

Chapter 18 Hospital In-Patients

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Chapter 18 - Hospital In-Patients

Introduction

Scope of Chapter 18

18000 With effect from 10.4.06 the old Hospital In-Patients Regulations¹ were revoked². The result was that hospital downrating ceased to apply to the benefits to which those regulations applied (see the list in DMG 18010).

Note: For guidance on the effect of hospitalization on IS and JSA see DMG Vol 4 Chapter 24 and for SPC see Vol 13 Chapter 78.

1 SS (HIP) Regs 75; 2 SS (HIP) Regs 05, reg 9

18001 This Chapter therefore now only gives guidance on when a person is to be regarded as a hospital in-patient for the purposes of AA and DLA plus some minor matters relating to the payability of ADIs and CDIs when the claimant or both the claimant and the dependant have been hospital in-patients for 52 weeks or more.

18002 - 18009

Benefits affected

18010 The following benefits were subject to the Hospital In-Patients Regulations 1975¹

1. IB
2. Bereavement Allowance
3. WA
4. WMA
5. WPA
6. WP
7. Benefits corresponding to WMA or WP²
8. Age addition
9. SDA
10. RP of any category (including GRP)
11. Unemployability Supplement (transitionally protected claims)
12. IDB (widow's and widower's pension)
13. ADIs to the benefits listed in DMG 16110³
14. Any CDIs to the benefits listed at DMG 16001 that remain payable after 6.4.03 under transitional arrangements and any CDIs listed in DMG 16002³.

1 SS (HIP) Regs 75, reg 4(b) & Sch 2; 2 SS CB Act 02 s 78; 3 SS (HIP) Regs 75, reg 2(1) definition of "dependency benefits"

18011 - 18019

In-patients

Free in-patient treatment

Deciding free in-patient treatment

18020 There are five points to consider when deciding whether a person is receiving free in-patient treatment. The person must be all of the following

1. maintained free of charge
2. receiving medical or other treatment
3. in a hospital or similar institution
4. an in-patient
5. receiving free in-patient treatment under prescribed legislation¹ **or** in a hospital or similar institution maintained or administered by the Defence Council.

Note: A person who does not meet any one of these conditions is not receiving free in-patient treatment. The decision maker does not need to consider the other conditions.

1 NHS Act 06; NHS (Wales) Act 06 NHS (Scot) Act 78; NHS & CC Act 90

Maintained free of charge

18021 A person is treated as being maintained free of charge¹ in a hospital or similar institution unless

1. accommodation and services are being provided for that person as a private patient² **or**
2. the person is meeting the full cost of their maintenance as a private patient in a private hospital.

1 SS (HIP) Regs 05, reg 2(4); SS (AA) Regs, reg 6; SS (DLA) Regs, reg 8;

*2 NHS Act 06, Sch 2 para 15 & Sch 6 para 11; NHS (Wales) Act 06, Sch 2 para 15 & Sch 5 para 11
NHS (Scot) Act 78, s 57 & Sch 7A, para 14; NHS & CC Act 90, Sch 2, para 14*

18022 In any other circumstances the person is treated as maintained free of charge. For example when

1. a payment is made by the patient for an amenity bed but the treatment is provided under the National Health Service¹
2. a patient is in paid work outside the hospital during the day and pays an amount to the HA or Health Board based on earnings towards maintenance and incidental costs²
3. a person is a patient in a nursing home being funded under arrangements made by the HA or Health Board³.

1 NHS Act 06, s 189; NHS (Wales) Act 06, s 137; NHS (Scot) Act 78, s 55;

2 NHS Act 06, s 190; NHS (Wales) Act 06, s 138; NHS (Scot) Act 78, s 56;

3 NHS Act 06; NHS (Wales) Act 06; NHS (Scot) Act 78

Burden of proof

18023 The burden of proving that a person is not being maintained free of charge rests with that person¹.

1 CS 591/49

Medical or other treatment

18024 To be treated as a hospital in-patient a person must be receiving

1. medical treatment (for example surgical treatment or administration of drugs and injections) **or**
2. other treatment which includes nursing services by professionally trained staff in the form of observation, therapy, support appropriate to the persons needs, advice and training in domestic and social skills.

It does not include straightforward care and attention by unqualified staff.

18025 Whether a person is receiving treatment is a question of fact. It cannot be assumed that because one person is receiving treatment in a hospital or similar establishment, that another person in the same establishment can automatically be regarded as receiving treatment. But the fact that a person is an in-patient in a hospital is strong evidence that the person is receiving medical or other treatment¹.

1 R(S) 26/54

18026 A person does not have to receive treatment throughout each day (midnight to midnight) for the day to be included in a period of in-patient treatment. The condition is satisfied if a person receives treatment at some time during the day¹.

1 R(S) 4/84

18027 Whether the decision maker should treat a person as receiving treatment depends on the circumstances of the individual. The decision maker cannot assume that because one person receives treatment in an establishment treated as a hospital or similar institution, another person in the same establishment is automatically regarded as receiving treatment¹.

1 R(P) 1/67

Hospital or similar institution

Hospital

18028 A hospital¹ is any of the following

1. an institution for the reception and treatment of persons suffering from illness, the reception and treatment of persons during convalescence, persons needing medical rehabilitation
2. a maternity home
3. in Scotland, any institution for dental treatment maintained in connection with a dental school
4. a clinic, dispensary or out-patient department maintained in connection with any of these homes or institutions.

1 NHS Act 06, s 275; NHS (Wales) Act 06, s 206; NHS (Scot) Act 78, s 108

18029 Illness includes¹

1. mental disorder **or**
2. any illness or disability needing medical treatment **or** dental treatment **or** nursing.

1 NHS Act 06, s 275; NHS (Wales) Act 06, s 206; NHS (Scot) Act 78, s 108

18030 Mental disorder means

1. in England and Wales¹ any disorder **or** disability of the mind
2. in Scotland² any form of mental illness (including personality disorder) **or** mental handicap.

1 MH Act 83, s 1(2); 2 Mental Health (Scotland) Act 1984, s 1(2)

Similar institution

18031 Similar institution is not defined. If an institution does not satisfy the definition of hospital, the decision maker should decide as a question of fact whether it is similar to a hospital taking into account

1. the purpose of the institution **and**
2. the type of treatment provided **and**
3. the level of care offered.

18032 A hospital or similar institution also includes those

1. maintained by or on behalf of the¹ Department of Health, Welsh Office, Scottish Office Home and Health Department (these include special hospitals such as Broadmoor and Rampton and the State Hospital in Scotland) **or**
2. maintained by or on behalf of the Defence Council, for example an army, navy or air force hospital.

1 NHS Act 06, s 4; NHS (Wales) Act 06, s 4; NHS (Scot) Act 78, s 102

Examples of hospitals or similar institutions

18033 A hostel or residential care home providing accommodation and social care to former alcoholics or drug addicts is not a similar institution to a hospital. An institution caring for former alcoholics, drug addicts or psychiatric patients which provides a degree of medical treatment or rehabilitation by trained nursing staff may be a similar institution to a hospital.

A nursing home providing appropriate nursing care by professionally trained nurses is a hospital. Medical or other treatment does not have to be the majority service provided to patients or be the main reason for the stay in the nursing home. But if the provision of nursing care is minimal, for example rarely expected, the nursing home may not be a hospital.

In-patient

18034 "In-patient" is not defined and should be given its ordinary meaning of a patient who occupies a bed in a hospital **or** similar institution rather than an out-patient who attends hospital daily or from time to time for treatment or to be attended to¹.

Note: The question of whether a person is an in-patient should be judged on the facts of each case.

1 R(I) 27/59; R(S) 8/51

18035 Examples of when a person would be included as an in-patient are where the person is

- a long term patient and spends part of each day away from the hospital¹
- provided with meals by close relatives
- a nurse treated in the nursed sick bay of the hospital in which the nurse works².

1 R(S) 4/84; 2 R(S) 2/52

18036 Examples of when a person would not be included as an in-patient are where the person is

- receiving treatment at home during the period a rehabilitation centre is closed for a holiday¹
- a matron receiving treatment in ordinary living quarters at a hospital².

1 R(I) 14/56; 2 R(S) 28/52

Prescribed legislation

18037 A person is an in-patient if they are receiving free in-patient treatment under prescribed legislation¹. But in deciding whether a person is to be treated as an in-patient, the decision maker should consider the terms under which the treatment is given rather than whether the hospital or similar institution is directly managed by

- the Department of Health **or**
- the Scottish Office Home and Health Department **or**
- a Health Authority in England and Wales **or**
- a Health Board in Scotland **or**
- a National Health Service Trust.

Health Authorities and Health Boards have a variety of duties under National Health Service legislation and not all of them mean that a person is receiving free in-patient treatment.

1 NHS Act 06; NHS (Wales) Act 06; NHS (Scot) Act 78; NHS & CC Act 90

England and Wales

18038 Health Authorities acting on behalf of the Secretary of State can

- arrange for long term health care in a nursing home or residential care home for a person whom they assess as needing that care¹ (in this case the service must be provided free of charge and the Health Authority is responsible for the full cost). If **this** applies the person is receiving free in-patient treatment under prescribed legislation **or**
- contribute to the cost of care through payments to a Local Authority, voluntary organisation or housing association² for social care **or** accommodation **or** housing costs for a person who does not need in-patient care from the National Health Service **or**
- make grants to voluntary organisations³ towards the cost of care for a person who does not need in-patient care from the National Health Service.

1 NHS Act 06, s 12; NHS (Wales) Act 06, s 10; 2 Health Services & Public Health Act 1968, s 64;

3 NHS Act 06, s 256; NHS (Wales) Act 06, s 194

Scotland

18039 Health Boards acting on behalf of the Secretary of State for Scotland can

- provide accommodation and services needed to meet all reasonable requirements¹
- make the necessary arrangements to meet all reasonable requirements². (If services are provided under this option the Health Board is responsible for the full cost).

1 NHS (Scot) Act 78, s 36; 2 s 37

Services provided under National Health Service legislation

18040 Examples of services under National Health Service legislation are¹

- hospital accommodation
- other accommodation for the purpose of any service the Secretary of State has the power to provide
- medical services
- nursing services
- facilities which the Secretary of State considers appropriate as part of the health service for the prevention of illness **or** care of persons suffering from illness **or** after care of persons who have suffered from illness.

These services may be provided in cash or kind under arrangements made with the private or voluntary sector.

1 NHS Act 06; NHS (Wales) Act 06; NHS (Scot) Act 78

Imprisonment

18041 A person who is admitted to the hospital wing of a prison is not regarded as receiving free in-patient treatment because these wings are administered by

1. the Home Office **or**
2. in Scotland, the Scottish Office Prisons Directorate.

18042 - 18049

Community care arrangements

Arrangements by Primary Care Trusts, Health Authorities and Health Boards

18050 As part of a community care programme, a Primary Care Trust, Health Authority or Health Board may make a variety of arrangements with care homes (including nursing homes) or hostels for

1. the continuing care of a patient **or**
2. a person in the community to be admitted directly to one of these homes.

The DM should consider DMG 18020 to decide whether the person is receiving free in-patient treatment in the home or hostel (see Benefit Specific Guidance if the LA is involved in the arrangements).

18051 Examples of arrangements made by Primary Care Trusts, HAs and Health Boards under community care programmes are

1. setting up their own homes or hostels
2. contracting with private and voluntary sector homes for the provision of accommodation and services
3. contracting with a voluntary agency to find suitable placements for patients
4. any combination of the above.

Points to consider

18052 The DM should consider the following when deciding whether the person is receiving free in-patient treatment in the new accommodation.

18053 When deciding whether the new accommodation is a hospital or similar institution the DM should consider the definition in DMG 18028 et seq. The DM should not compare the new accommodation with the person's previous hospital accommodation.

18054 If the arrangements between the Primary Care Trust, HA or Health Board and the home or hostel are under any of the provisions of the prescribed legislation¹ DMG 18020 is satisfied.

1 NHS Act 06; NHS (Wales) Act 06; NHS (Scot) Act 78; NHS & CC Act 90

18055 If a HA or Health Board helps a voluntary sector home by awarding a grant or loan under other legislation¹ DMG 18020 is not satisfied, but if the HA or Health Board have a contractual agreement to pay a grant for future financial years, this may be

evidence that the agreement has been made under prescribed legislation², and the person may be receiving free in-patient treatment.

1 HS & PH Act 68, s 64; NHS (Scot) Act 78, s 16B;

2 NHS Act 06; NHS (Wales) Act 06; NHS (Scot) Act 78; NHS & CC Act 90

18056 A HA or Health Board may agree to provide help to a home on the assumption that the person will not be treated as receiving free in-patient treatment for IS or JSA(IB) purposes. For example they may agree to pay the difference between

1. ordinary applicable amounts of IS or JSA(IB) **and**
2. the amount charged for the home.

Note: If the agreement is made under prescribed legislation¹, the HA or Health Board is responsible for the full cost of the accommodation and services no matter what the agreement states.

1 NHS Act 06; NHS (Wales) Act 06; NHS (Scot) Act 78; NHS & CC Act 90

18057 A HA or Health Board can provide financial assistance or services, for example they may provide trained nursing staff. If the home reimburses

1. the **full** cost of the services to the HA or Health Board, DMG 18020 is not satisfied and the person is not receiving free in-patient treatment **or**
2. part of the cost of the services, the arrangement may be under prescribed legislation¹.

1 NHS Act 06; NHS (Wales) Act 06; NHS (Scot) Act 78; NHS & CC Act 90

18058 The arrangement between the HA or Health Board must include continuing help. If a placement is found without any continuing commitment from the HA or Health Board to fund the care, DMG 18020 is not satisfied. For example a hospital social worker may help a patient who is about to be discharged to find a suitable nursing home.

Local authority placements

18059 LAs have responsibilities for placing people in care homes including those providing nursing as well as residential care¹. LAs

1. contract with the home owners **and**
2. are often responsible for the full cost of the placement **and**
3. may be helped with funding from a HA or Health Board².

If a LA has made the placement, the conditions in DMG 18020 are not satisfied because the placement has not been arranged under prescribed legislation³. Any funding from the HA or Health Board does not affect the placement.

1 NA Act 48; SW (Scot) Act 68; 2 NHS Act 06, s 256; NHS (Wales) Act, s 194; NHS (Scot) Act 78;

3 NHS Act 06; NHS (Wales) Act 06; NHS (Scot) Act 78; NHS & CC Act 90

Continuing care - NHS responsibilities

Legal Background

18060 Under the NHS Act¹ the Secretary of State for Health is under a duty to provide facilities for the care of persons suffering from illness and the after-care of persons who have suffered from illness¹. Services under the Act must be provided free of charge² except in so far as the making or recovery of charges is expressly provided for by law.

Note: This paragraph and DMG 18061 to 18069 describe law and case law that applies in England and Wales and the guidance has no direct application to Scotland where the law is different.

1 NHS Act 06, s 3(1)(e); NHS (Wales) Act 06, s 3(1)(e); 2 NHS Act 06, s 1(3); NHS (Wales) Act, s 1(3)

18061 Accordingly Primary Care Trusts acting on behalf of the Secretary of State can arrange for long term care in a care home for a person whom they assess as needing that care¹. In such a case the service must be provided free of charge and the HA is responsible for the full cost.

1 NHS Act 06, s 12; NHS (Wales) Act 06, s 10

18062 LAs may make arrangements for providing residential accommodation for persons over 18 who by reason of age, illness, disability or any other circumstances are in need of care and attention which is not otherwise available to them¹. LAs can charge for this provision.

1 NA Act 48, s 21

18063 In July 1999 the Court of Appeal¹ considered where the borderline lay between the duties of LAs and the duties of the NHS as regards providing nursing care. The Court held that it is lawful for LAs to provide nursing services where they are

1. merely incidental to the provision of accommodation which a LA is under a duty to provide **and**
2. of a nature which it can be expected that an authority whose primary responsibility is ordinarily to provide social services can be expected to provide.

1 R v North and East Devon Health Authority ex parte Coughlan [2000] 3 All ER CA 850

The Health Ombudsman's report

18064 In February 2003 the Health Service Commissioner for England (known as the Health Ombudsman) issued a report called "NHS Funding for Long Term Care of Older and Disabled People".

- 18065 The Ombudsman found a number of defects in the way in which decisions had been made regarding whether a person should be provided with continuing care in a home free of charges under the NHS or by an LA with charges payable.
- 18066 Among the Ombudsman's recommendations were that Strategic Health Authorities and Primary Care Trusts should
1. review the criteria used and the way they had been applied since 1996 **and**
 2. make efforts to remedy any consequent financial injustice to patients where the criteria, or the way they were applied, were not clearly appropriate or fair. This would include attempting to identify patients who may wrongly have been made to pay for their care in a home and making appropriate recompense to them or their estates.
- 18067 Where, following a review of the criteria it is decided that a claimant should be fully funded by the NHS in a home providing care then, provided the DM is satisfied that the care home concerned is a similar institution to a hospital, the claimant will be a hospital in-patient from the date the Primary Care Trust makes a decision that continuing care should be provided.
- 18068 As, with effect from 10.4.06, hospital downrating at 52 weeks was abolished, such a decision by a Primary Care Trust will have no effect on the amount of the benefits listed in DMG 18010 after that date.
- 18069 If a period before 10.4.06 is involved, DMs are advised that payments made to compensate claimants for the period during which they were wrongly charged for care do not mean that those claimants were hospital in-patients for the period covered by the compensation. These claimants were not in fact being maintained free of charge while undergoing medical or other treatment as in-patients under NHS legislation during that period. Payment of compensation does not alter that fact.

18070 - 18119

Adjustment of benefit after twelve weeks

Child in hospital

18120 Prior to 10.4.06, if a dependent child had been in hospital continuously for twelve weeks or more payment of an increase of benefit for that child would continue only if the beneficiary

1. regularly had expenses for the child such as costs of visits, comforts, pocket money **or**
2. made or had made some payment to the child or some other person for the benefit of the child¹.

1 SS (HIP) Regs, reg 13

18121 From 10.4.06 the rule described in DMG 18120 was abolished.

18122 - 18129

Abolition of 52 Week Downrating

18130 With effect from 10.4.06 the Hospital In-Patient Regulations 1975 were revoked. This meant that hospital downrating at 52 weeks ceased to apply to any of the benefits listed in DMG 18010.

Date the change took effect

18131 Revocation came into force on different dates depending upon the benefit involved as follows

1. in the case of a claimant in receipt of IB or SDA, from 10.4.06¹
2. in the case of a claimant in receipt of any of the benefits listed at DMG 18010 other than IB or SDA²
 - 2.1 on 10.4.06 if that is the claimant's appropriate payday
 - 2.2 otherwise, the next payday appropriate to that claimant immediately following 10.4.06.

1 SS (HIP) Regs, 05 reg 1(b)(ii); 2 reg 1(b)(i)

18132 - 18139

Residual Rules

18140 Although hospital downrating has effectively been abolished certain rules concerning payability of ADIs and CDIs remain.

ADIs and CDIs

Claimant in hospital for 52 weeks

18141 Where the claimant is in hospital as an in-patient and has received free in-patient treatment for 52 weeks or more, any ADI or CDI will cease to be payable unless¹ the claimant applies to the Secretary of State to pay the increase to

1. the dependant **or**
2. some other person who
 - 2.1 is approved by the Secretary of State **and**
 - 2.2 satisfies the Secretary of State that they will apply the increase for the benefit of the dependant.

1 SS (HIP) Regs 05, reg 2(2)

Both claimant and dependant in hospital for 52 weeks

18142 Where both the claimant and the dependant for whom an ADI or CDI is paid are hospital in-patients and both have received free in-patient treatment for 52 weeks or more, that ADI or CDI will cease to be payable unless¹ the claimant applies to the Secretary of State to pay the ADI or CDI to

1. the dependant **or**
2. some other person who
 - 2.1 is approved by the Secretary of State **and**
 - 2.2 satisfies the Secretary of State that they will apply the increase for the benefit of a child of the beneficiary.

1 reg 2(3)

18143 - 18149

Prisoners

18150 For guidance on the effect of hospitalization on prisoners see DMG Chapter 12.

18151 - 18999

The content of the examples in this document (including use of imagery) is for illustrative purposes only