

Position Statement

The status of NHS Prescription Charges in Clinical Homecare

Scope:

Originally commissioned by the NCHA Standing Committee in 2013 to set out the legal basis of NHS prescription charges and their application in clinical homecare.

Background:

The NHS was founded in 1948 by the National Health Services Act to provide health services “free at the point of use”. NHS prescription charges have always been controversial. A growing drugs bill prompted the introduction of prescription charges in 1952. The plans were first put forward in 1951, much to the dismay of some ministers. The “father” of the NHS Aneurin Bevan resigned stating the introduction of prescription charges as part of his reason. The first prescription charges were made in October 1952. Harold Wilson resigned alongside Aneurin Bevan and followed up his convictions when as Prime Minister in 1965 when he abolished prescription charges. However, the NHS drugs bill soared and in June 1968 prescription charges were restored. NHS prescription charges and have been in place in England and Scotland ever since. In 2001, the Welsh Assembly Government legislated to abolish prescription charges for people aged 16 to 25 in Welsh pharmacies.

To help the financial burden on patients with long term conditions that were not included on the medical exemptions list, prescription pre-payment certificates were introduced in 1968. In 1975, there was a further extension to the exemption arrangements with the introduction of charge-free contraceptive drugs and appliances. The only further change to the medical exemption categories occurred in 2009, when the new exemption for patients receiving treatment for cancer, or for the effects of cancer treatment, was introduced. Further general information can be found in the [Health Select Committee in its 2006 report on NHS Charges](#)

In October 2008, following the Prime Minister’s pledge to exempt people with long term conditions from prescription charges and the outcry from other patient groups following the introduction of the exemption for cancer patients, the Gilmore Report was commissioned by DH Ministers. Published in November 2009, the Prescription Charges Review: Implementing Exemption from Prescription Charges for People with Long Term Conditions (Gilmore Report) makes recommendations that the criteria for exemption from NHS prescription charges should be changed, so that everyone with a long term condition as certified by their GP would receive an NHS prescription charges exemption certificate. The findings of the Gilmore Report have not

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been implemented and whilst the scope was not specifically limited to primary care, there is no mention in the report of the management of prescription charges in secondary care.

The collection of prescription charges by NHS pharmacies under the primary care contract as set out in the Drug tariff is well established and controlled via reimbursement of FP10 prescriptions by the NHS Business Services Authority which now incorporates the body formerly known as the Prescription Pricing Authority. The reimbursement system extends to hospital prescriptions that are written on FP10(HP) forms and others.¹

It was not until 1995 that the definition of NHS prescriptions that attracted NHS prescription charges was formally extended to secondary care outpatient prescriptions. For 10 years prior to this prescription charges had been sporadically, but increasingly charged by secondary care pharmacies for outpatient prescriptions. The charging of NHS prescription charges in secondary care was formalised in an internal document, Health Service Guideline HSG(95)17, issued by the NHS Executive. Whilst running to 14 pages, this guideline repeats that prescription charges should be levied for outpatient the same rules for exemptions as in set out in the prevailing [Drug Tariff](#).

Whilst it does not appear that the original Health Services Guideline has been updated or superseded, it is now “normal” for outpatient prescriptions to be subject to NHS prescription charges as defined in the prevailing Drug Tariff. In secondary care, the prescription charges are collected locally at the point of dispensing and/or handover of the outpatient medication to the patient. These secondary care prescription charges are administered locally by the Trust and the proceeds are accounted for as income for the Trust.

Regulations, Offences and Sanctions

The National Health Service Act has been reformulated over its life, most recently in 2006. The Health and Social Care Act 2012 made provisions for restructuring the NHS, but did not amend regulations relating to prescription charges. In principle, “the services provided as part of the health service in England must be free of charge except in so far as the making and recovery of charges is expressly provided for by or under any enactment, whenever passed.” There is a separate regional National Health Services Act for Scotland. The Act is an enabling Act for prescription charges for NHS prescriptions with the specific exception of inpatient prescriptions.

The details of the prevailing levels and exemptions from NHS prescription charges are listed by [NHS Choices](#). The Directions are made by the Secretary of State for Health gives the following Directions in exercise of the powers conferred by sections 7, 8, 168A, 272(7) and 273(1) of the National Health Service Act 2006(a) and tend to be updated annually. The directions provide for the NHS Business Services Authority to publish the Drug Tariff and deduct prescription charges from reimbursement to Community pharmacies under the local pharmaceutical services contract.

As an enabling act, the National Health Service Act makes no provision for any offences associated with non-collection or non-payment of prescription charges. Whilst many people consider the prescription charge to be a “tax”, it is not administered by the HM Revenue and Customs and is not subject to the same provisions, penalties and offences associated with non-payment of taxes.

The primary care pharmacy contract terms of services requires a check to be made at the point of dispensing which included whether the patient is exempt from payment of NHS prescription charges, however this is not applicable in homecare unless an FP10 or FP10(HP) prescription is being dispensed and reimbursed by NHS Business Services Authority under a primary care contract.

¹ <https://psnc.org.uk/dispensing-supply/receiving-a-prescription/patient-charges/>
http://www.psn.org.uk/pages/valid_prescription_forms.html

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The Health Act provides for recovery of health related charges including NHS prescription charges if exemption has been fraudulently claimed. If it is found that prescription charge exemption has been claimed incorrectly by the patient or their representative as set out in the bullet points below, the health service body may recover the original charge and impose a penalty charge in accordance with the Health Act 1999.

- on the ground that he or another is a person of a particular description, where the person in question is not in fact of that description,
- on the ground that he or another holds a particular certificate, when the person in question does not in fact hold such a certificate or does hold such a certificate but is not entitled to it,
- on the ground that he or another has made a particular statement, when the person in question has not made such a statement or the statement made by him is false.

The charge is recoverable by the person (“responsible authority”) to whom the charge was due to be paid, but can be recovered by another health service body on behalf of that “responsible authority”.

There are no regulations relating to the charges that may be levied by pharmacies dispensing private prescriptions – this is therefore a commercial matter for agreement between the dispensing pharmacy and the patient or payer.

NHS Prescription charges in clinical homecare:

With the development of clinical homecare as a care sector independent of primary and secondary care, the application of prescription charges in clinical homecare is not covered in detail by existing regulations and guidelines.

NHS prescription charges should be applied to NHS prescriptions except where they relate to in-patient treatment, however, there is no clear definition of NHS prescription. NHS prescription is generally understood to mean any prescription covered by the NHS Business Services Authority control and reimbursement processes². Where a hospital prescription is dispensed by a third party, under the Medicines Act, it is understood to be legally classified as a “private” prescription for the purposes of control and record keeping. However, where the patient is receiving NHS commissioned homecare there is a clear argument that the homecare prescription should be considered an NHS Prescription.

Clinical homecare patients are likely to have complex needs and therefore it should be at the discretion of the commissioner whether prescription charges are payable by the patient subject to the restrictions applied by the Health Services Act and the prevailing Drug Tariff. There are currently differing views on whether prescription charges should be applied for NHS clinical homecare patients. Assuming all homecare prescriptions for NHS patients are classified as NHS prescriptions for the purposes of the Health Services Act, it would be incumbent on the commissioner of the service to specify further contract specific prescription charge exemptions to be applied over and above the prevailing Drug Tariff exemptions if they were applicable.

Conclusion

Whilst the situation is open to interpretation, it is not unreasonable to conclude that in relation to clinical homecare services

² http://www.psn.org.uk/pages/valid_prescription_forms.html

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- any NHS prescription charges applied should be as detailed in the prevailing Drug Tariff including exemptions notably cancer patients and administered medicines. Whilst not a stated medical exemption in the Drug Tariff, prescription charges for HIV medicines have not been applied³.
- prescription charges should be collected from homecare patients when dispensing FP10 or FP10(HP) prescriptions unless they are covered by an exemption
- where NHS prescription charges are collected, homecare companies should support patients who wish to purchase NHS Pre-payment Certificates via the homecare company
- NHS prescription charges for dispensing of hospital prescriptions in homecare setting are governed by the commercial contract under which they are supplied
- NHS prescription charges collected on behalf of hospitals should be recorded, transparent and on behalf of the NHS.

History

Version 1 approved NCHA Board 30 Aug 2013

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³ <https://www.tht.org.uk/hiv-and-sexual-health/living-well-hiv/healthcare/nhs-services>

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