was amended by section 6 of, and Schedule 4 to, the National Health Service (Consequential Provisions) Act 2006 (c. 43).

(**2**) Functions conferred or imposed on the National Assembly for Wales immediately before the first appointment of a First Minister under section 46 of the Government of Wales Act 2006 (c. 32) ("GOWA") by an enactment contained in an Act were transferred to the Welsh Ministers by section 162(1) of, and paragraph 30(2) of Schedule 11 to, GOWA.

(**3**) S.I. 2015/238, which comes into force on 6th April 2015.

"hospital" means a health service hospital within the meaning of the National Health Service Act 2006(**4**) or the National Health Service (Wales) Act 2006(**5**);

"injury" means an injury which occurs on or after 29th January 2007;

"maximum" has the meaning given to it in regulation 2(3); and

"relevant NHS body" means the relevant ambulance trust or responsible body of the hospital to which the Secretary of State is required by section 162(1) (payment of NHS charges to hospitals or ambulance trusts) to pay the amount of any relevant NHS charges received by the Secretary of State.

(4) A reference in these Regulations to a numbered section is a reference to that section of the Act.

Amount of NHS charges

2.—(1) A certificate must specify—

(a) the amount set out in the relevant row of column (2) (ambulance services) for each occasion on which, as a result of an injury, the injured person was provided with NHS ambulance services to take him or her to a hospital for NHS treatment; and

(b) where the injured person received NHS treatment at a hospital in respect of an injury, either—

(i) if the injured person was not admitted to hospital, the amount set out in the relevant row of column (3) (out-patient), or

(ii) if the injured person was admitted to hospital, the amount set out in the relevant row of column (4) (in-patient) for each day or part day of admission,

subject to paragraphs (3) and (4) and regulations 3, 4, 5 and 7.

(2) For the purposes of paragraph (1)(b)(ii), where the injured person was admitted to hospital on one day and discharged on another day, the day of discharge shall be disregarded.

(3) The amount which a certificate may specify under paragraphs (1)(a) or (1)(b), or both aggregated, shall not exceed the amount set out in the relevant row of column (5) ("the maximum").

(4) Where—

(a) amounts must be specified under both paragraphs (1)(a) and (1)(b); and

(b) the aggregate of those amounts would, apart from paragraph (3), exceed the maximum,

the amount to be specified under paragraph (1)(b) is to be reduced by the difference between the maximum and the aggregate of those amounts.

(5) For the purposes of this regulation—

(a) the reference to taking a person to a hospital includes transportation from one hospital to another; and

(b) a row is the relevant row in relation to an injury where that injury occurred on or after the date listed in column (1) of that row but before the date listed in column (1) of the following row (if any).

(6) In this regulation—

"column" means a column of the table in Schedule 1; and

"row" means a row of the table in Schedule 1.

(**4**) 2006 c. 41. Section 275(1) defines "health service hospital". This definition was amended by section 55(1) of, and paragraph 138 of Schedule 4 to, the Health and Social Care Act 2012 (c. 7).
(**5**) 2006 c. 42. Section 206(1) defines "health service hospital".

Amount of NHS charges: reduction in respect of earlier payment

3.—(1) Where a person liable to pay relevant NHS charges—

(a) makes a compensation payment in the form of a lump sum (an "earlier payment"); and

(b) subsequently makes another such payment in respect of the same injury (a "later payment"),

the amount to be specified in the certificate in respect of the later payment shall be the amount determined under regulation 2 reduced by the amount paid in satisfaction of any liability to pay relevant NHS charges in connection with the earlier payment.

(2) Where paragraph (1) applies to a person whose liability to pay the relevant NHS charges has been determined or redetermined under regulation 6(4), the certificate shall specify—

(a) any amounts to be specified under paragraph (1); and

(b) the amount of relevant NHS charges that person is liable to pay in accordance with that determination or redetermination.

Amount of NHS charges: reduction in respect of overseas visitors' charges

4. Where a charge has been made in respect of an injured person in accordance with—

(a) regulation 2(1) of the National Health Service (Charges to Overseas Visitors) Regulations 1989(**6**) (making and recovery of charges);

(b) regulation 3 of the National Health Service (Charges to Overseas Visitors) Regulations 2011(**7**) (obligation to make and recover charges); or

(c) regulation 3 of the National Health Service (Charges to Overseas Visitors) Regulations 2015 (obligation to make and recover charges);

the amount to be specified in a certificate in respect of NHS treatment at a hospital for which that charge has been made must be £0.

Treatment to be taken into account

5.—(1) A certificate issued under section 151(2) (applications for certificates of NHS charges) shall only take into account treatment received, or ambulance services provided, before the date the certificate is issued.

(2) A certificate issued under sections 151(10) or 155(2)(a) (recovery of NHS charges) shall only take into account treatment received, or ambulance services provided, before the settlement date.

Apportionment of liability to pay NHS charges

6.—(1) This regulation applies where each of two or more persons ("the compensators")—

(a) has made a compensation payment to or in respect of a person in consequence of any injury suffered by that person; or

(b) is, or is alleged to be, liable to any extent in respect of the injury.

(2) This paragraph applies where—

(a) one of the compensators applies for a certificate under section 151 and, at the time of making the application, requests that the liability to pay the relevant NHS charges be apportioned between the compensators; and

(**6**) S.I. 1989/306; amended by S.I. 1991/438, S.I. 2000/602, S.I. 2004/696 and S.I. 2009/1824 and revoked in relation to England by S.I. 2011/1556. There are other amending instruments but none are relevant to these Regulations.

(**7**) S.I. 2011/1556. There are amending instruments but none are relevant to these Regulations.

(b) before issuing the certificate, the Secretary of State receives sufficient evidence to determine how that liability is to be apportioned.

(3) This paragraph applies where—

(a) a compensator to whom a certificate has been issued requests that the liability to pay the relevant NHS charges be apportioned between the compensators; and

(b) the Secretary of State receives sufficient evidence to determine how that liability is to be apportioned.

(4) Where paragraph (2) or (3) applies the Secretary of State must determine or, where a certificate has been issued, redetermine, the liability of each compensator to pay the relevant NHS charges and apportion such charges between them.

(5) Where paragraph (2) applies, the certificate when issued shall specify the liability to pay the relevant NHS charges and the share that has been apportioned to that compensator.

(6) Where paragraph (3) applies, when the Secretary of State redetermines the liability to pay the relevant NHS charges, subsections (5) and (7) of section 156 (review of certificates) apply as if the redetermination were a review under that section.

Adjustment of amounts where certificates issued by the Secretary of State and Scottish Ministers

7.—(1) This paragraph applies where—

(a) in accordance with—

(i) a certificate issued by the Secretary of State, and

(ii) a certificate issued by the Scottish Ministers,

a person is liable to pay relevant NHS charges in respect of the same injured person in consequence of the same injury; and

(b) when aggregated, the amounts specified in the certificates exceed the maximum.

(2) Where paragraph (1) applies, the Secretary of State may adjust any amount specified in the certificate issued by the Secretary of State having regard to—

(a) the amounts that may be specified in the certificate in accordance with paragraphs (3) and (4) of regulation 2; and

(b) any amount specified in the certificate issued by the Scottish Ministers and any adjustment to that amount that the Scottish Ministers notify the Secretary of State that they propose to make.

(3) Where the Secretary of State proposes to make an adjustment in accordance with paragraph (2) the Scottish Ministers must be notified.

Overpayments by compensators

8.—(1) This paragraph applies where—

(a) one of the following applies—

(i) the Secretary of State has made a redetermination of the relevant NHS charges in accordance with regulation 6(4),

(ii) the Secretary of State has adjusted the amount of the relevant NHS charges in accordance with regulation 7, or

(iii) as a result of a review under or by virtue of section 156, or an appeal under section 157 (appeal against a certificate or a waiver decision), a fresh certificate has been issued or a certificate has been revoked; and

(b) in consequence of the redetermination, adjustment, review or appeal it appears that the amount of any relevant NHS charges paid by any person is more than the amount that the person ought to have paid.

(2) Where paragraph (1) applies—

(a) the Secretary of State must pay to the person who paid the relevant NHS charges the difference between the amount that has been paid and the amount that ought to have been paid (except where the Secretary of State requires a payment to be made under sub-paragraph (b)(iii)); and

(b) where the Secretary of State has, under section 162 (payment of NHS charges to hospitals or ambulance trusts), paid the amount received to a relevant NHS body, the Secretary of State may—

(i) deduct the difference between the amount that has been paid under section 162 and the amount that ought to have been paid ("the difference") from any future payment due to the relevant NHS body under that section,

(ii) require the relevant NHS body to pay the difference to the Secretary of State, or

(iii) require the relevant NHS body to pay the difference to the person who paid the relevant NHS charges.

Underpayments by compensators

9.—(1) This paragraph applies where—

(a) either—

(i) the Secretary of State has made a redetermination of the relevant NHS charges in accordance with regulation 6(4), or

(ii) as a result of a review under or by virtue of section 156, or an appeal under section 157, a fresh certificate has been issued or a certificate has been revoked; and

(b) in consequence of the redetermination, review or appeal it appears that the amount of any relevant NHS charges paid by any person is less than the amount that person ought to have paid.

(2) Where paragraph (1) applies—

(a) the person who has paid the relevant NHS charges must pay to the Secretary of State the difference between the amount that has been paid and the amount that ought to have been paid; and

(b) the Secretary of State must pay that difference to the relevant NHS body.

(3) Where any payment to be made under paragraph (2)(a) relates to—

(a) treatment received at more than one hospital; or

(b) treatment received at one or more hospitals and the provision of NHS ambulance services,

the Secretary of State must divide the difference among the relevant NHS bodies in an appropriate manner.

Provision of statements to person paying NHS charges

10. Where the Secretary of State makes a payment under regulation 8(2)(a), or requires a payment under regulation 8(2)(b)(iii), or a payment falls to be made under regulation 9(2)(a), the Secretary of State must send a statement to the person who paid the relevant NHS charges showing—

(a) the name and address of the injured person to whom the statement relates;

(b) the total amount already paid to the Secretary of State;