

WELSH HEALTH CIRCULAR



Llywodraeth Cymru
Welsh Government

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Title:
Additional Guidance on Proof of Payment for Reimbursement of Retrospective Claims WHC/2016/003

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For Action by:
Health boards
NHS Trusts
Chief Executives
Directors of Primary Care

Action required by:
Immediate

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Enclosure(s): Annex 1

ANNEX 1 WELSH HEALTH CIRCULAR WHC/2016/003**Continuing NHS Healthcare (CHC) in Wales****Additional Guidance on Proof of Payment for Reimbursement of Retrospective Claims.****Background**

1. On 16 December 2013, Welsh Government issued MD/ML/001/13. Supplementary Guidance (Proof of Payment) to Welsh Health Circular 015/2010. This guidance related specifically to cases reviewed by the Powys Project where further proof of payment had been requested by health boards (HBs) at the end of the process.
2. Additional guidance followed in WHC/2015/039 which extended the principles of the previous supplementary guidance and addressed the recommendations of the Continuing NHS Healthcare Follow up Report, published by the Wales Audit Office in January 2015. It related to:
 - those claims submitted to HBs since August 2010 but may relate to periods prior to that date;
 - those claims submitted in response to the 31 July 2014 cut off date, which may relate to any period between 1 April 2003 and 31 July 2013.
3. This guidance supersedes WHC/2015/039. It retains the same arrangements albeit no longer referring to the use of the County Court Rate (CCR) in calculating reimbursement in exceptional circumstances for claims still to be processed.
4. Redress is about placing individuals in the position they would have been in had NHS Continuing Healthcare been awarded at the appropriate time and not about the NHS or the public profiting from public funds. The use of retail price index (RPI), without the deduction of historical benefits and allowances already received by the claimant, is considered to be the appropriate method of calculating a fair level of interest payable in addition to the claim settlement amount. It is also considered to be a relatively straight forward method of interest calculation.
5. A calculation using the CCR rate, with a deduction of benefits and allowances received, has proven to be impractical to determine in most cases and, therefore, is not considered an appropriate level of interest to be used in this scenario.

Claimants who have already requested that their settlement be considered using a CCR calculation may continue to pursue this with their Health Board, but all relevant information and evidence would need to be in place for that CCR calculation to be made and if this is not the case then RPI method should be applied as the default.

These arrangements have been agreed with the Public Service Ombudsman for Wales.

6. The new arrangements now relate to:
 - those claim periods set out above;
 - those claims submitted as a result of the 31 October 2015 cut-off date which may relate to any period between 1 August 2013 and 30 September 2014; and,
 - those claims submitted thereafter.

Principles of Good Public Administration

7. Health boards should ensure their undertakings are compliant with the Public Service Ombudsman's Principles of Good Public Administration. The full guidance of which is available via the following link:

http://www.ombudsman-wales.org.uk/en/public-body-information/~/_/media/Files/Documents_en/Principles_of_Good_Administration.ashx

Implications for redress in CHC retrospective claims

8. HBs in Wales are independent decision-making bodies, and have agreed the arrangements for dealing with retrospective claims as set out in Section 6 of Continuing NHS Healthcare: The National Framework for Implementation in Wales (2014).
9. The arrangements for dealing with retrospective claims, as set out in the 2014 Framework, are clear that proof of payment of care fees is required at the outset of the process. The claim will not be progressed if such evidence cannot be provided. The Framework also states that HBs need to balance their requirement to provide timely restitution with that of demonstrating probity with the public purse (para 6.10).

Prompt request for Proof of Payment and fair prioritisation of claims

10. It is the responsibility of the HB to request proof of payment and legal authority to submit a claim promptly on receipt of an application or of intent to claim (e.g. letter to the HB). The written request for Proof of Payment should be posted within 10 working days and recorded on the LHB database.

11. No claimant should be disadvantaged because the LHB has failed to request proof of payment in a timely manner. If the HB has not complied with the timescale as set out above, it should adjust the timescale for review accordingly.

12. As set out in the Framework, it is reasonable to expect the claimant to provide the required proof within 5 months, unless exceptional circumstances apply. The LHB should evidence that:

- it has monitored progress with the claimant;
- delays due to other agencies are evidenced; and
- any exceptional circumstances have been considered.

13. The HB should provide feedback to the claimant and validate or reject the claim within 6 weeks (30 working days) of receipt of the proof of payment.

Reasoned and reasonable decisions on acceptable proof of payment.

14. HBs must make reasoned and reasonable decisions regarding acceptance of evidence of proof of payment, taking into account all available and relevant information. HBs should bear in mind that, owing to the passage of time, evidence may not be complete.

15. In order to demonstrate reasonableness, HBs will need to apply a degree of discretion to the level of evidence they deem acceptable, dependent on the period to which the claim relates. For cases relating to the claim period end date of 5 years or less, all evidence that is accessible, including bank statements, care home statements and invoices, must be provided. This will show there is no outstanding debt to the care provider if the subject of the claim is deceased unless there are extenuating circumstances.

16. As a minimum, HBs should satisfy themselves that:

- The individual was resident in a care home for the period(s) of eligibility;
- There is no evidence that any public body or agency paid all or part of the fees; and
- There are no outstanding debts, e.g. unpaid fees to the care home.

Fair and transparent calculation of reimbursement

17. In arriving at the value for reimbursement, the HB should use a transparent rationale and clear calculations.

18. If evidence exists of proof of payment for part of the claim period, and is deemed robust, then this should be used as a basis for further calculations covering the whole claim period.
19. Where evidence of financial outlay by the claimant is not robust enough, LHBs may calculate reimbursement offers based on a different and well reasoned cost indicator; for example, the high dependency residential care home rate in operation by the Local Authority in the area during the period of eligibility.
20. If there is evidence that a public authority has paid a proportion of the claimants nursing home fees directly to the nursing home, an abatement of the reimbursement may be appropriate to abate that proportion.
21. It is deemed reasonable for HBs to continue to apply the Retail Prices Index (RPI) for the calculation of interest when considering recompense in continuing care reviews. Where RPI is used to calculate interest there will be no deduction for benefits received by the claimant during the claim period (and the Department for Work and Pensions has agreed that there will be no reclaim of those benefits).
22. On conclusion of the decision of eligibility, HBs should normally take no longer than 1 month (20 working days) to calculate reimbursement and send the indemnity letter to the claimant.

Ex-gratia payments

23. In addition to the reimbursement principles stated above, there may be occasions where HBs also wish to consider making ex-gratia payments in line with the existing guidance on Losses and Special Payments in the IFRS NHS Wales Manual for Accounts. HBs are encouraged to seek legal advice about individual cases where necessary, and make ex-gratia payments if appropriate.

Disputes

24. If the claimant is dissatisfied with the approach taken they may raise a concern with the relevant HB. Their concern will be handled in accordance with the NHS (Concerns, Complaints & Redress Arrangements) (Wales) Regulations 2011. Claimants may also contact the Public Service Ombudsman for Wales.