NHSO
National Health Security Office

# NO-FAULT COMPENSATION SYSTEM

## IN THE THAI UNIVERSAL COVERAGE SCHEME

# GLOSSARY

**NATIONAL HEALTH SECURITY BOARD**

As stipulated by the National Health Security Act (2002), the National Health Security Board is comprised of representatives from various sectors including government agencies, professional councils, local government bodies, private hospitals, not-for-profit NGOs and experts. The Board is chaired by the Minister of Public Health (as per Article 18) and is responsible for administering and managing the National Health Security Fund, setting the scope and standards of health services, setting the conditions for the preliminary payment according to Article 41, and overseeing the operations of the National Health Security Office.

**QUALITY AND STANDARD CONTROL BOARD**

This Board was established by the National Health Security Act 2002, and its members comprise representatives from various sectors including government agencies, professional councils, local government organizations, private hospitals, professional practitioners, Royal Colleges of the four major disciplines, non-profit organizations, and experts. The Board has duties as specified in the National Health Security Act 2002, such as supervision, control, quality promotion and standardization of service units. The Board is also charged with protecting the rights of eligible persons under the Universal Coverage Scheme, including hearing grievances by service recipients and paying basic compensation according to Article 41.

**SUB-COMMITTEE OF ARTICLE 41: PROVINCIAL LEVEL**

Sub-committee to consider for approval requests for compensation at the provincial level.

**NATIONAL HEALTH SECURITY OFFICE [NHSO]**

The NHSO is a government agency which exists as a juristic person. The NHSO is under the supervision of the Minister of Public Health and performs the administrative work of the National Health Security Board and the Quality and Standard Control Board, including various subcommittees of the Boards. The scope of the NHSO covers academic/technical dimensions to develop the national health security system, registration of beneficiaries and service units, and management of the various funds in accordance with the regulations prescribed by the National Health Security Board.

**NHSO REGIONAL OFFICES**

The NHSO has 13 branch offices throughout the country, 12 of which cover geographic clusters of provinces, and one office for Bangkok.

**SERVICE UNIT**

Pursuant to the Regulations on the Criteria, Procedures and Conditions for Preliminary Compensation in the event that a service recipient sustained an injury from medical treatment (2012), Clause 4 defines the meaning of 'service unit' as a unit that provided the service that was the cause of the initial request for compensation, and must be a service unit under Article 3 of the National Health Security Act 2002 or, in other words, is a registered service facility under the Act.

**HEALTHCARE**

Pursuant to the Regulations on the Criteria, Procedures and Conditions for Preliminary Compensation in the event that a service recipient sustained an injury from medical treatment (2012)[1] and as amended (No. 2) 2014, Clause 4 defines 'healthcare' to mean 'public health services' according to Article 3 of the National Health Security Act 2002, such as medical and health services, which are provided to beneficiaries to promote health, prevent disease, make a diagnosis for medical treatment and/or rehabilitation necessary for health and life, including services of Thai traditional medicine and alternative medicine according to the Practitioner Licensing law.

**PRELIMINARY COMPENSATION UNDER ARTICLE 41**

The provision of not more than 1% of the money which will be paid to the service unit as preliminary compensation to the service recipients or their immediate relatives or guardians as approved by the Subcommittee under Article 41 at the provincial level or the Quality and Standard Control Board in the event that the service recipient receives an injury arising from the treatment of the service unit – regardless of demonstration of fault – but has not received compensation for damages within a reasonable period of time, in accordance with the Regulations on the Criteria, Procedures and Conditions for Preliminary Compensation by the Board.

# TABLE OF CONTENTS


**10** **INTRODUCTION**

12 WHY IS THERE A NEED FOR ARTICLE 41?

14 INTENTIONS OF ARTICLE 41

**16** **CONSIDERATION OF THE GRIEVANCE AND PRELIMINARY COMPENSATION ACCORDING TO ARTICLE 41**

19 IS THE SUBMISSION OF THE GRIEVANCE IN ACCORDANCE WITH THE LAW?

22 DOES THE TYPE OF INJURY MEET THE CRITERIA FOR PRELIMINARY COMPENSATION?

25 HOW MUCH SHOULD THE PRELIMINARY COMPENSATION BE?

**31** **MECHANISMS FOR IMPLEMENTATION IN ACCORDANCE WITH ARTICLE 41**

32 SUBMITTED THE GRIEVANCE AS A BASIS FOR RECEIVING PRELIMINARY COMPENSATION

36 PERSON(S) WITH AUTHORITY TO CONSIDER A GRIEVANCE

41 CONSIDERATION OF THE GRIEVANCE

43 CONSIDERATION OF AN APPEAL BY THE QUALITY AND STANDARD CONTROL BOARD

**46 RESULTS OF IMPLEMENTATION IN ACCORDANCE WITH ARTICLE 41 (FY2004–20)**

47 NUMBER OF GRIEVANCES FILED AS A BASIS FOR APPLYING FOR PRELIMINARY COMPENSATION & NUMBER OF RECIPIENTS OF PRELIMINARY COMPENSATION

55 BUDGET FOR PAYMENT OF PRELIMINARY COMPENSATION

57 NUMBER OF APPLICATIONS FILED TO APPEAL THE PRELIMINARY COMPENSATION DECISION

59 NUMBER OF LAWSUIT CASES FILED IN COURT

**62 NOTEWORTHY CASE STUDIES**

62 POST-OPERATIVE INFECTION LEADING TO BLINDNESS IN CATARACT SURGERY PATIENTS

65 ACCIDENT DURING THE PROCESS OF REFERRING A PATIENT

66 POST-STERILIZATION PREGNANCY

67 NATIONAL EMERGENCY OR DISASTER

**68 FACTORS BEHIND SUCCESS & REMAINING CHALLENGES**

69 FACTORS BEHIND THE SUCCESS

74 CHALLENGING ISSUE

**75 SUMMARY**

# 1

# INTRODUCTION

The promulgation of the **NATIONAL HEALTH SECURITY ACT OF 2002** is an essential mechanism for ensuring and extending the right to receive standardized and efficient health services by all Thai citizens. This is an important achievement in protecting the people's fundamental rights under Articles 52[a] and 57[b] of the 1997 Thai Constitution,[1] also known as the **PEOPLE'S CONSTITUTION**, due to the participation of the public in its drafting process.

a Article 52 A person shall enjoy an equal right to receive standard public health service, and the indigent shall have the right to receive free medical treatment from public health centers of the State, as provided by law. The public health service by the State shall be provided thoroughly and efficiently and, for this purpose, participation by local government organizations and the private sector shall also be promoted insofar as it is possible. The State shall prevent and eradicate harmful contagious diseases for the public without charge, as provided by law.

b Article 57 The right of a person as a consumer shall be protected as provided by law. The law under paragraph one shall provide for an independent organization consisting of representatives of consumers for giving opinions on the enactment and issuance of law, rules and regulations and on the determination of various measures for consumer protection.

In accessing health services, there could be some probability of an injury that may lead to a resolution using the court system. This process often affects both the accused public health personnel and the injured party due to the complex, time-consuming, and expensive process of adjudicating the issue. This protracted process can cause distress for health workers, the injured party, and their relatives. This circumstance inevitably gives rise to a **CRISIS OF RELATIONS** between health care providers and health service recipients.

Thailand's National Health Security System attaches great importance to quality control of health services to protect the rights of the beneficiaries, and this is a relatively advanced form of consumer rights protections compared to other countries at a similar level of development in the region. Article 41 of the National Health Security Act of 2002 mandates payment of preliminary compensation to alleviate suffering and heal the injury. In order to prevent conflict and to foster good relationships between health care providers and recipients who have been injured from health services, the law provides for **NO-FAULT COMPENSATION**.

To this end, Article 41 of the National Health Security Act of 2002 stipulates the following:

> *The Board shall earmark no more than one percent of the budget to be allocated to service units for financial assistance in the case where a beneficiary is damaged by the medical treatment provided by a service unit where no wrongdoer is identified, or where the wrongdoer is identified, but the beneficiary has not received compensation within a reasonable period of time, according to the rules, procedures, and conditions described by the Board.*[2]

# 1.1

## WHY IS THERE A NEED FOR ARTICLE 41?

Before the passage of the National Health Security Act of 2002, service recipients who sustained an injury in the course of receiving treatment or care from a service unit – whether public or private sector – had to sue in court to appeal for compensation for said injury.

When a dispute arises between the service provider and the service recipient, the judicial process is treated the same as in general cases of infringement. However, in health care, it is difficult for the recipient of the service or the injured party to prove the healthcare provider's liability because of the proprietary knowledge and technical complexity of the provision of health services. This applies to diagnosis, clinical procedures, surgery, and rehabilitation, the knowledge of which is not generally accessible to the layperson. Although the 1996 Tortuous Liabilities of Officials Act[3] was enacted to provide an avenue for redressing injury such as that in health care, the path to receiving justice is arduous for the average injured party, as explained below:

> *When this law came out, the injured party was prohibited from suing a doctor but could sue the Ministry of Public Health (MOPH) as a juristic person. In addition, injured parties could not sue the hospital where the injury was sustained because hospitals are not juristic entities. The only avenue for compensation was by suing the Office of the Permanent Secretary of the MOPH. This was not a fair fight if the injured party was just an ordinary citizen who had been wronged. The injured party was up against a powerful government entity with access to lawyers and sophisticated defense mechanisms. Meanwhile, the injured party had to arrange legal support by themselves. This power imbalance represented a terrible injustice.*[4]

In addition to fighting the case in court through a complex process of identifying the violators, the injured party also had to incur considerable costs (e.g., attorney's fees, witness gathering costs, and court fees, among others). The process was also long and arduous. Importantly, litigation such as this threatened to harm the trusting relationship between health providers and recipients, with the result that this could create discord and conflict between service units and the consumer of health care.

# 1.2

## INTENTIONS OF ARTICLE 41

The National Health Security Act of 2002 aimed to organize the provision of health services that are essential to well-being and livelihoods, including standardized, comprehensive, and effective health care. However, the provision of health services sometimes results in injury to the service recipient, and the injured party is not compensated within a reasonable period of time. The Act provides for preliminary assistance to be made to the injured party in accordance with Article 41. There are two important intentions of this Article:

1. To provide prompt assistance (in due time) to service recipients who sustained injury from medical treatment without the need to assign fault. This assistance is intended to be initial relief to an injured service recipient and not necessarily the full compensation that might be awarded later on.

2. To provide a preliminary compensation system as one of the tools to reduce conflict and maintain a good relationship between the service recipient and service provider.

> *If an injury occurs, change the problem. Don't ask, 'Who caused the injury?' Don't say, 'This doctor damaged me and needs to pay me compensation.' Instead, you should ask, 'Did the injury actually happen? And, if so, should it be compensated? And by how much?' In this way, the problem can be resolved while preserving a good relationship between provider and patient. This is because the health practitioner is not confronted directly. This approach is a more systematic solution to redress people's suffering and achieve swift justice.*[4]

Prior to the National Health Security Act of 2002, Thailand had not yet implemented Article 41. However, a review of the relevant literature found that, for example, in the Scandinavian countries, namely Sweden, Finland, Denmark, and New Zealand, including some US states, there is a law to compensate for injury from health services by no-fault compensation. That is, there is no need to assign blame to a practitioner, only the need to establish whether the injury is attributable to the medical treatment/health service or not.[5]

However, during the drafting of the Act, there had to be clarification and persuasion of the health care providers and practitioners since they opposed this provision of the Act. At that time, many public health practitioners, especially doctors, were concerned about the sections of the Act which used wording such as **INJURY CAUSED BY MEDICAL TREATMENT** and **RECOURSE** in accordance with Articles 41 and 42[c] (or Articles 44 and 45 of the Senate Committee draft), respectively, as a civil matter. In 2001, a group of health and medical practitioners protested against the two clauses, but the Parliament confirmed the content of the draft bill in principle.

c Article 42 of the National Health Security Act of 2002 stipulates that in the event where a beneficiary is damaged by the medical treatment provided by a service unit, where the wrongdoer is identified but the beneficiary has not received compensation within a reasonable period of time pursuant to Section 41, the Office shall be entitled to take recourse with the wrongdoer following its payment of preliminary aid to the beneficiary.

# 2

# CONSIDERATION OF THE GRIEVANCE AND PRELIMINARY COMPENSATION ACCORDING TO ARTICLE 41

The right to receive preliminary compensation in accordance with Article 41 must meet the conditions specified by the National Health Security Act of 2002 and the Regulations on the Criteria, Procedures and Conditions for Preliminary Compensation (2012)[6] (No. 2) (2014).[7] The process can be classified into the following three steps:

1. Consider whether the application for preliminary compensation complies with the law;

2. Consider that an injury qualifies for preliminary compensation in accordance with the Regulations on the Criteria, Procedures and Conditions for Preliminary Compensation or not; and

3. Determine how much preliminary compensation should be provided.

Figure 1

## ISSUES IN CONSIDERATION OF A GRIEVANCE AND APPLICATION FOR PRELIMINARY COMPENSATION IN ACCORDANCE WITH ARTICLE 41

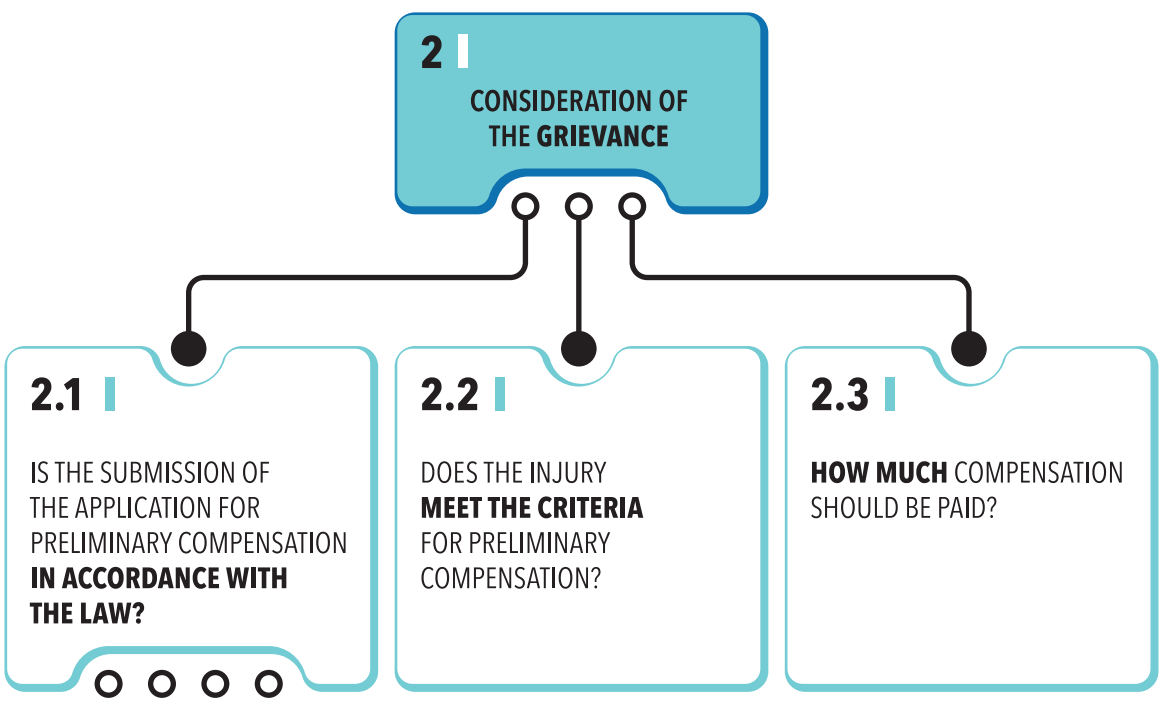
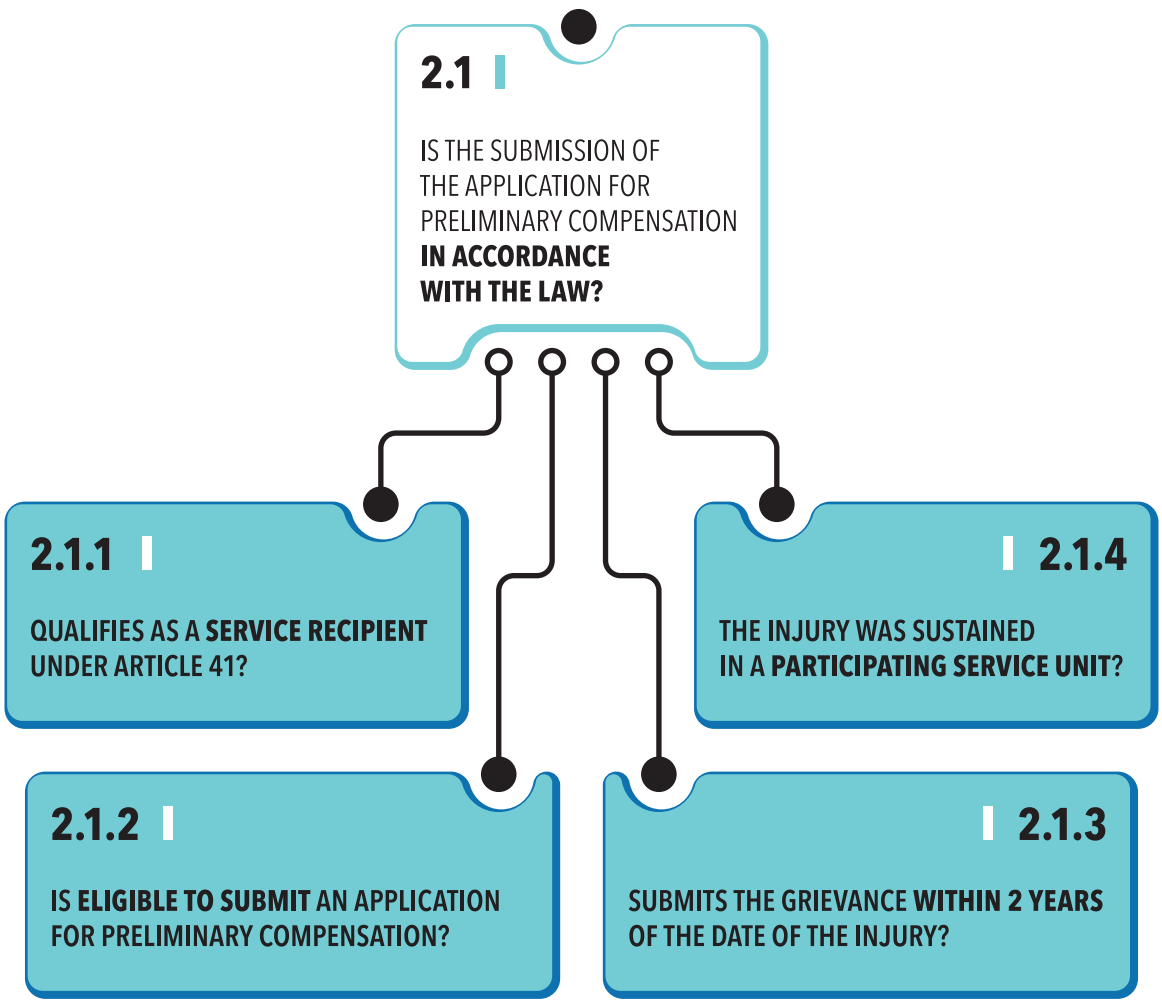


Figure 2

## CONDITIONS AND CONSIDERATIONS IN SUBMITTING A GRIEVANCE IN ORDER TO RECEIVE PRELIMINARY COMPENSATION IN ACCORDANCE WITH ARTICLE 41



# 2.1

## IS THE SUBMISSION OF THE GRIEVANCE IN ACCORDANCE WITH THE LAW?

**THE PROCESS OF SUBMITTING A GRIEVANCE AS PART OF AN APPLICATION FOR PRELIMINARY COMPENSATION IN ACCORDANCE WITH ARTICLE 41 TAKES INTO CONSIDERATION THE FOLLOWING.**

# 2.1.1

## IS THE INJURED PARTY A SERVICE RECIPIENT IN ACCORDANCE WITH ARTICLE 41?

If the recipient sustained an injury in the course of receiving a service, they might claim preliminary compensation in accordance with Article 41 of the Act. The injured party must be eligible under the National Health Security Act of 2002, and eligible persons include employees/contractors of local administrative organizations and their families in accordance with the Royal Decree prescribing the right under this Act (effective from October 1, 2013, onwards), but excluding the following persons:

1. Persons who exercise the right to receive medical treatment under the Social Security System;
2. A government official or employee of a government agency;
3. An official or employee of a state enterprise, a person who works for other government agency, or any other person who is entitled to receive medical treatment by the expenditures from the budget; and
4. Parents, spouse, children, or any other person who receive medical benefits by the rights of persons under (2) and (3)

# 2.1.2

## IS THE INJURED PARTY ELIGIBLE TO FILE A GRIEVANCE AND REQUEST PRELIMINARY COMPENSATION?

The Regulations on the Criteria, Procedures and Conditions for Preliminary Compensation, Clause 7 requires a person(s) entitled to submit the grievance for preliminary compensation, as the service recipient that sustained an injury, their immediate relative or a guardian (who is the person who has supported or cared for the service recipient for a long period prior to the event that resulted in injury). Alternatively, a service unit providing the service can be the entity that guides the process of filing the grievance on behalf of the service recipient or the immediate relative or guardian of the service recipient.

# 2.1.3

## WAS THE GRIEVANCE FILED WITHIN TWO YEARS OF THE DATE OF THE INJURY?

In accordance with the Regulations on the Criteria, Procedures and Conditions for Preliminary Compensation (No. 2) 2014,[7] Clause 7 stipulates that the service recipient that sustained an injury, an immediate relative, guardian, or the service unit, has the right to file the grievance for preliminary compensation, but the grievance must be submitted within one year of the date of the injury. It was resolved to repeal the provisions of Clause 7 of the said regulation and **TO EXTEND THE WINDOW OF TIME TO FILE THE GRIEVANCE, IN ACCORDANCE WITH ARTICLE 41, FROM ONE YEAR TO TWO YEARS**[8] to ensure that the injured party has adequate time to file the grievance, and to align the conditions to be the same as the beneficiaries under the Social Security Act (No. 4) 2015.[9,10]

# 2.1.4

## WAS THE INJURY SUSTAINED AT A PARTICIPATING SERVICE UNIT?

The Regulations on the Criteria, Procedures and Conditions for Preliminary Compensation, Clause 4 stipulates that the **SERVICE UNIT** that submits a request for preliminary compensation must be a service unit registered in accordance with the National Health Security Act of 2002. If it is not a service unit under the Act, the injured party is not entitled to receive preliminary compensation in accordance with Article 41 of the Act.

# 2.2

## DOES THE TYPE OF INJURY MEET THE CRITERIA FOR PRELIMINARY COMPENSATION?

According to the Regulations on the Criteria, Procedures and Conditions for Preliminary Compensation, Clause 4 defines the meaning of **MEDICAL TREATMENT** and **HEALTH SERVICES** in accordance with Article 3 of the National Health Security Act of 2002, which are medical and health services provided to the individual to promote health, prevent disease, and conduct medical diagnosis for clinical care and rehabilitation that is necessary for health and life, including services of Thai traditional medicine and alternative medicine according to the Licensed Practitioner Act.

In addition, before determining whether the injury meets the criteria for preliminary compensation or not, there must be a determination whether the injury is caused by the medical treatment of the **SERVICE UNIT** in accordance with the Regulations. The following are some points to consider.

# 2.2.1

## WHAT IS THE NATURE OF THE INJURY FOR WHICH PRELIMINARY COMPENSATION IS BEING SOUGHT?

The Regulations on the Criteria, Procedures and Conditions for Preliminary Compensation, Clause 5 sets out the conditions for determining whether injury resulting from the medical treatment of a service unit that would be a cause of preliminary compensation is in accordance with this regulation. This includes cases of force majeure in the healthcare system, but not an injury caused by an underlying **PATHOLOGY** or complications of disease/ condition that are typical occurrences in the course of said condition or disease.

# 2.2.2

## DOES THE CAUSE OF THE INJURY MEET THE CRITERIA FOR PRELIMINARY COMPENSATION?

Expert knowledge and professional experience are sometimes needed to determine whether an injury is a direct result of the treatment, or force majeure in the healthcare system, or injury caused by underlying pathology of the injured party, or a complication in the natural progression of the disease/condition. Preliminary compensation must be paid in one of the following conditions:

1. An injury caused by medical treatment of the service unit;
2. A case of force majeure in the healthcare system; and
3. An injury caused by medical treatment or force majeure in the medical system interacts with the underlying pathology of the injured party or the natural complications of the disease/condition. However, if the injury is caused solely by the underlying pathological condition of the injured party or a natural complication of the disease; in this case, the patient is not entitled to preliminary compensation.

# 2.3

## HOW MUCH SHOULD THE PRELIMINARY COMPENSATION BE?

When the Sub-committee, under Article 41 at the provincial level, has considered the relevant points in determining the eligibility of the grievance for preliminary compensation, the Sub-committee considers what type of preliminary compensation should be paid and how much that should be.

# 2.3.1

## WHAT IS THE TYPE OF INJURY SUSTAINED?

The Subcommittee, under Article 41 at the provincial level, must determine the type of injury sustained and set the rate of preliminary compensation for that type of injury in accordance with Clause 6 of the Regulations on the Criteria, Procedures and Conditions for Preliminary Compensation, with details of the type of injury and the rate of preliminary compensation as follows:

1. **LOSS OF LIFE OR PERMANENT DISABILITY**, or chronic illness/condition that requires lifelong treatment and has a severe adverse impact on livelihood/quality of life: Pay preliminary compensation from 240,000 baht, but not exceeding 400,000 baht;

2. **LOSS OF ORGAN(S) OR DISABILITY** which has an adverse impact on livelihood/quality of life: Pay preliminary compensation from 100,000 baht, but not more than 240,000 baht; and

3. **INJURY OR CONTINUOUS ILLNESS**: Pay preliminary compensation not exceeding 100,000 baht

For cases where an injury may not be easily classified as above, the Quality and Standard Control Board has the authority to deem its equivalence with a defined type of injury as appropriate.

# 2.3.2

## RELATIONSHIP BETWEEN THE INJURY AND THE CARE OR TREATMENT RECEIVED

When considering the injury and eligibility for preliminary compensation, the condition is often found to be a combination of an injury that occurred during medical treatment or by force majeure in the healthcare system in the presence of an existing pathology or complication in the natural course of the disease/condition. When considering preliminary compensation for an injury, it is important to consider how directly the injury is related to the medical treatment in question. How much preliminary compensation is paid depends on the level of correlation between **INJURY** and **TREATMENT**, and there are four types:

**type**

1. Injury related to medical treatment and not related to illness;
2. Injury related to medical treatment and related to illness;
3. Partial injury (a minor condition) related to medical treatment; and
4. Injury caused by an existing pathology or complication of an underlying disease and not related to medical treatment

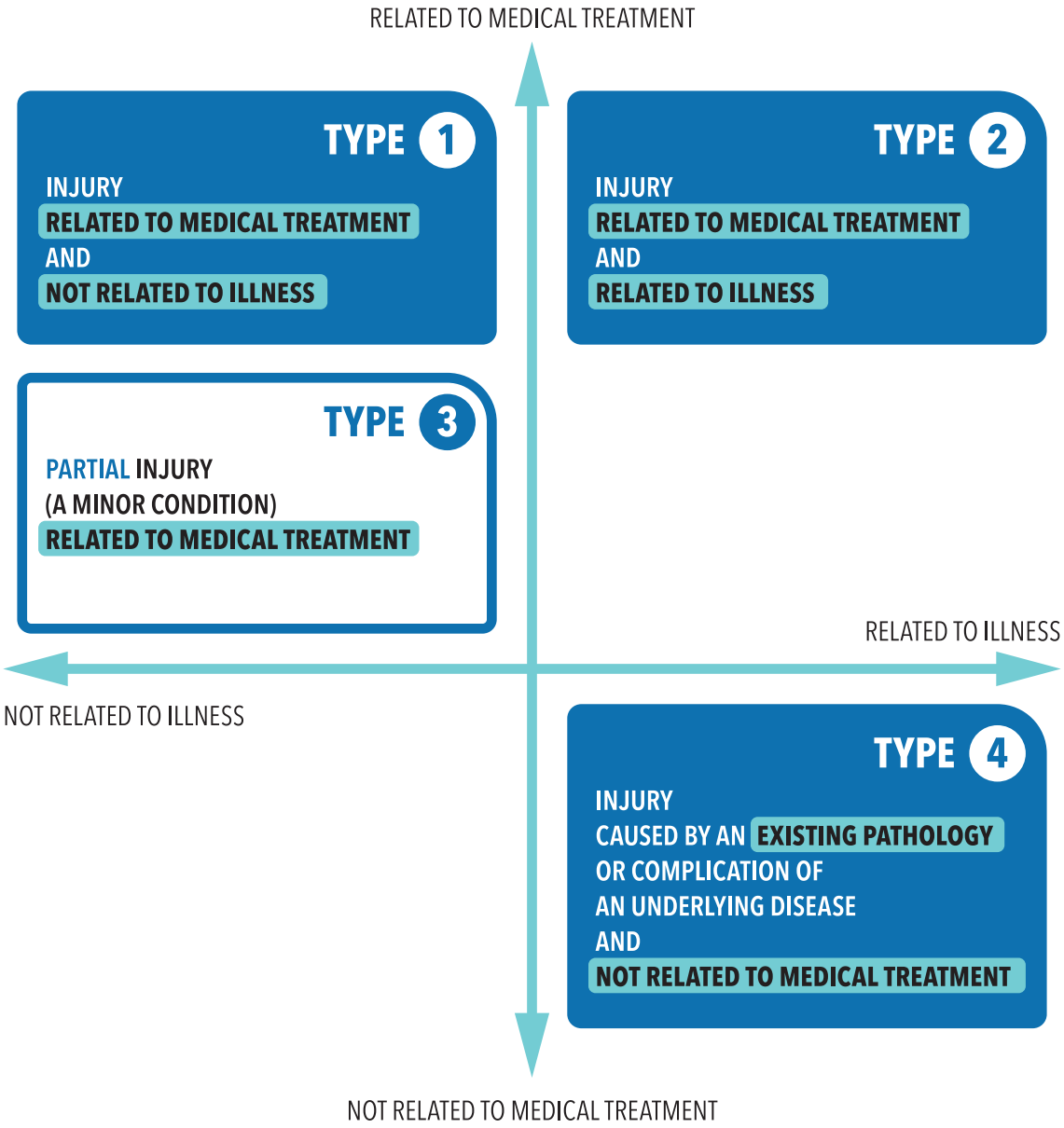



Figure 3

## CONDITIONS FOR CONSIDERATION OF THE RELATIONSHIP BETWEEN THE INJURY AND THE CARE OR TREATMENT RECEIVED

# 2.3.3

## ADVERSE IMPACT OF THE INJURY

The negative impact of an injury itemized above is based on consideration by professional experience and expertise, and to determine the cause of an injury, and whether this is due to the medical treatment criteria that make an injured party eligible for preliminary compensation. There is also consideration of the adverse impact on the immediate relatives or guardian of the service recipient and how severe that impact is.

The method for classifying the severity of the impact that the injured party (including immediate relatives and/or guardians) is according to Clause 6 of the Regulations as follows:

**TYPE OF INJURY ACCORDING TO CLAUSE 6(1):** Severity of the effects are classified into three levels according to injury characteristics: (1) Death, (2) Permanent disability, and (3) Illness requiring lifelong treatment, with a severe and deleterious impact on life.

**ACCORDING TO CLAUSE 6(2):** Type of injury: Loss of organ(s) or sustaining a disability that adversely affects livelihood/quality of life. The severity of the impact can be classified into three levels: (1) high, (2) moderate, and (3) slight. There is consideration of the ability to return to work in their regular occupation, ability to function in daily life, the extent of suffering, being a burden to those around the service recipient, being a burden on the family by the cost of treatment.

**TYPE OF INJURY ACCORDING TO CLAUSE 6(3):** Chronic injury or illness. The severity of the impact can be classified into three levels: (1) high, (2) moderate, and (3) slight. There is consideration of the duration and cost of treatment and rehabilitation, loss of career opportunities.

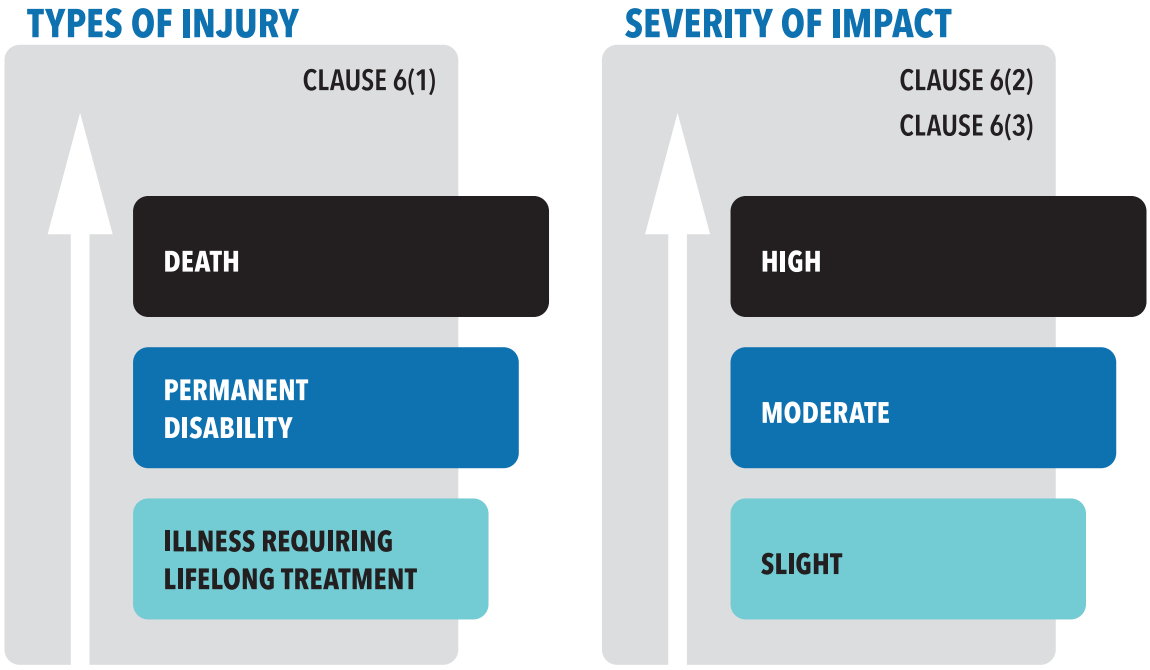



Figure 4

## CONDITIONS FOR CONSIDERATION OF THE ADVERSE IMPACT OF THE INJURY

# 2.3.4

## SPECIFICATION OF PRELIMINARY COMPENSATION

According to Clause 6 of the Regulations, determining the amount of preliminary compensation requires the use of **JUDGMENT**. This determination may differ from province to province, even for the same condition. Other judgments include the strength of the relationship between the **INJURY**, **MEDICAL CARE**, and the **SEVERITY OF IMPACT**.

# 3

# MECHANISMS FOR IMPLEMENTATION IN ACCORDANCE WITH ARTICLE 41

In accordance with the National Health Security Act of 2002, the operating structure under Article 41 is clearly defined by the Regulations on the Criteria, Procedures and Conditions for Preliminary Compensation. The National Health Security Board has set forth the Regulations with the key points summarized as follows.

# 3.1

## SUBMITTED THE GRIEVANCE AS A BASIS FOR RECEIVING PRELIMINARY COMPENSATION

# 3.1.1

### PERSONS WHO ARE ELIGIBLE TO FILE A GRIEVANCE AND AGENCY RECEIVING THE GRIEVANCE

In addition to the service recipient themselves, an immediate relative (who does not have to be a legal heir under civil law, but a significant other), a guardian of the injured party, and the service unit itself have the right to file a grievance and apply for preliminary compensation. Article 41 stipulates that an entity at the provincial level can receive the grievance, consider the application, and pay compensation to the injured party, immediate relative, or guardian.

# 3.1.2

## KEY INFORMATION WHEN FILING A GRIEVANCE AS A BASIS FOR APPLYING FOR COMPENSATION

A grievance must be filed in accordance with the case defined or may be filed in writing, but the text should indicate at least the following detail:

1. Name of service recipient that sustained an injury;
2. Nature of the injury arising from the provision of health services;
3. Name of the service unit that provided the health service;
4. The date that the injury occurred or the date when the injury was diagnosed;
5. A place that can be contacted with the service recipient or the person who filed the grievance; and
6. Status of the service recipient, such as responsibility, occupation, income, or being the head of a household, for the benefit of consideration of financial assistance based on the economic status of the service recipient

# 3.1.3

## SUPPORTING DOCUMENTATION

In filing the grievance by a service recipient or on their behalf by an immediate relative, guardian, or service unit, the following documentation should accompany the grievance:

1. Copy of the injured party's identification card (certified true copy);
2. Copy of house registration (certified true copy);
3. Power of attorney (in case of authorization); and
4. Documents or evidence showing details or other information that may be useful for consideration (if any)

# 3.1.4

## METHOD OF SUBMITTING THE GRIEVANCE AND APPLICATION FOR COMPENSATION

To submit the grievance for preliminary compensation, people who are entitled to submit the grievance may do this in two ways:

1. Submitting the grievance in person at a unit that is authorized to receive the grievance, i.e., a service unit of the NHSO, a branch office of the NHSO, provincial health office, or other qualified receiving units as indicated by Section 50(5) announced by the Quality and Standard Control Board; or

2. Sending the grievance by registered mail. The date of the submission of the grievance is the date of the postmark, which will be used to define the duration of time from the injury to the filing of the grievance. Filing of the grievance must be made within two years from the date the injury was known for it to be considered.[8]

# 3.2

## PERSON(S) WITH AUTHORITY TO CONSIDER A GRIEVANCE

Consideration of the grievance and an application for preliminary compensation is the authority of the **SUB-COMMITTEE UNDER ARTICLE 41 AT THE PROVINCIAL LEVEL** (hereinafter called the 'Sub-committee'). The Sub-committee is appointed by the Quality and Standard Control Board based on the nomination of the Sub-committee for Quality and Standard Control at the regional level. The process involves nominating at least three qualified experts in the area and representatives of the service unit and client population, who serve equally on the deliberating body. Selection is in accordance with the method prescribed by the NHSO.

# 3.2.1

## AUTHORITY OF THE SUBCOMMITTEE UNDER ARTICLE 41 AT THE PROVINCIAL LEVEL

The Sub-committee has the power to approve preliminary compensation not exceeding the rates specified in Clause 6 of the Regulations.

Consideration of the Sub-committee is to be completed **NO LATER THAN 30 DAYS** from the date of receipt of the grievance. The result of the Sub-committee action is reported to the Quality and Standard Control Board for information.

The Regulations (No. 2) 2014 stipulate that the Sub-committee members have a term of four years and may be re-elected but cannot hold office for more than two consecutive terms. After the expiration of the term of four years, if a new member has not yet been appointed to the Sub-committee to fill the pending vacancy, the acting member may remain on the Sub-committee until a newly-recruited member takes on the role.

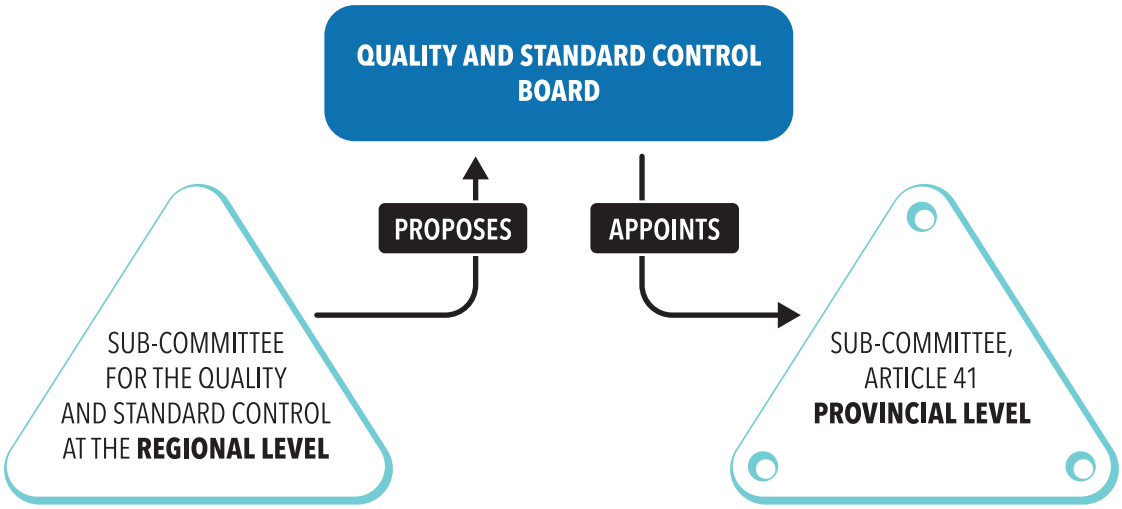



Figure 5

## APPOINTMENT OF MEMBERS OF THE SUB-COMMITTEE UNDER ARTICLE 41 AT THE PROVINCIAL LEVEL

# 3.2.2

## METHOD OF APPOINTING MEMBERS TO THE SUB-COMMITTEE

According to Clause 9 of the Regulations (No. 2) 2014, the Sub-committee for Quality and Standard Control at the regional level is to nominate appropriate persons to be the Sub-committee members under Article 41 at the provincial level totaling five to seven people. In the absence of the Sub-committee for Quality and Standard Control at the regional level, the NHSO, via its branch, will nominate a person(s) to the Quality and Standard Control Board to be considered for appointment to the Sub-committee.

# 3.2.3

## COMPOSITION OF THE SUB-COMMITTEE

Under Article 41 at the provincial level, the Sub-committee consists of five to seven persons, including at least three qualified experts in the area, representatives of the service unit, and representatives of the service users, who serve equally on the deliberating body. The NHSO has defined the meaning of representatives in each sector as follows:

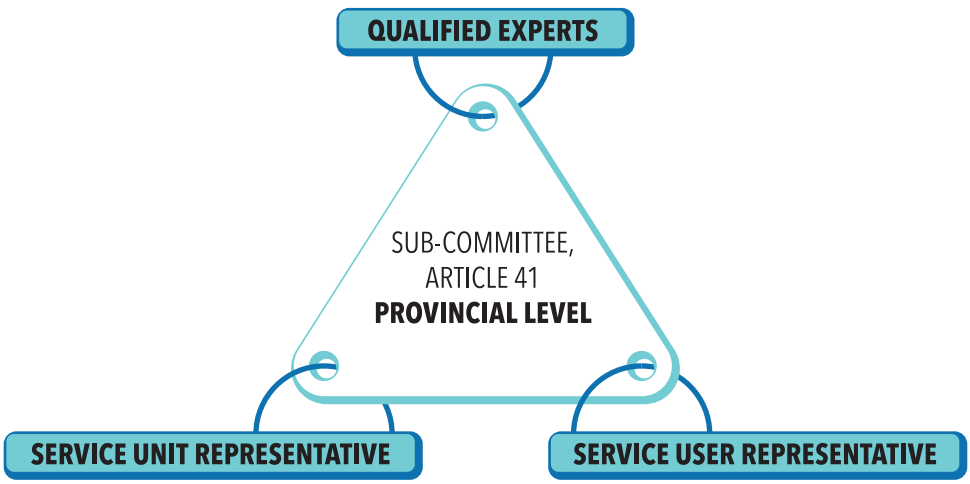
**QUALIFIED EXPERT** means a senior individual who is knowledgeable in various fields and who is respected by their peers, such as legal, social, administrative personnel, or traditional sages within the province.

**SERVICE UNIT REPRESENTATIVE** means a person who has experience and expertise in medicine or public health, operating in a service unit registered under the National Health Security Act of 2002.

**SERVICE USER REPRESENTATIVE** means a person who has used the service under any benefits scheme (i.e., not required to be eligible for the National Health Security System) that the Sub-committee for Quality and Standard Control at the regional level proposes for an appointment.

Figure 6

## COMPOSITION OF THE SUB-COMMITTEE UNDER ARTICLE 41 AT THE PROVINCIAL LEVEL




The composition of the Sub-committee under Article 41 at the provincial level has a **TRIPARTITE** structure, consisting of:

1. A competent or senior or respected person;
2. A service representative;
3. A representative of the client population.

These individuals are selected to consider paying preliminary compensation to an injured service recipient. It is objective and fair and is a mechanism that creates a good understanding between service recipient and service provider.

# 3.3

## CONSIDERATION OF THE GRIEVANCE

Once the grievance has been submitted for consideration of preliminary compensation, the unit receiving the grievance must submit the matter to the Secretariat of the Sub-committee under Article 41 at the provincial level (now the Provincial Health Office, or PHO) to present the matter to the Sub-committee under Article 41 at the provincial level for a determination.

However, when considering all aspects, it can be seen that the PHO is an important agency whose mission is directly and closely related to the welfare of the people. The PHO can provide support and healing in other dimensions, not just cash hand-outs. For example, when there is an injured party, the PHO may help coordinate with the community or the local Health Security Coordination Center attached to the service unit, to provide appropriate assistance and remediation to those family members.

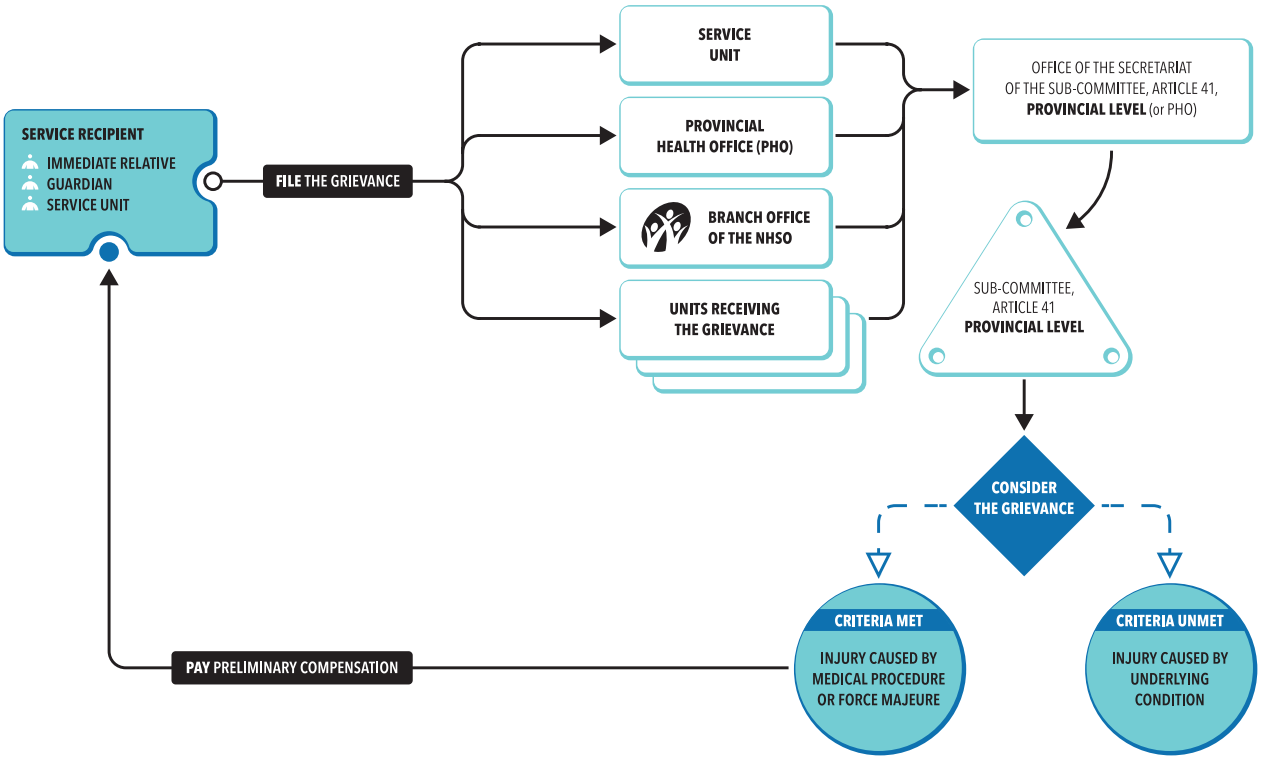



Figure 7

## METHOD OF FILING THE GRIEVANCE AND CONSIDERATION OF THE APPLICATION FOR PRELIMINARY COMPENSATION IN ACCORDANCE WITH ARTICLE 41

The Sub-committee must determine whether the grievance claim qualifies to receive assistance or not and if it should be given formal consideration for approving preliminary compensation. They must consider the type of injury and preliminary compensation rate set by the National Health Security Board.

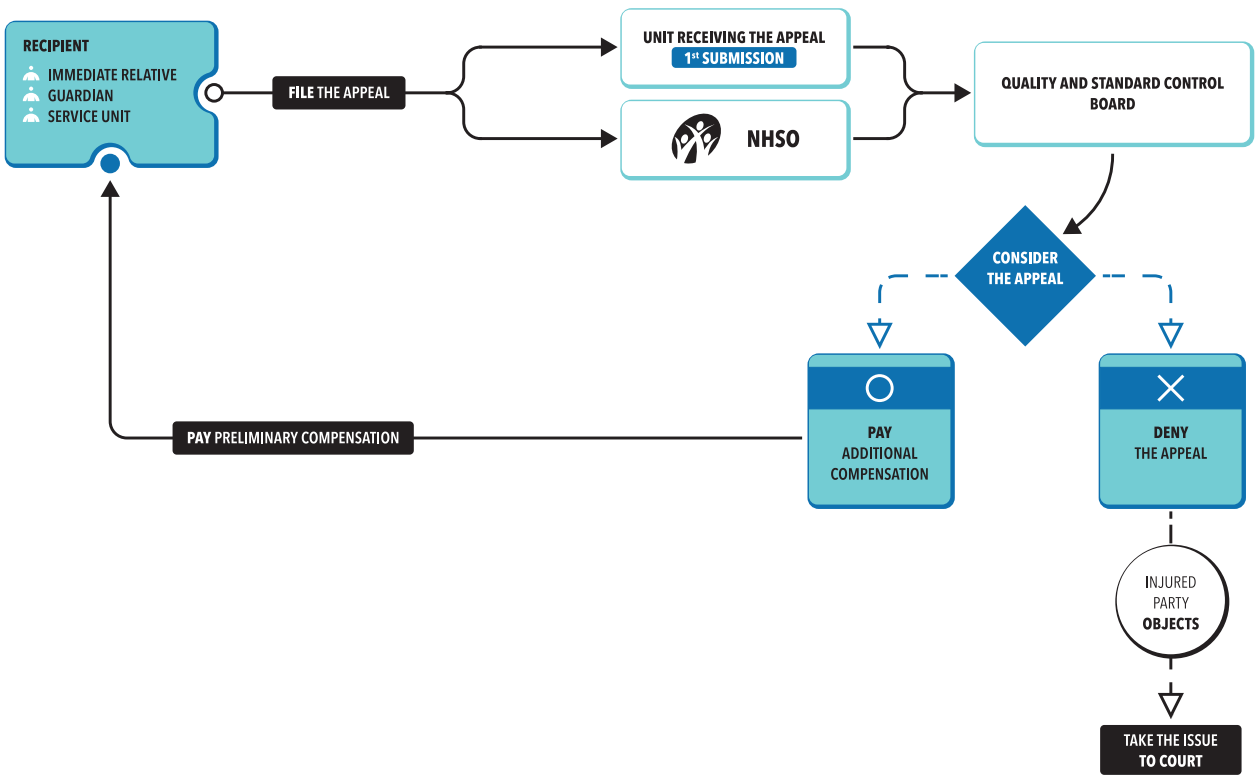
For payment of preliminary compensation to the grievance applicant, an injured party can contact the branch office of the NHSO at the PHO that filed the grievance or transfer the money to the bank account of the injured party.

# 3.4

## CONSIDERATION OF AN APPEAL BY THE QUALITY AND STANDARD CONTROL BOARD

Figure 8

### SUBMITTING AND CONSIDERATION OF AN APPEAL WITH THE QUALITY AND STANDARD CONTROL BOARD



A person filing a grievance who has already received the Sub-committee's findings under Article 41 at the provincial level, and disagrees with the results, may file an appeal. The injured party may dispute the amount of compensation awarded, contend that there is incomplete compensation, dispute the determination of the nature of the injury, or issue another dispute. The appeal is submitted to the Quality and Standard Control Board, or it can be submitted to the NHSO or the Secretariat of the Quality and Standard Control Board. An appeal must be submitted within

**30 DAYS**

of the date of being informed of the results of the initial determination.

For this reason, the notification of the Sub-committee under Article 41 at the provincial level is important in that its Secretariat provides proof of the notification of the determination to ensure the verity of the adjudication. The filing of an appeal is to occur within 30 days. However, if the Sub-committee does not notify the injured party of their right to appeal, then the period to file an appeal can be extended to

**2 YEARS**

according to the law on administrative procedures instead of the specified period of 30 days.

A judgment of an appeal by the Quality and Standard Control Board is followed by payment of preliminary compensation not exceeding the rate specified for each type of injury. If the Sub-committee under Article 41 at the provincial level has paid preliminary compensation, and the appeal of insufficient payment is approved, then there is an additional payment of compensation, but not to exceed the specified rate allowed by law. However, if the Quality and Standard Control Board disagrees with the appeal, there will be an order to dismiss the appeal, but not in a way to disadvantage the injured party who has already received payment of compensation.

**THE RULING OF THE QUALITY AND STANDARD CONTROL BOARD OF AN APPEAL IS FINAL. THE GRIEVANCE SUBMITTER MAY NOT APPEAL AGAIN, BUT THIS DOES NOT PRECLUDE THE RIGHT TO SUE.**

# 4

# RESULTS OF IMPLEMENTATION IN ACCORDANCE WITH ARTICLE 41 (FY2004–20)

# 4.1

## NUMBER OF GRIEVANCES FILED AS A BASIS FOR APPLYING FOR PRELIMINARY COMPENSATION & NUMBER OF RECIPIENTS OF PRELIMINARY COMPENSATION

Throughout 2004–20, the NHSO considered

**14,472 CASES**

of grievances filed to apply for preliminary compensation at the provincial level and the Quality and Standard Control Board. Of these,

**2,547 (17.6%)**

did not qualify for compensation, while

**11,925 (82.4%)**

did qualify, and assistance was received (See Table 5).

Table 5

## RESULTS OF CONSIDERATION OF PAYING PRELIMINARY COMPENSATION IN ACCORDANCE WITH ARTICLE 41: FISCAL YEARS (FY) 2004–2020

| FISCAL YEAR | GRIEVANCES FILED (CASES) | CRITERIA NOT MET (CASES) | CRITERIA MET (CASES) | DEATH (CASES) | DISABILITY (CASES) | INJURY (CASES) | AMOUNT OF COMPENSATION (BAHT) |
|---|---|---|---|---|---|---|---|
| 2004 | 99 | 26 | 73 | 49 | 11 | 13 | 4,865,000 |
| 2005 | 221 | 43 | 178 | 113 | 29 | 36 | 12,815,000 |
| 2006 | 443 | 72 | 371 | 215 | 71 | 85 | 36,653,500 |
| 2007 | 511 | 78 | 433 | 239 | 74 | 120 | 52,177,535 |
| 2008 | 658 | 108 | 550 | 303 | 73 | 174 | 64,858,148 |
| 2009 | 810 | 150 | 660 | 344 | 97 | 219 | 73,223,000 |
| 2010 | 876 | 172 | 704 | 361 | 139 | 204 | 81,920,000 |
| 2011 | 965 | 182 | 783 | 401 | 141 | 241 | 92,206,330 |
| 2012 | 951 | 117 | 834 | 401 | 140 | 293 | 98,607,000 |
| 2013 | 1,182 | 187 | 995 | 533 | 125 | 337 | 191,575,300 |
| 2014 | 1,112 | 181 | 931 | 478 | 116 | 337 | 218,439,200 |
| 2015 | 1,045 | 221 | 824 | 442 | 105 | 277 | 202,929,300 |
| 2016 | 1,069 | 184 | 885 | 457 | 118 | 310 | 212,952,000 |
| 2017 | 1,108 | 201 | 907 | 461 | 99 | 347 | 222,026,900 |
| 2018 | 1,155 | 231 | 924 | 412 | 110 | 402 | 202,156,100 |
| 2019 | 1,188 | 218 | 970 | 466 | 126 | 378 | 228,013,900 |
| 2020 | 1,079 | 176 | 903 | 438 | 119 | 346 | 213,957,100 |
| **MEAN** | **851** | **150** | **701** | **360** | **100** | **242** | **129,963,254** |
| **TOTAL** | **14,472** | **2,547** | **11,925** | **6,113** | **1,693** | **4,119** | **2,209,375,313** |
| **PERCENT** | | **17.6** | **82.4** | **51.3** | **14.2** | **34.5** | |

**SOURCE** Adapted from the Report of the NHSO for FY 2020[11]

Considering the overview of the 17 years of data, there was an average of

**851 GRIEVANCES**

filed per year, seeking compensation in the amount of about

**130 MILLION BAHT PER YEAR**

on average. The largest amount of preliminary compensation compared to other fiscal years was

**228,013,900 BAHT**

in FY2019. However, preliminary compensation in the fiscal year was only

**0.13%**

of the amount paid to the service unit for that purpose, which is still less than the amount of not more than 1% as stipulated by law to be set aside for preliminary compensation.

# 2006

The compensation pay rate has been adjusted twice. The first time was in 2006:

**200,000 BAHT**

in the case of death,

**120,000 BAHT**

in the case of disability, and

**50,000 BAHT**

in the case of injury.

The rate was adjusted a second time in 2012:

**240,000–400,000 BAHT**

in the case of death,

**100,000–240,000 BAHT**

for disability, and not more than

**100,000 BAHT**

in case of injury.

# 2012

# 4.1.1

## CLASSIFICATION BY TYPE OF INJURY

From 2004 to 2020, the injuries received by service recipient were:

A **6,113 CASES**

of deaths or permanent disability (or 51.3% of cases meeting the grievance criteria);

B **1,693 CASES**

of disability or dismemberment (14.2%); and

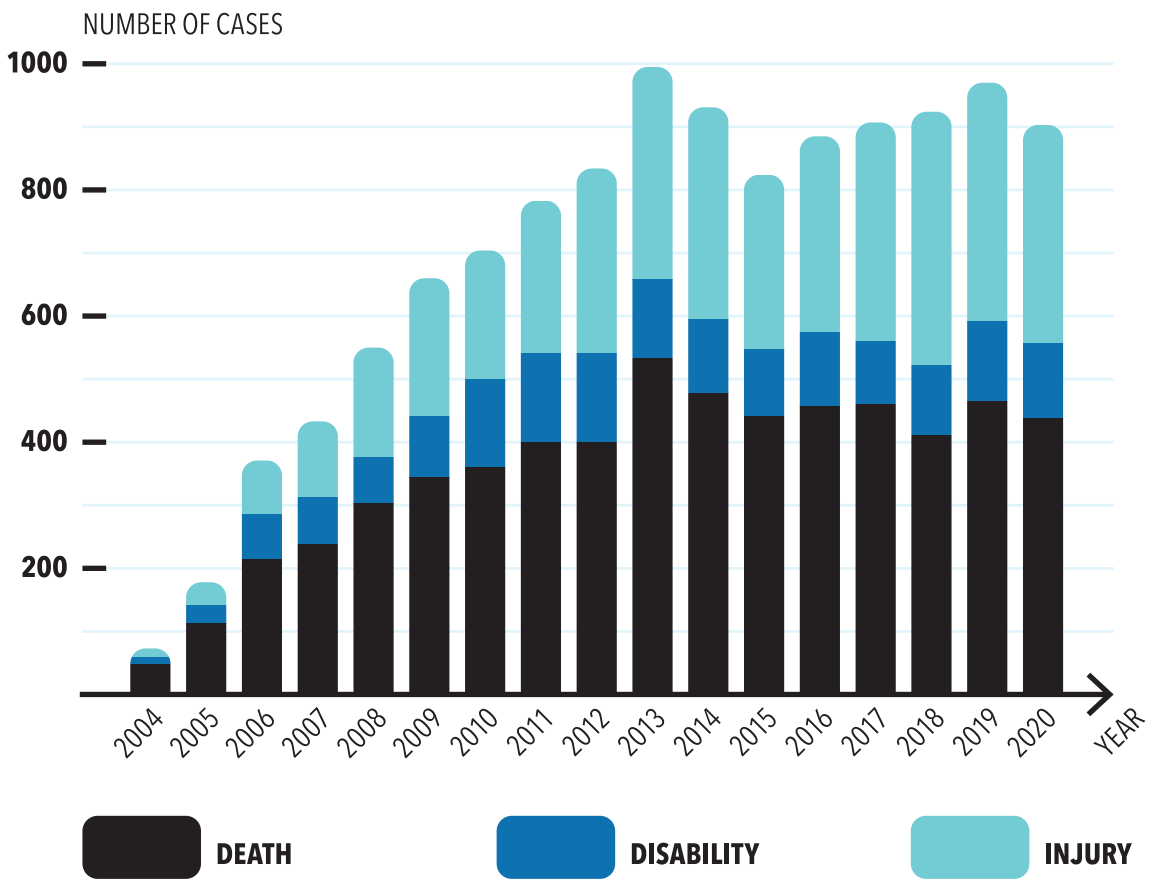
C **4,119 CASES**

of injury and continuous illness (or 34.5%). The total payment of preliminary compensation was

**2.2 BILLION BAHT**

Figure 9

## NUMBER OF CASES BY TYPE OF INJURY FOR WHICH COMPENSATION WAS PAID, FY 2004–2020



# 4.1.2

## CLASSIFIED BY THE BRANCH OF SERVICE

According to the results of consideration of preliminary compensation for service recipients who sustained an injury in FY 2020, classified by the branch of service, there were

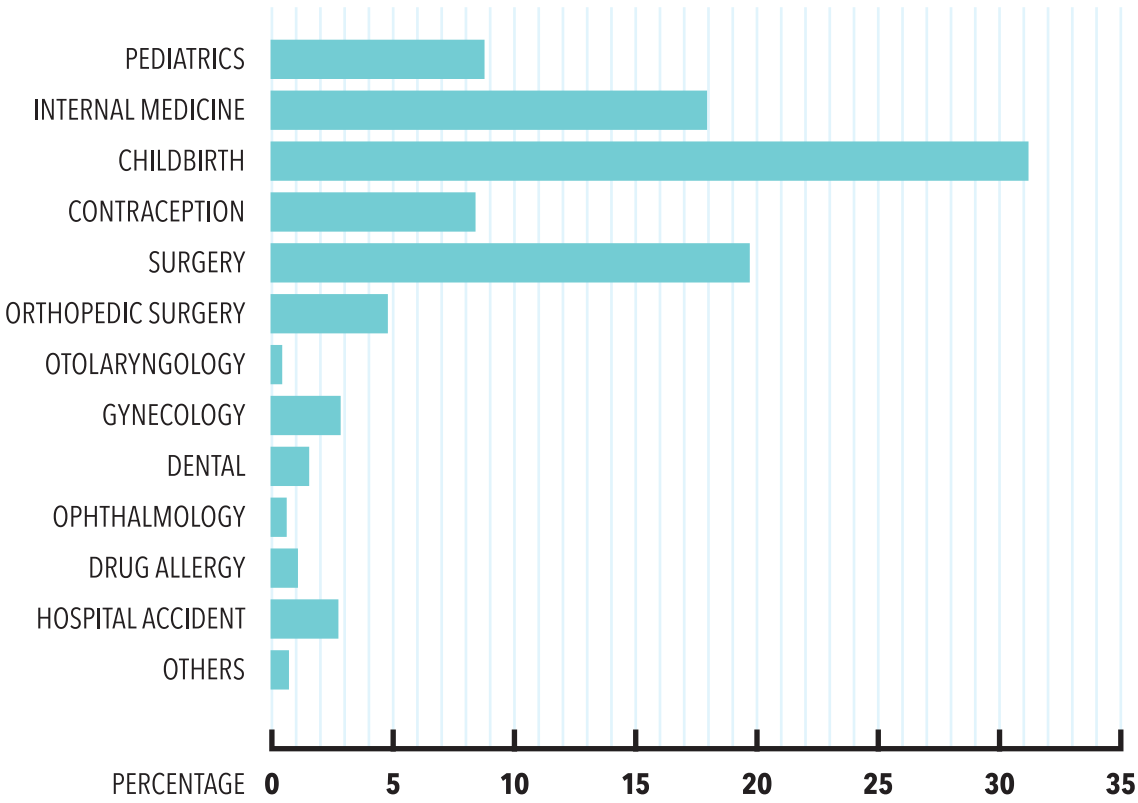
**1,079 INJURED PARTIES**

submitted the grievance for preliminary compensation in accordance with Article 41. The top five clinical areas in which a claim was made were

| | |
|---|---|
| **OBSTETRICS** | **31.1%** |
| **SURGERY** | **19.6%** |
| **INTERNAL MEDICINE** | **17.9%** |
| **PEDIATRICS** | **8.7%** |
| **CONTRACEPTIVE SERVICES** | **8.3%** |

Figure 10

## PERCENT OF GRIEVANCES FILED BY THE BRANCH OF SERVICE, FY2020



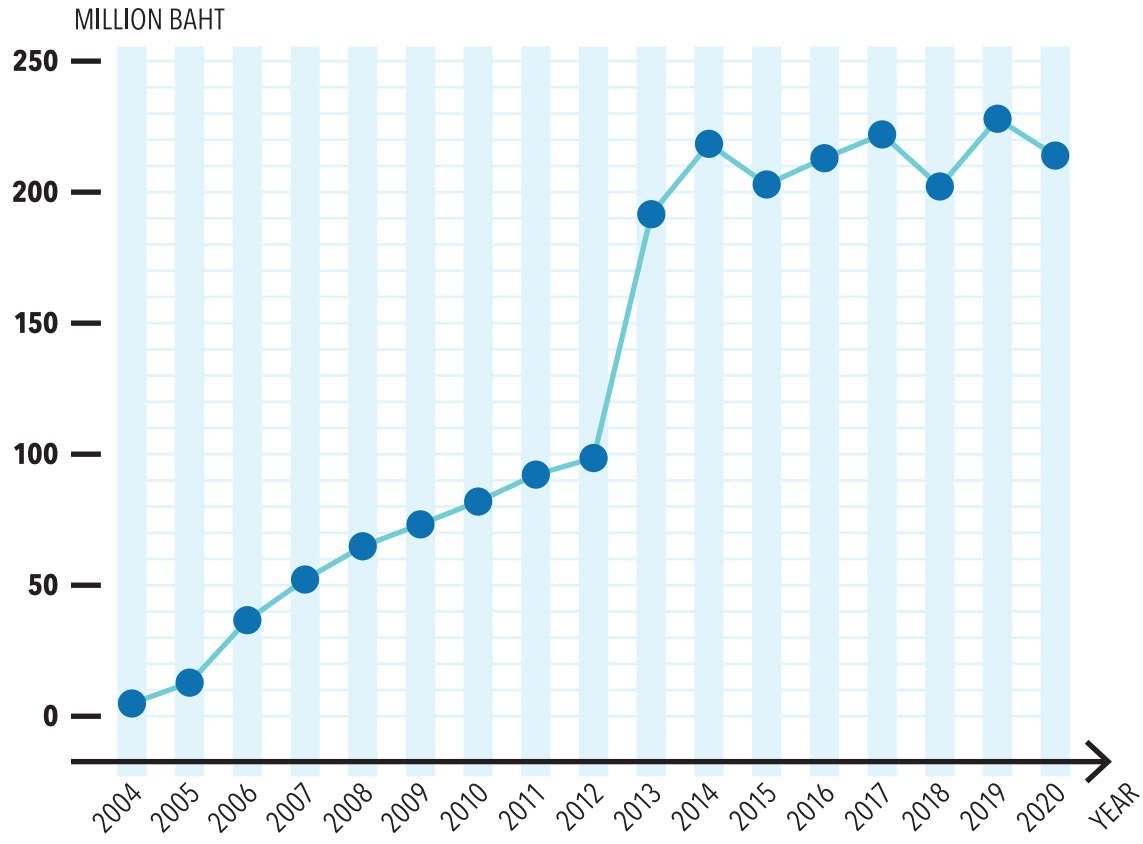

**SOURCE** NHSO Report for FY2020[11]

# 4.2

## BUDGET FOR PAYMENT OF PRELIMINARY COMPENSATION

Figure 11

**TREND IN PAYMENT OF PRELIMINARY COMPENSATION IN ACCORDANCE WITH ARTICLE 41, FY2004–20**




SOURCE Adapted from the NHSO Report for FY2020[11]

Considering the grievances submitted for preliminary compensation from FY2004–20, it was found that there were few grievances filed in the early years. That fact contradicts the exaggerated concern of medical groups who initially opposed the provision of the draft Act for filing grievances. Indeed, arranging a system for no-fault compensation can greatly reduce the potential for conflict between service recipient and service provider, as shown in the low prosecution statistics. Thus, in retrospect, this feature of the law was correct and **A WORTHWHILE MEASURE**.

When looking at the statistics of filing a grievance for preliminary compensation, there is a noteworthy trend: **THE EXPONENTIAL INCREASE FROM FY2013 ONWARDS**. This is related to the introduction of new rates for providing preliminary compensation in case of an injury from medical treatment, effective October 1, 2012. Still, the overview indicates that the number of such claims was proportionate. That is, the amount of claims was small when compared to the amount allowed by law, and not more than the 1% quota paid to the service unit.[2] This was true even in the year with the highest preliminary compensation statistics (FY2019), that is, payment of compensation was 228,013,900 baht, but still, only 0.13% of the money set aside for the service unit for this purpose.

# 4.3

## NUMBER OF APPLICATIONS FILED TO APPEAL THE PRELIMINARY COMPENSATION DECISION

In the event that the applicant of the grievance is aware of the results of the consideration and is not satisfied with the judgment of the Sub-committee under Article 41 at the provincial level, then an appeal can be filed. Some of these appeals met the criteria for consideration, and some did not. The appeal is submitted to the Quality and Standard Control Board, and appeals totaled

**1,446**

accounting for about one in ten of all the grievances filed. In other words, the vast majority (90%) of the initial determinations were accepted by the injured party. It can be said that the preliminary compensation system can handle disputes between service recipients and service providers reasonably well.

## NUMBER OF APPEALS FILED IN ACCORDANCE WITH ARTICLE 41, FY2004–20

| FISCAL YEAR | NUMBER OF GRIEVANCES (CASES) | CRITERIA NOT MET (CASES) | CRITERIA MET (CASES) | NUMBER OF APPEALS (CASES) |
|---|---|---|---|---|
| 2004 | 99 | 26 | 73 | 12 |
| 2005 | 221 | 43 | 178 | 32 |
| 2006 | 443 | 72 | 371 | 60 |
| 2007 | 511 | 78 | 433 | 59 |
| 2008 | 658 | 108 | 550 | 74 |
| 2009 | 810 | 150 | 660 | 67 |
| 2010 | 876 | 172 | 704 | 72 |
| 2011 | 965 | 182 | 783 | 114 |
| 2012 | 951 | 117 | 834 | 84 |
| 2013 | 1,182 | 187 | 995 | 98 |
| 2014 | 1,112 | 181 | 931 | 112 |
| 2015 | 1,045 | 221 | 824 | 82 |
| 2016 | 1,069 | 184 | 885 | 102 |
| 2017 | 1,108 | 201 | 907 | 96 |
| 2018 | 1,155 | 231 | 924 | 142 |
| 2019 | 1,188 | 218 | 970 | 153 |
| 2020 | 1,079 | 176 | 903 | 87 |
| **MEAN** | **851** | **150** | **701** | **85** |
| **TOTAL** | **14,472** | **2,547** | **11,925** | **1,446** |
| **PERCENT** | | **17.6** | **82.4** | **10.0** * |

**SOURCE** Adapted from the NHSO Report for FY2020[11]

* **REMARK** Calculated based on the total number of grievances files as a basis for applying for preliminary compensation

# 4.4

## NUMBER OF LAWSUIT CASES FILED IN COURT

From the medical case statistics from 2002–20, there were a total of

**402 CASES**

filed by the plaintiffs to the Office of the Permanent Secretary Office of MOPH, divided into[12]

- **48 CRIMINAL CASES**
- **351 CIVIL CASES**
- **3 ADMINISTRATIVE CASES**

These were cases in which an injured party did not accept the ruling of preliminary compensation by the Sub-committee or the Quality and Standard Control Board, as provided by law, could take the matter further in court.

In accordance with Article 41, during FY2016-20, a total of

**580 PEOPLE**

submitted an appeal to the Quality and Standard Control Board. Of these, 47 took the matter further to the Administrative Court (or 8.1% of all appeal submissions). As of this report,

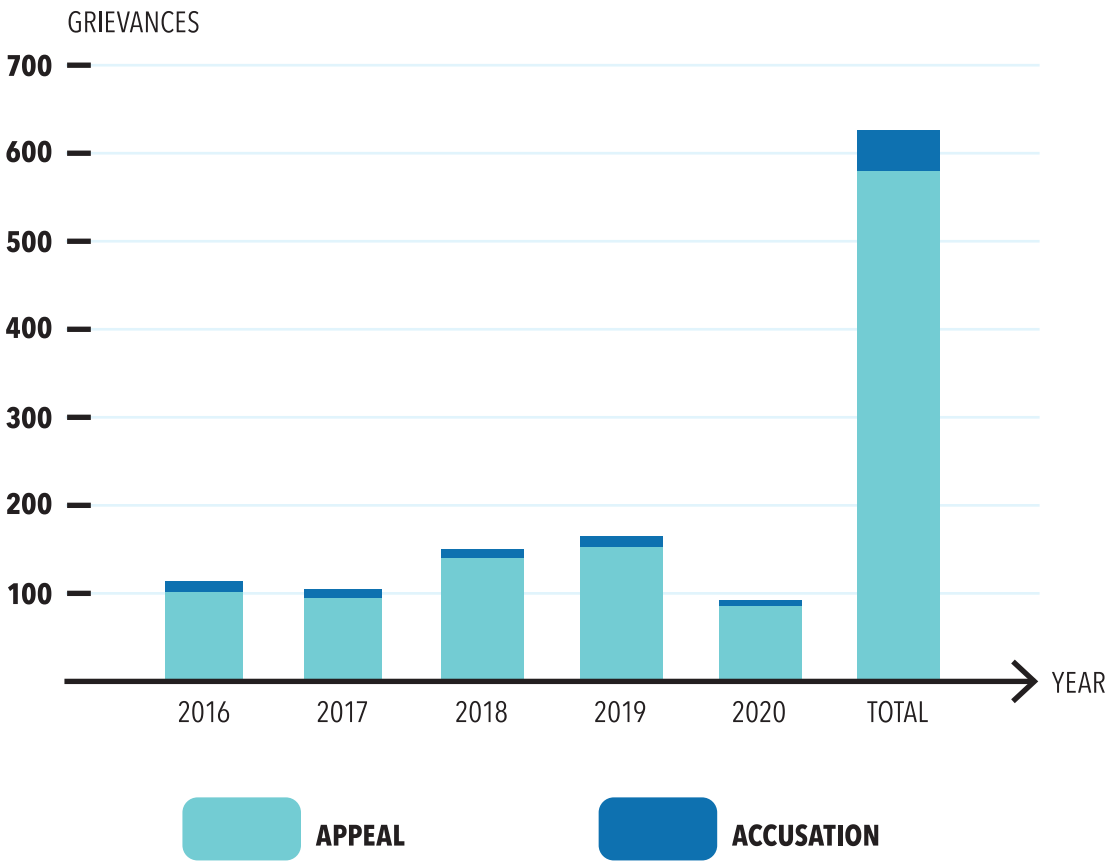
**14 CASES**

were adjudicated, with

- **RESULTING PAYMENT FOR 6 CASES**
- **5 DISMISSALS OF THE LAWSUIT**
- **3 CASE DISTRIBUTIONS**

Figure 12

## NUMBER OF GRIEVANCES FILED AND APPLICATIONS TO APPEAL THE DECISION ON PRELIMINARY COMPENSATION IN ACCORDANCE WITH ARTICLE 41 THAT WERE ELEVATED TO THE COURT, FY2016–20




**SOURCE** Rights Protection Group, Legal Affairs Office, NHSO

# 5

# NOTEWORTHY CASE STUDIES

## 5.1

## POST-OPERATIVE INFECTION LEADING TO BLINDNESS IN CATARACT SURGERY PATIENTS

There are some interesting examples of preliminary compensation awarded in accordance with Article 41. In 2010, there were several cataract surgery cases and subsequent blindness due to infection attributed to the surgery at Khon Kaen Hospital (a regional hospital). The hospital provided prompt remedial assistance, both paying compensation and providing patient care. This resulted in the injured party deciding not to prosecute the case in court. The case was open to full external audits, and the hospital continues to take excellent care of the injured parties.[13,14]

On January 4, 2010, Dr. Weeraphan Suphannchaimat, Director of Khon Kaen Hospital, and a team of eye surgeons held a press conference to announce the results of cataract surgery patients, the infection which caused blindness in seven patients, and the four others who were rendered legally blind. In this cohort, there were

## 25 CATARACT SURGERY PATIENTS

Post-operative examination found two cases of eye inflammation. Thus, the hospital immediately followed up with all the patients who had been discharged. The team found nine more patients, for a total of 11, who had post-operative eye inflammation.

After initial treatment of inflammation in the patient's home, the hospital transferred each case to the Khon Kaen University Hospital. Ten cases developed severe inflammation, while another case was referred to Metta Pracharak Hospital (Wat Rai Khing), Nakhon Pathom Province. The medical team coordinated with Metta Pracharak Hospital to report the treatment before providing an ambulance with the staff to send the patient to that province.

On December 31, 2009, the hospital said seven of the 11 patients still had severe infections, and two required additional surgery to remove eye tissue or the eyeball itself due to uncontrolled inflammation. The other five cases were also severe, all of whom were eventually rendered blind. The other four patients recovered and were discharged.

The Disease Control Committee, together with a team of surgeons, took samples of the particulates in the air of the operating room, humidity, temperature, general equipment, surgical equipment, water, as well as samples from the patients' secretions to be sent to test for culture. It was found that the microbe that caused the cataract patients to develop inflammation was a bacterium called *Pseudomonas aeruginosa*, which contaminated the surgical eye incision, resulting in blindness.

The Committee and the medical team tried to find the source origin of this bacteria. Initially, it was not possible to determine where the bacteria came from. However, it was concluded that the infection was a complication of the surgery, even though the means of contamination could not be determined. The hospital studiously reviewed the incident to find opportunities for improvement according to the criteria of standard care before, during, and after surgery to prevent this from happening again.

Regarding the assistance provided to the 11 patients with post-operative inflammation, seven were covered under the Universal Coverage Scheme (UCS). Initially, the hospital paid compensation of 50,000 baht per person and submitted the cases to the Sub-committee under Article 41 to consider full medical compensation. The limit of preliminary compensation was 120,000 baht at that time. With the 50,000 baht paid up front, each UCS case was then awarded a total of

**170,000 BAHT**

Four patients were covered under the Civil Servants Medical Benefit Scheme (CSMBS), and they received a similar level of compensation. All 11 patients were also granted free health/medical care for life. This rapid response and level of compensation preserved the reputation of the institution and that of the medical staff. Since that event, no other such cases have been reported at this facility.

# 5.2

## ACCIDENT DURING THE PROCESS OF REFERRING A PATIENT

During the transfer of a patient from one clinical facility to another, the patient's accompanying relatives, health staff, and the vehicle driver were all killed in a horrible traffic accident en route. However, miraculously, the patient was not injured. Since the accident was not related to a medical procedure, there was no specification in the law for compensation to the deceased relatives of the patient. Only the patient can claim injury. However, the Quality and Standard Control Board deemed that the vehicle was an extension of the clinical service unit and, therefore, the relatives were also eligible for compensation.

# 5.3

## POST-STERILIZATION PREGNANCY

There are quite a number of cases of failed contraceptive sterilization procedures that are eligible for consideration under Article 41. Initially, there was a variation in deliberations and judgments regarding failed surgical sterilization for the purpose of birth limiting. Some cases received compensation, while others did not. Subsequently, the matter was considered by the Quality and Standard Control Board to determine the payment guidelines. Furthermore, academic data from the Royal College of Physicians asserted that even surgical sterilization has a known failure rate that is accepted internationally, and which the client must be informed of before electing to undergo the procedure. Therefore, some held the view that the payment should not be made in cases of sterilization failure.

In 2018, the National Health Security Board passed a resolution to appoint a working group to review the Regulations on the Criteria, Procedures and Conditions for Preliminary Compensation in accordance with Article 41 in the case of adverse events related to clinical contraception. The Board approved in principle that compensation should generally be provided in cases of vasectomy and tubal ligation, followed by an unwanted pregnancy in the same couple.[15]

# 5.4

## NATIONAL EMERGENCY OR DISASTER

Payment of preliminary compensation also applies to cases of provision of health care during an emergency situation or national disaster (e.g., COVID-19). As of this report, the Thai government was in the process of rolling out the COVID-19 vaccine to the entire population, and that qualifies as an essential health service during a national emergency. Accordingly, if a vaccinated person suffers adverse side effects, the injured party can apply for preliminary compensation under Article 41.[16]

As of this writing, there have been no reports of fatalities associated with receiving the COVID-19 vaccine. However, the no-fault compensation provision of Article 41 can provide reassurance to the population that they will be covered if an adverse reaction to the vaccine occurs.

# 6

# FACTORS BEHIND SUCCESS & REMAINING CHALLENGES

# 6.1

## FACTORS BEHIND THE SUCCESS

# 6.1.1

### STAKEHOLDER INVOLVEMENT IN THE DELIBERATION PROCESS

Preliminary compensation is paid in accordance with Article 41 for injury resulting from medical treatment or force majeure in the process of providing care for the primary condition of the patient – but not if the injury is the result of an underlying disease/condition or natural side effect of the underlying disease/condition. This stipulation introduces a bias in favor of the health facility or medical practitioner since the determination of the exact cause of the injury can be a highly technical consideration. Hence, the Sub-committee under Article 41 at the provincial level requires participation from all parties, representing various sectors, including the service provider side, experts, and representatives of the health consumer public. That will help ensure transparency in the decision-making process whether to pay preliminary compensation.

# 6.1.2

## CONSIDERATION OF INITIAL REMEDIAL ASSISTANCE TO THE INJURED PARTY IN A REASONABLE TIME FRAME AT THE PROVINCIAL LEVEL.

From the saying that **DELAYED JUSTICE IS JUSTICE DENIED**, there is a provision in Article 41 of the National Health Security Act of 2002 and criteria set by the National Health Security Board which is intended to help those who have sustained an injury or their immediate relative to receive immediate and early relief. This is an ethical measure aimed at reducing conflict and maintaining a good relationship between service providers and service recipients.

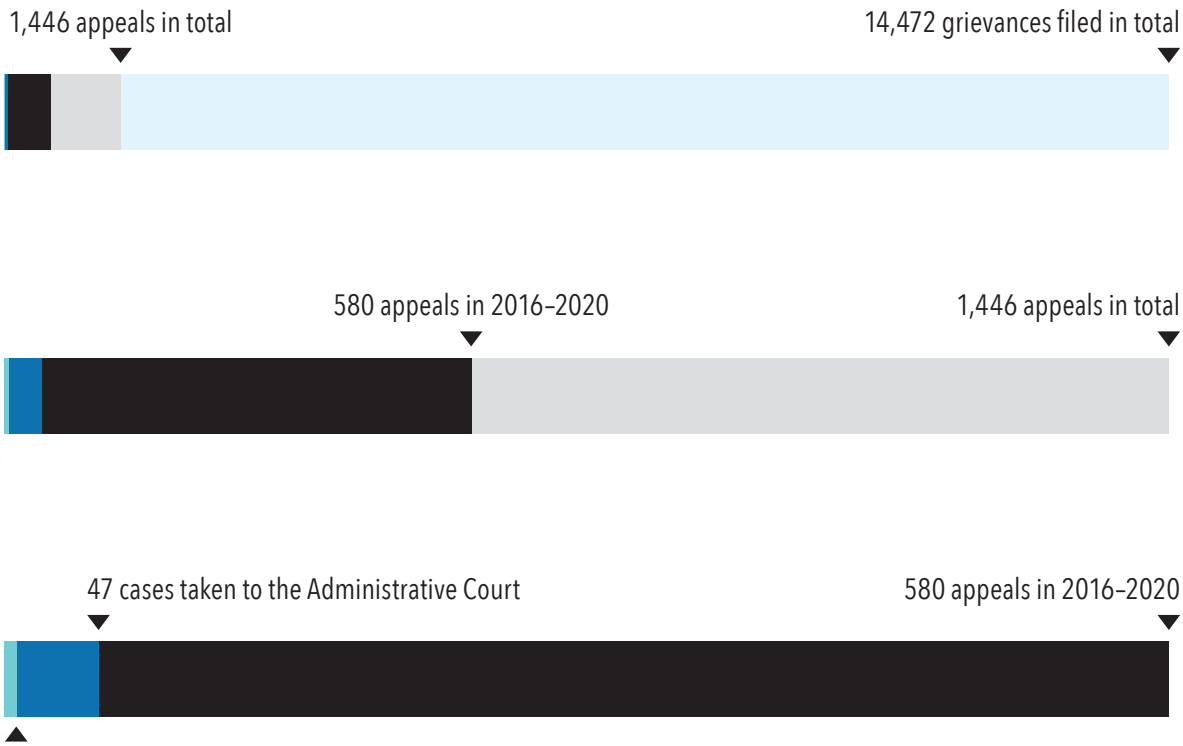
The Regulations on the Criteria, Procedures and Conditions for Preliminary Compensation have also set a clear time frame for completing consideration of the Sub-committee under Article 41 at the provincial level; i.e., **NOT MORE THAN 30 DAYS** from the date of receiving the grievance application, which is considered timely relief compared to a court case which could drag on for months or even years.

The Sub-committee under Article 41 at the provincial level is another innovation of the NHSO to make action practical and efficient. Having a branch office at the provincial level enables agility and operational efficiency due to the localization of procedures and the decentralization of processing of grievances throughout the country, instead of creating a **LOG-JAM** with a centralized clearinghouse.

# 6.1.3

## NOT DEPRIVING THE INJURED PARTY OF THE RIGHT TO TAKE THE CASE TO COURT

Obtaining preliminary compensation by the pending proof of wrongdoing in accordance with Article 41 does not prejudice the injured party or the potential recipient of the payment to continue to sue the court. In most cases of court proceedings, the suit is contesting that the decision by the Sub-committee was inaccurate, unlawful, or resulted in incorrect payments. Thus, these cases are often filed with the administrative court, i.e., referring to a resolution decree.




# 0.04%

Of the total 14,472 grievances filed in the period of study, there were 1,446 appeals to the Quality and Standard Control Board (10.0%). Based on the most recent five fiscal years (2016–20), of the 580 appeals, 47 cases decided to take the grievance to the Administrative Court, or 8.1% of those who filed an appeal, and 0.3% of all grievances. However, there were only six grievances in which the Court of First Instance decided to pay more compensation (or 12.8% of the grievances, and 0.04% of all grievances).

**OF ALL THE CASES ADJUDICATED BY THE SUB-COMMITTEE UNDER ARTICLE 41 AND THE QUALITY AND STANDARD CONTROL BOARD, VERY FEW HAVE BEEN DISPUTED AND TAKEN FURTHER TO THE ADMINISTRATIVE COURT.**

# 6.1.4

## NOT HAVING TO USE THE BUDGET OF THE SERVICE UNIT IN PAYING PRELIMINARY COMPENSATION

Providing preliminary compensation in accordance with Article 41 is a mechanism for reassuring service providers and recipients that their rights are protected, and this contributes to more successful mediation after an injury occurs. That is, the injured party will be protected in the event of medical force majeure by the provider, and the service unit is not required to pay preliminary compensation to the injured party out of their own.

> *Without Article 41 and an injured party sues, the hospital might have had to pay compensation and maintenance costs, or the MOPH had to pay compensation itself. However, with Article 41, the practitioner refers the matter to the Sub-committee under Article 41 at the provincial level, where there is consideration of whether the grievance meets the allowable criteria and/or whether the incident was the result of force majeure. In these circumstances, the practitioner can have a reasonable conversation with the injured party (or their relatives) and explain the amount and limits that can be paid as compensation. This encourages practitioners and service recipients to be realistic and straightforward in their considerations. The practitioner does not need to admit fault, and the injured party has a good expectation of rapid payment of compensation.*[17]

# 6.2

## CHALLENGING ISSUE: EXPANDING COVERAGE OF THE RIGHT TO APPLY FOR PRELIMINARY COMPENSATION ROM OTHER HEALTH FUNDS

In accordance with Article 41, the NHSO has developed a preliminary no-fault compensation system for service recipients that sustained an injury from a participating service unit in the course of receiving a health or clinical service. This system has helped to efficiently resolve problems and avoid disputes between service recipients and service providers to the satisfaction of both parties. Nevertheless, there is one more challenge that needs to be addressed. The coverage of the right of a service recipient to be able to submit the grievance in accordance with Article 41 has been expanded to include personnel of local administrative organizations and those covered under the Social Health Insurance Scheme (SHI).[d] However, as of this report, the beneficiaries under the CSMBS and employees of other government agencies are not yet covered by Article 41. For this reason, preliminary compensation for injury due to health services should be a right of all Thais, regardless of the health insurance coverage scheme they are a member of.

d The insured person can exercise their rights under Article 63(7) of the Social Security Act (No. 4) B.E. 2558 regarding benefits in the event of injury or illness that are not due to work by stating that preliminary compensation shall be provided to the insured in the event that the insured is damaged from receiving medical services. When the office has paid the initial aid to the insured, the office shall be entitled to take recourse with the wrongdoer following its payment of preliminary aid to the insured. Also, the Medical Committee signed the Announcement of the Medical Committee according to the Social Security Act on the Criteria and Rates of the Preliminary Compensation to the Insured Person Damaged from Receiving Medical Services. This will be effective from October 20, 2015 onwards by categorizing the damage from medical services and determining the payment rates, in accordance with Article 41 of the National Health Security Act of 2002.

# 7

## SUMMARY:
# CONSUMER RIGHTS, CONFLICT REDUCTION & SUSTAINABILITY OF THE UNIVERSAL HEALTH COVERAGE

Throughout the years of implementation in accordance with Article 41, the preliminary no-fault compensation system has proven to be a fast-paced mechanism for providing preliminary assistance to the injured party. Most importantly, the no-fault provision of the Article reassures both client and provider of swift action. In addition to helping the injured party and immediate relatives who have been affected by injury, the system is also a guideline for reducing conflict between service providers and service recipients. Furthermore, the budget used to pay preliminary compensation is negligible compared to the ceiling amount allowed by law. For example, in FY2019 (when the most compensation was paid), that amount constituted only 0.13% of the money set aside for the purpose.

The provision of the Sub-committee under Article 41 at the provincial level and the governance of a clear time frame for completion of deliberations of a grievance of **NOT MORE THAN 30 DAYS** demonstrates the ability of the NHSO to translate policy into practice. It is viewed that the NHSO not only decentralized the matter to the provincial level, but also established clear standards of work so that it could be transparently audited.

It can also be said that operating in accordance with Article 41 is another important mechanism for ensuring consumer rights, and demonstrates that government truly takes responsibility for the provision of health services. Prompt action to pay preliminary compensation under no-fault principles contributes to the mediation process that has led to a significant reduction in conflict between the service recipient and service providers. This mechanism is one of the essential conditions for the creation of a sustainable Universal Health Coverage (UHC) system in any country. That is because it values and builds trust between service providers and service recipients, and that trust enables the UHC system to move forward in a sustainable way while creating a true **HEALTH BENEFIT** for the people.

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Project on Knowledge Management, Lesson Learnt Reflection and Dissemination of
National Health Security Office [NHSO]

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**FIRST PUBLISHED** e-book 2021

**NATIONAL HEALTH SECURITY OFFICE**

The Government Complex Commemorating His Majesty the King's 80th Birthday Anniversary 5th December, B.E. 2550 (2007) Building B 120 Moo 3 Chaeng Watthana Road, Lak Si District, Bangkok 10210

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