

Improving Systems for Cost Recovery for Overseas Visitors

Interim guidance, May 2015



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Interim Guidance for implementing risk share arrangements between providers and commissioners for chargeable overseas visitors

The NHS Commissioning Board (NHS CB) was established on 1 October 2012 as an executive non-departmental public body. Since 1 April 2013, the NHS Commissioning Board has used the name NHS England for operational purposes.

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1 Policy statement

From 6 April 2015, new Regulations¹ will require that chargeable visitors from non-EEA countries are to be charged at 150% of tariff for NHS services they receive. The Department of Health provides guidance on the identification of chargeable patients².

To support NHS providers to undertake their statutory duty to identify chargeable visitors, to levy and collect the appropriate charges from them, and to tackle fraud, new arrangements are being put into place to share the risk of non-payment between providers and commissioners. This follows recognition that it is in the overall interests of the health system to ensure fairness and equity, and is designed to ensure that both NHS commissioners and providers of NHS services have an interest in driving change.

Regulation 7 provides that non-EEA chargeable overseas visitors must be charged for relevant services provided to them by NHS providers (defined by the regulations as NHS Trusts, Foundation Trusts and local authorities exercising public health functions) at 150% of the tariff for that service (either (a) the national price (subject to any local modification approved or determined by Monitor), or (b) where there is no national price set by the National Tariff, the local price as agreed in accordance with the rules set out in the National Tariff).

In support of those regulations, new arrangements for the sharing of risk of non-recovery of charges are being put in place by NHS England, as set out in this interim guidance and the NHS Standard Contract for 2015/16. This interim guidance explains:

- How the risk-share arrangements will operate;
- What appropriate actions by providers and commissioners are expected;
- Who will be the responsible commissioner for an overseas visitor (Who Pays? guidance will be updated accordingly in due course);
- How the risk share should be accounted for by commissioners.

Overview of risk-share arrangements

The Department of Health set out their proposed risk sharing mechanism in July 2014 in the Visitor & Migrant NHS Cost Recovery Programme Implementation Plan 2014–16³. It said:

We recognise the current NHS payment flows present an active disincentive for providers to identify and seek to recover costs from chargeable, non-EEA patients. When providers identify an individual as chargeable, the full financial risk burden for recovering the debt sits with the trust. If providers –

¹ www.legislation.gov.uk/uksi/2015/238/contents/made

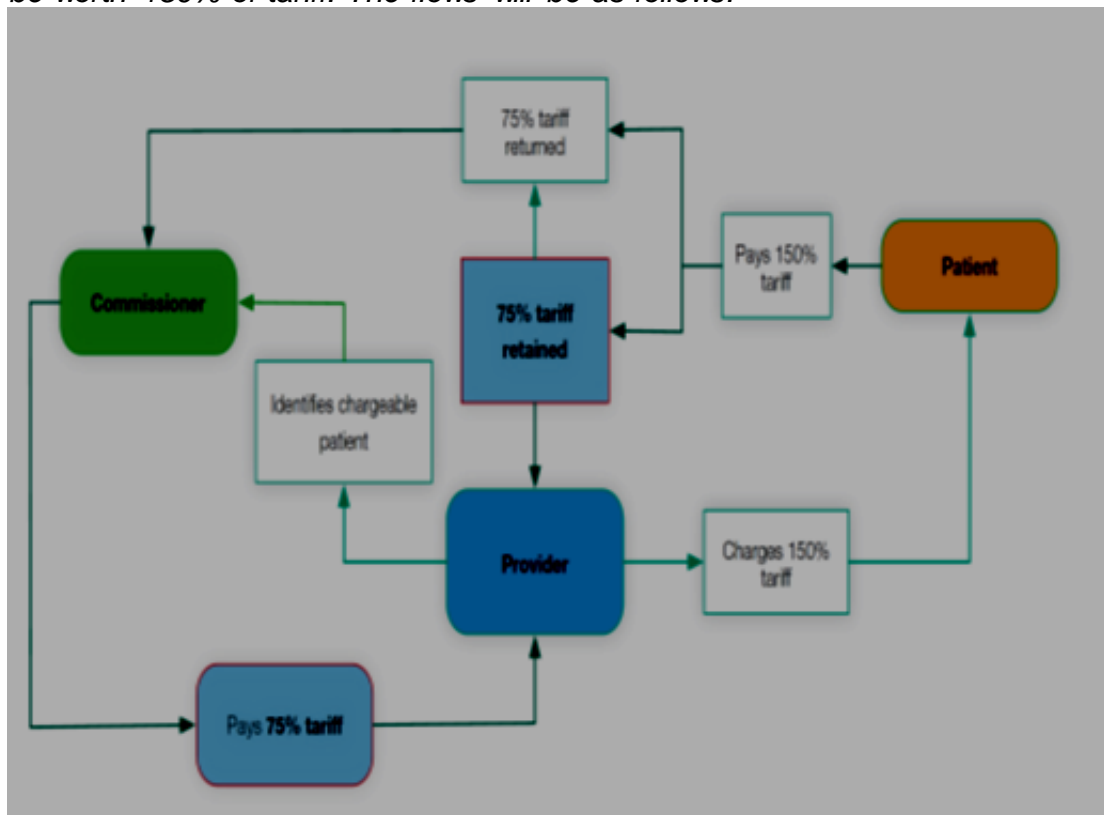
² www.gov.uk/government/publications/guidance-on-overseas-visitors-hospital-charging-regulations

³ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/329789/NHS_Implementation_Plan_Phase_3.PDF

intentionally or otherwise – avoid identifying patients as chargeable, the costs of healthcare continue to be borne in full by the commissioner.

To support the recovery of costs from chargeable non-EEA visitors and migrants (i.e. patients who are charged directly) we will be introducing a new mechanism. It will share the risk of unpaid debt to provide a direct financial incentive to encourage trusts to invest in identification and cost recovery processes. This will deliver a major step change in behaviour and process.

Under the new mechanism, when a provider identifies a chargeable patient, their commissioner will pay the provider 75% of the standard NHS tariff for the cost of the patient’s care. This means that for any such patient, the provider is guaranteed a minimum level of income. The patient will then be billed by the provider at a rate of 150% of tariff. On payment by the patient, the 150% tariff fee received will be split equally between the provider and the commissioner. This means the commissioner is reimbursed and the provider balance would be worth 150% of tariff. The flows will be as follows:



Under section 175(4) of the National Health Service Act 2006, the Secretary of State for Health has the power to set the level of charges for healthcare provided to chargeable patients on any basis he considers to be the most appropriate commercial basis. The charges must be set in secondary legislation. As such, the Department will lay regulations before Parliament in the autumn⁴ setting out how NHS providers must calculate their charging. This

⁴ Regulations were in fact laid in February 2015

affects only patients seeking NHS healthcare rather than private healthcare provided by NHS hospitals.

The increase of charging to 150% of the NHS standard tariff for non-EEA patients recognises that there is a significant additional workload for providers when identifying chargeable patients and seeking to recover costs. The programme has reviewed comparable direct charges for healthcare under other care provisions and found that 150% of tariff still represents very good value for the extent and quality of NHS healthcare provided.

The non-EEA incentive mechanism will also be reviewed after 12 months to ensure its success. The Department will continue to work with NHS England, Monitor, the NHS Trust Development Authority, NHS providers and CCGs to ensure that the changes to financial flows are not detrimental to patient care and hospital budgets.

Overview of governance issues

Both commissioners and providers are reminded of the need to consider clinical and information governance issues around this process. Procedures and practice should appropriately account for these issues and this begins at the design stage:

- Any process of identification must incorporate identity validation checks to ensure that any individual is who they say they are;
- Patients need to be advised of what personal data your organisation requires, what it is intended to be used for and with whom it might be shared;
- Contracts do not, in themselves, provide a lawful basis to access personal confidential data. Commissioners will need to ensure that their methods to scrutinize providers are appropriate and lawful;
- It is recommended that both commissioners and provider organisations, engage with their information governance and clinical governance leads as early as possible, particularly as they design processes and protocols.
- Early discussions between providers and their host CCG may help in designing an end-to-end process covering both organisations' needs. Any process must provide sufficient assurance to commissioners that all reasonable steps, as outlined in this document, have been taken

Chargeable EEA visitors

Where there is a patient from the EEA who does not qualify for NHS-funded care and is unable to present a European Health Insurance Card, they must be charged by the provider at the normal NHS price (i.e. 100% of tariff as defined above).

The risk share arrangements outlined above are to apply on the same basis in respect of EEA visitors who are liable to charges (i.e. as with non-EEA visitors, the commissioner shares the risk with the provider on the recovery of the charge income). A table of examples is provided in Annex A.

NHS Standard Contract provisions

The NHS Standard Contract for 2015/16 has new provisions (at Service Condition 36.50) to support the delivery of the risk share (see Annex B). These provisions require that commissioners and providers must comply with the new regulations and with this and other guidance issued in support of those regulations.

The NHS Standard Contract makes it clear that commissioners are only required to make any payments to providers in respect of services delivered to a chargeable overseas visitor where the Provider has taken all reasonable steps to:

- identify the individual as a chargeable overseas visitor, and
- recover charges from the chargeable overseas visitor or other person liable to pay those charges (for example, a parent or guardian).

Provided that the provider has taken or is taking all reasonable steps to identify a patient as a chargeable overseas visitor and to collect charges from him, the Responsible Commissioner (defined below) must pay to the provider the “appropriate contribution” on account – that “appropriate contribution” being half of the appropriate charge for the service (i.e. 75% of tariff for non-EEA patients and 50% of tariff for EEA patients).

On recovery of the relevant charge from the chargeable overseas visitor, the provider must refund to the Responsible Commissioner the payment made on account.

Under General Condition 15.8.9, commissioners can require an audit of the provider’s identification of chargeable overseas visitors and the collection of charges from them. The regulations make it clear that providers may take deposits or full payment from the chargeable overseas visitor in advance of treatment. Otherwise, in determining locally what reasonable steps providers should be taking to identify chargeable overseas visitors and to collect charges from them, it may be helpful to consider:

- Whether new protocols are introduced to verify the status of patients before the start of treatment. This could be a requirement to present photographic ID and proof of residence (e.g. a utility bill) at the first outpatient appointment, with Overseas Visitor Managers being referred to where appropriate.
- When it is appropriate to demand full payment in advance of treatment, when it is acceptable to accept a deposit, and when it is acceptable to proceed with treatment without having secured any payment.
- What resources should be deployed to aid the identification of chargeable patients, to gather appropriate information to facilitate the charging of patients and any further debt recovery and what capacity is in place to recover debts (and in this regard, note the specific obligation at Service Condition 36.50.2 to make full use of existing mechanisms designed to increase rates of recovery).

However, it should be stressed that immediately necessary/urgent treatment cannot be withheld pending payment. Providers are encouraged to seek deposits when clinically appropriate in these circumstances and seek full payment in advance before undertaking any non-urgent (elective) treatment.

Responsible Commissioner

This guidance supersedes and replaces the relevant sections of the August 2013 Who Pays? Guidance.

Paragraph 50 is replaced by the following:

“50. Patients who are not ‘ordinarily resident’ in the UK (e.g. they are overseas visitors), and to whom no exemption from charges under Regulations applies, will be personally liable for the cost of any hospital treatment with which they are provided. **In such circumstances**, where providers have taken reasonable steps to identify chargeable overseas patients and to recover charges, the Responsible Commissioner is responsible for funding up to half of the patient charge. The commissioner must pay to the provider, on account, half of the patient charge in a timely manner, consistent with payment for normal NHS activity. The provider is required to advise the commissioner on the recovery of patient charge income on a regular basis and, on receipt of payment from the overseas visitor or on his behalf, to refund to the Responsible Commissioner in a timely manner that income on a 50:50 basis. However, a CCG is **wholly responsible** for funding the entire cost of care of those visitors to the UK who are exempt from charges and those services that are free to all overseas visitors.

The responsible commissioner for chargeable overseas visitor is determined as follows:

- First by paragraph 1 of this Who Pays? Guidance, but
- If the chargeable overseas visitor is not usually resident within a CCG geography, then the host CCG⁵ for the provider is the responsible commissioner.
- If the service received is one usually commissioned by NHS England, then NHS England is the responsible commissioner

Paragraph 6 of Annex A of the Who Pays? Guidance is replaced by the following:

“If a person is not ordinarily resident in the UK, they are subject to the Charging Regulations, which place a legal duty on NHS providers to make and recover charges from overseas visitors who they have provided with treatment unless an exemption from charges applies as listed within the Charging Regulations. **Where such a patient is liable for the charge, the provisions of paragraph 50 will apply.**”

Accounting for the risk Share

This accounting guidance considers both the Commissioner and Provider entries required for accounting for chargeable overseas visitors. In accordance with the Regulations, it supports the principle of a risk share and effectively cash backs the debt whilst the Provider continues to recover the debt from the patient. Within I&E,

⁵ The host CCG will be the CCG in which the provider is sited.

the Provider initially recognises the income from the patient and does not recognise any income from the Commissioner. Income from the Commissioner is recognised by the Provider once all reasonable steps to recover the debt have been taken and the Provider has written off any remaining unrecoverable debt from the patient, providing assurance to the Commissioner to that respect. At this point, the Commissioner also recognises expenditure for their share (50%) of the unrecoverable debt.

The Provider initially recognises a Payment on Account as NHS deferred income from the Commissioner and the Commissioner initially recognises a Payment on Account as a NHS prepayment with the Provider. Where the patient settles the debt, the Provider returns the funding and transactions in both the Provider and Commissioner are effectively reversed. Where the Provider writes off the debt, the Provider and Commissioner will recognise income and expenditure respectively at this point in time. No income or expenditure is recognised in either the Provider or Commissioners books until the patient debt is written off, this is the income recognition trigger.

To enable effective administration, we would advise Commissioners to work with Providers to ensure activity is invoiced on a monthly basis for all cases, rather than on an individual case by case basis. Further, as illustrated below, this invoice should include the following 2 sections:

- New patients treated and associated cost at 75% of tariff
- Refunds of monies to Commissioners in respect of previous amounts received on account where patients have settled their debts

As such, we advise a net invoice to be issued from Providers for all new activity less refunds to commissioners.

Further, on a monthly basis, we advise that the Provider should provide case by case information to support the invoice and further provide detailed breakdowns of any debts from patients written off in the period to enable appropriate accounting entries be made in both sets of books to recognise the income and expenditure in the Provider's and Commissioner's books respectively.

As such, the accounting can be broken down into the following 3 steps (using the non EEA tariff as an example):

1) Provider treats patient and issues invoice to patient

At the point of treatment, the Provider should raise an invoice to the patient for 150% of tariff (£150x). The accounting transactions will be:

Dr	receivables	£150x
Cr	income	£150x

2) Provider notifies CCG of treatment of patient and raising of invoice

The provider will raise an invoice for 75% of tariff (£75x) to the Commissioner. The Provider will code this as deferred income and the Commissioner as a Prepayment. For Commissioners, a new subjective code will need to be set up to enable this coding. No income or expenditure will be recognised at this point. However, it is

expected that the cash will transfer from the Commissioner to the Provider at this time. The accounting transactions will be:

Provider			Commissioner	
Dr	Receivables/Cash	£75x	Prepayments	£75x
Cr	Deferred income	£75x	Payables/Cash	£75x
To recognise the payment on account from the Commissioner to the Provider				

3) (a) Patient pays provider debt owed or (b) Provider taken all reasonable steps to recover debt and has been unable to, leading to debt write off

One of these steps will only realise, so in the event the patient pays the debt, the accounting will follow 3a) and in the event the Provider writes off the debt, the accounting will follow 3b).

3a) The Provider will notify the Commissioner of the recoverability of the debt and raise a credit on the next invoice issued to the Commissioner, supported by case information. The accounting transactions will be:

Provider			Commissioner	
Dr	Cash	£150x		
Cr	Receivables	£150x		
To recognise receipt of monies from patient				
Dr	Deferred income	£75x	Payables/Cash	£75x
Cr	Receivables/Cash	£75x	Prepayments	£75x
To return monies received on account by the Provider to the Commissioner				

3b) The Provider will write off the debt from the patient and recognise the income from the Commissioner. The Commissioner will recognise the expenditure. The accounting transactions will be:

Provider			Commissioner	
Dr	Expenditure	£150x		
Cr	Receivables	£150x		
To recognise write off of patient debt				
Dr	Deferred income	£75x	Expenditure	£75x
Cr	Income	£75x	Prepayments	£75x
To recognise the Commissioner risk share Income in the Providers books and Expenditure in the Commissioners books				

In the event that the patient part pays the debt, then the amounts should be pro-rated. The Provider will recognise the amount received and return a proportionate amount of the Payment on Account to the Commissioner (i.e. half the amount received from the patient). If it expects to recover the remaining debt going forward, the remaining deferred income and prepayments will remain on the Provider and

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Commissioners accounts. If at this point it writes off the remaining debt, this debt will be written off and the remaining payment on account from the Commissioner recognised as income in the Providers accounts and expenditure in the Commissioners accounts.

Finally, from an Agreement of Balances perspective, the transaction should not be included on the I&E AOB statement until the debt has been written off but any outstanding invoices should be included on the payables statement.

2 Annex A: Illustrated examples

Patient category	Treatment type	Identified as part of residential population?	Charging whom?	Charging how much?	Commissioner risk share of half patient charge	Patient type
UK ordinarily resident	Regular	YES	Responsible commissioner (CCG)	100%	n/a	NHS resident
UK ordinarily resident	Specialist	YES	Responsible commissioner (NHS England)	100%	n/a	NHS resident
UK resident, surcharge payee	Regular	YES	Responsible commissioner (CCG)	100%	n/a	NHS resident
UK resident, surcharge payee	Specialist	YES	Responsible commissioner (NHS England)	100%	n/a	NHS resident
EEA visitor with EHIC/S2	Regular	YES	Responsible commissioner (CCG)	100%	n/a	CEOV/ EEA
			EHIC only: Department of Health ⁶	25%	n/a	
EEA visitor with EHIC/S2	Regular	NO	Responsible commissioner (Host CCG)	100%	n/a	CEOV/ EEA
			EHIC only: Department of Health	25%	n/a	
EEA visitor with EHIC/S2	Specialist	YES	Responsible CCG	100%	n/a	CEOV/ EEA
			EHIC only: Department of Health	25%	n/a	
EEA visitor with EHIC/S2	Specialist	NO	Host CCG	100%	n/a	CEOV/ EEA
			EHIC only: Department of Health	25%	n/a	
EEA	Regular	YES	Responsible	100%	n/a	CEOV/

⁶ The Department of Health – as part of the EHIC incentive launched on 1 October 2014 – pays NHS providers an additional 25% of the value of Tariff for any EHIC activity reported on the Overseas Visitors' Treatment portal. This incentive only applies to EHIC, not S2 forms.

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Patient category	Treatment type	Identified as part of residential population?	Charging whom?	Charging how much?	Commissioner risk share of half patient charge	Patient type
visitor without EHC/S2 but exempt from charges			commissioner (CCG)			EEA
		NO	Responsible commissioner (Host CCG)	100%	n/a	
EEA visitor without EHC/S2 but exempt from charges	Specialist	YES	Responsible commissioner (CCG)	100%	n/a	CEOV/ EEA
		NO	Responsible commissioner (Host CCG)	100%	n/a	
EEA visitor without EHC/S2 and <u>not</u> exempt from charges	Regular	YES	Patient	100%	Responsible commissioner (CCG)	Chargeable EEA
		NO	Patient	100%	Responsible commissioner (Host CCG)	Chargeable EEA
EEA visitor without EHC/S2 and <u>not</u> exempt from charges	Specialist	n/a	Patient	100%	Responsible commissioner (NHS England)	Chargeable EEA
Non-EEA visitor exempt from charges	Regular	YES	Responsible commissioner (CCG)	100%	n/a	CEOV/ Non-EEA
		NO	Responsible commissioner (Host CCG)	100%	n/a	
Non-EEA visitor exempt from charges	Specialist	YES	Responsible commissioner (CCG)	100%	n/a	CEOV/ Non-EEA
		NO	Responsible commissioner (Host CCG)	100%	n/a	

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Patient category	Treatment type	Identified as part of residential population?	Charging whom?	Charging how much?	Commissioner risk share of half patient charge	Patient type
Non-EEA visitor <u>not</u> exempt from charges	Regular	YES	Patient	150%	Responsible commissioner (CCG)	Chargeable Non-EEA
		NO	Patient	150%	Responsible commissioner (Host CCG)	Chargeable Non-EEA
Non-EEA visitor <u>not</u> exempt from charges	Specialist	n/a	Patient	150%	Responsible commissioner (NHS England)	Chargeable Non-EEA

3 Annex B: NHS Standard contract provisions

36.50 The Parties acknowledge the requirements and intent of the Overseas Visitor Charging Regulations and Overseas Visitor Charging Guidance, and accordingly:

36.50.1 the Provider must comply with all applicable Law and Guidance (including the Overseas Visitor Charging Regulations, the Overseas Visitor Charging Guidance and the Who Pays? Guidance) in relation to the identification of and collection of charges from Chargeable Overseas Visitors, including the reporting of unpaid NHS debts in respect of Services provided to non-EEA national Chargeable Visitors to the Department of Health;

36.50.2 if the Provider has failed to take all reasonable steps to:

36.50.2.1 identify a Chargeable Overseas Visitor; or

36.50.2.2 recover charges from the Chargeable Overseas Visitor or other person liable to pay charges in respect of that Chargeable Overseas Visitor under the Overseas Visitor Charging Regulations,

no Commissioner will be liable to make any payment to the Provider in respect of any Services delivered to that Chargeable Overseas Visitor and where such a payment has been made the Provider must refund it to the relevant Commissioner;

36.50.3 (subject to SC36.50.2) each Commissioner must pay the Provider, in accordance with all applicable Law and Guidance (including the Overseas Visitor Charging Regulations, Overseas Visitor Charging Guidance and Who Pays? Guidance) the appropriate contribution on account for all Services delivered by the Provider in accordance with this Contract to any Chargeable Overseas Visitor in respect of whom that Commissioner is the Responsible Commissioner;

36.50.4 the Provider must refund to the relevant Commissioner any such contribution on account if and to the extent that charges are collected from a Chargeable Overseas Visitor or other person liable to pay charges in respect of that Chargeable Overseas Visitor, in accordance with all applicable Law and Guidance (including Overseas Visitor Charging Regulations, Overseas Visitor Charging Guidance and the Who Pays? Guidance);

36.50.5 the Provider must make full use of existing mechanisms designed to increase the rates of recovery of the cost of Services provided to overseas visitors insured by another EEA state, including the EEA reporting portal for EHIC and S2 activity; and

36.50.6 each Commissioner must pay the Provider, in accordance with all applicable Law and Guidance (including Overseas Visitor Charging Regulations, Overseas Visitor Charging Guidance and the Who Pays? Guidance), the appropriate sum for all Services delivered by the Provider to any overseas visitor in respect of whom that Commissioner is the Responsible Commissioner and which have been reported through the EEA reporting portal.

Chargeable Overseas Visitor	a patient who is liable to pay charges for NHS services under the Overseas Visitor Charging Regulations
European Economic Area or EEA	the European Economic Area (EEA) which consists of the European Union and all the European Free Trade Association (EFTA) countries except Switzerland
Overseas Visitor Charging Guidance	any guidance issued from time to time by the Secretary of State or by NHS England on the making and recovery of charges under the Overseas Visitor Charging Regulations, available via: www.gov.uk/government/publications/guidance-on-overseas-visitors-hospital-charging-regulations and [INSERT LINK TO OUR GUIDANCE – WHERE WILL WE BE POSTING IT?]
Overseas Visitor Charging Regulations	the regulations made by the Secretary of State under section 175 of the National Health Service Act 2006, available via: www.legislation.gov.uk/ukpga/2006/41/section/175 .
Who Pays? Guidance	<i>Who Pays? Determining the responsibility for payments to providers</i> , available at: www.england.nhs.uk/wp-content/uploads/2014/05/who-pays.pdf

