

QBE INSURANCE ISSUES BRIEF

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QBE
European
Operations

RECOVERY OF NHS CHARGES

BACKGROUND

Since April 1999, the National Health Service has been able to recover the costs incurred in treating patients, injured in road traffic accidents from negligent drivers (or their insurer). The Department of Health (DoH) now intends to extend this scheme to the recovery of costs arising from all cases of personal injury where compensation is paid to the injured party. This will include employers' liability (EL) and public liability (PL) claims.



THE NEW SCHEME

It is intended that the process for recovery in relation to EL and PL injuries will be closely related to that currently undertaken for road traffic injuries, although there will be a couple of significant alterations as explained below.

The DoH is currently working on the legislation necessary to bring the extended scheme into effect, with the intention that it should pass through Parliament, reach the statute books and be effective by **January 29th 2007**.

WHAT IS THE SCOPE?

Essentially the scheme is designed to recover the cost of **accidents**.

The scheme applies when compensation is paid to any "injured person" but does not include payments for disease, unless the disease is directly attributable to the initial traumatic injury e.g. 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 post traumatic stress disorders.

WHAT WILL IT COST?

There are 3 classes of NHS expenditure that will be recoverable from negligent defendants and their insurers:

- i) A **flat rate fee** for treatment without admission to hospital (i.e. outpatient) of £505
- ii) A **daily** rate for treatment with admission to hospital (i.e. inpatient) of £620
- iii) Ambulance charges **per journey** at £159

All of the above, separately and cumulatively, are subject to a **ceiling of £37,100** per incident.

The recovery of ambulance charges is new to the EL/PL scheme and does not currently apply to road traffic cases.

The charges are reviewed each April and increase in line with hospital and community health service inflation. As a rough indication of likely future rises, **the increase this April was 4.5%**. The DoH aims to provide notification of each year's increase in charges by the preceding November.

The DoH estimates that the introduction of the scheme will cost insurers in the region of **£150million a year**.

WHO PAYS?

The scheme will specifically provide that even in cases where an insured has an excess on their policy, provided the insurer in questions covers liability to some extent **the insurer**, rather than the insured, will pay the charges.

Likewise, a loophole in the road traffic accident scheme that allowed self-insured and insurance exempt vehicle drivers to avoid paying charges will be closed.

CAN ANY SAVING BE MADE BY THE PAYING PARTY?

The second significant difference between the EL/PL and RTA schemes (after the introduction of charging for ambulance journeys) is the introduction to the new scheme of the concept of **contributory negligence**.

Where this has been agreed between the parties (defendant and claimant only) or ordered by the court a reduction by the same percentage will be applied to the charges repayable by the defendant.

WHO ADMINISTERS 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) in the same way as is already done for benefits to the Department of Work and Pensions.



WHAT CAN BE DONE TO KEEP COSTS DOWN?

As the costs recovered are based on treatment at hospital, savings may be made if employers offer treatment to employees through work or they or their insurer paying for private healthcare, such as physiotherapy. This would cost less than the NHS charge of £505 for the first visit without admission. It would also usually be cheaper to send lightly injured employees to hospital by taxi, rather than by calling an ambulance.

QBE already takes a proactive approach to injury management through its Employee Care programme and under the auspices of the Rehabilitation Team headed up by Rosie Corless. 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 keep hospital attendances, and thus NHS charges, to a minimum.

Fundamentally, a reduction in RTAs will mitigate the overall cost of legislation in this area, and Insureds should ensure they have an adequate occupational road risk policy which reflects this aim'.

ABOUT THE AUTHOR

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Jonathan joined QBE in 1998. He is a member of the Strategic Claims Team based in Leeds and as such handles claims with significant financial value in the areas of employers' liability, public liability and professional indemnity as well as co-ordinating technical audit within the claims function. He also provides technical support to the risk management, underwriting and actuarial functions within QBE and to external clients/Insureds through briefing notes, articles and direct liaison.



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