

NO-FAULT COMPENSATION SYSTEM

IN THE THAI UNIVERSAL COVERAGE SCHEME



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. 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**.



ARTICLE 41 OF THE NATIONAL HEALTH SECURITY ACT OF 2002 MANDATES PAYMENT OF PRELIMINARY COMPENSATION TO ALLEVIATE SUFFERING AND HEAL THE INJURY.

Knowledge of diagnosis, clinical procedures, surgery, and rehabilitation is **NOT GENERALLY ACCESSIBLE** to the layperson.



Before the passage of the National Health Security Act of 2002, service recipients who sustained an injury **HAD TO SUE IN COURT** to appeal for compensation for said injury.

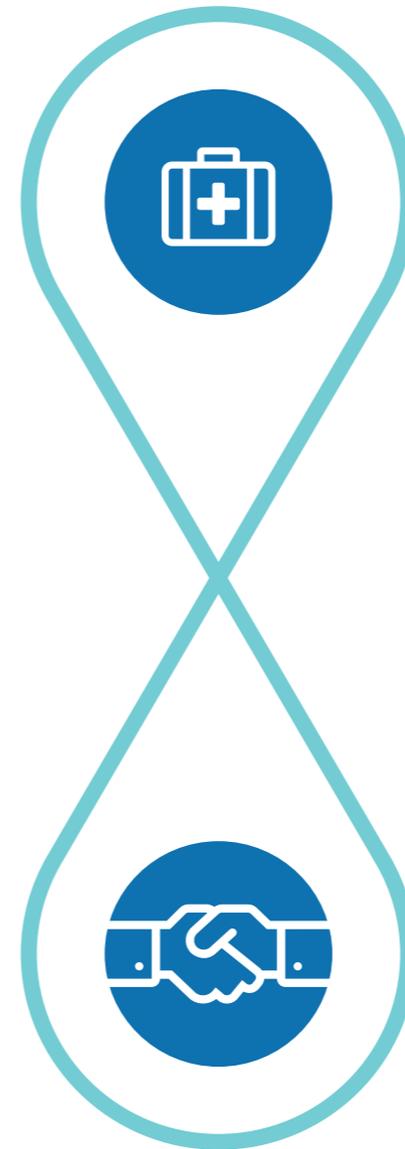
Litigation threatened to harm the trusting relationship between health providers and recipients, with the result that this could create **DISCORD AND CONFLICT** between service units and the consumer of health care.

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. The process **TAKES TIME**.

The case which is taken to court involves a complex process of identifying the violators, and the injured party also has to **INCUR CONSIDERABLE COSTS** (e.g., attorney's fees, witness gathering costs, and court fees, among others). The process is also long and arduous.

INTENTIONS OF ARTICLE 41

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.



PROVIDE INITIAL RELIEF

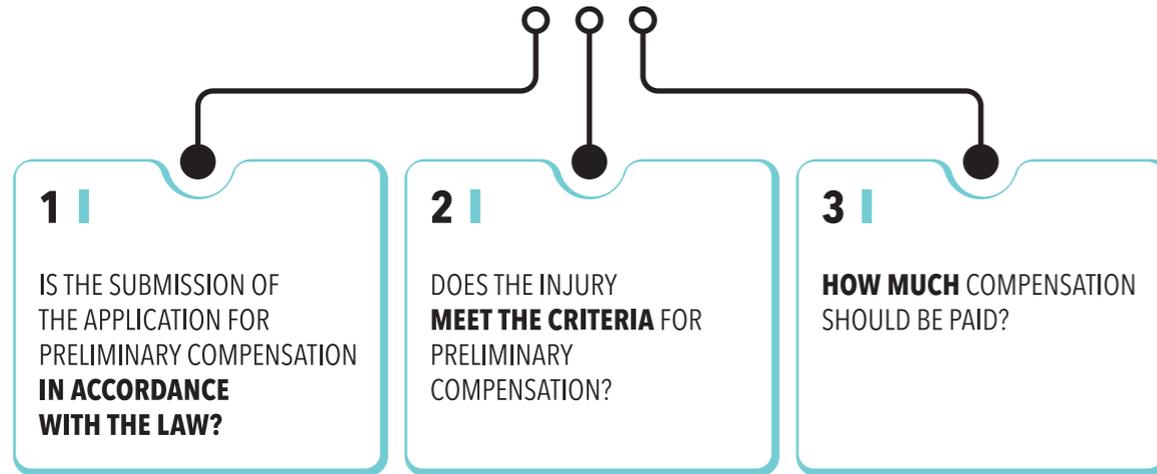
To provide **PROMPT ASSISTANCE** (in due time) to service recipients who sustained injury from medical treatment without the need to assign fault. This assistance is intended to be initial relief to an injured service recipient and not necessarily the full compensation that might be awarded later on.

REDUCE CONFLICT

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.

THE CRITERIA OF CONSIDERATION

TO RECEIVE PRELIMINARY COMPENSATION IN ACCORDANCE WITH ARTICLE 41



Is qualified as a service recipient under Article 41?

Is eligible to submit an application for preliminary compensation?

The injury was sustained in a participating service unit?

Submits the grievance within 2 years of the date of the injury?

What is the nature of the injury for which preliminary compensation is being sought?

Does the cause of the injury meet the criteria for preliminary compensation?

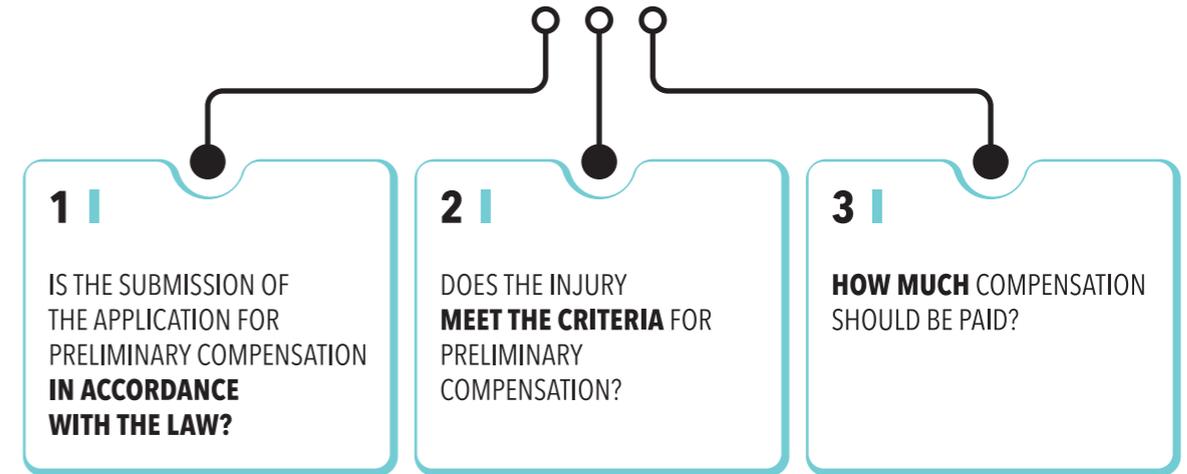


What is the type of injury sustained?

Relationship between the injury and the care or treatment received

THE CRITERIA OF CONSIDERATION

TO RECEIVE PRELIMINARY COMPENSATION IN ACCORDANCE WITH ARTICLE 41



Eligible persons:

- NHSO beneficiaries
- Employees or contractors of local administrative organizations and their families (effective from October 1, 2013, onwards).

Eligible person to submit claim:

- Immediate relative
- Guardian
- Service unit

Eligible service unit:

- Registered with NHSO

Injury caused by medical procedure or force majeure

Not an injury caused by an underlying pathology or complications of disease/condition



Loss of life or permanent disability: 240,000 – 400,000 baht

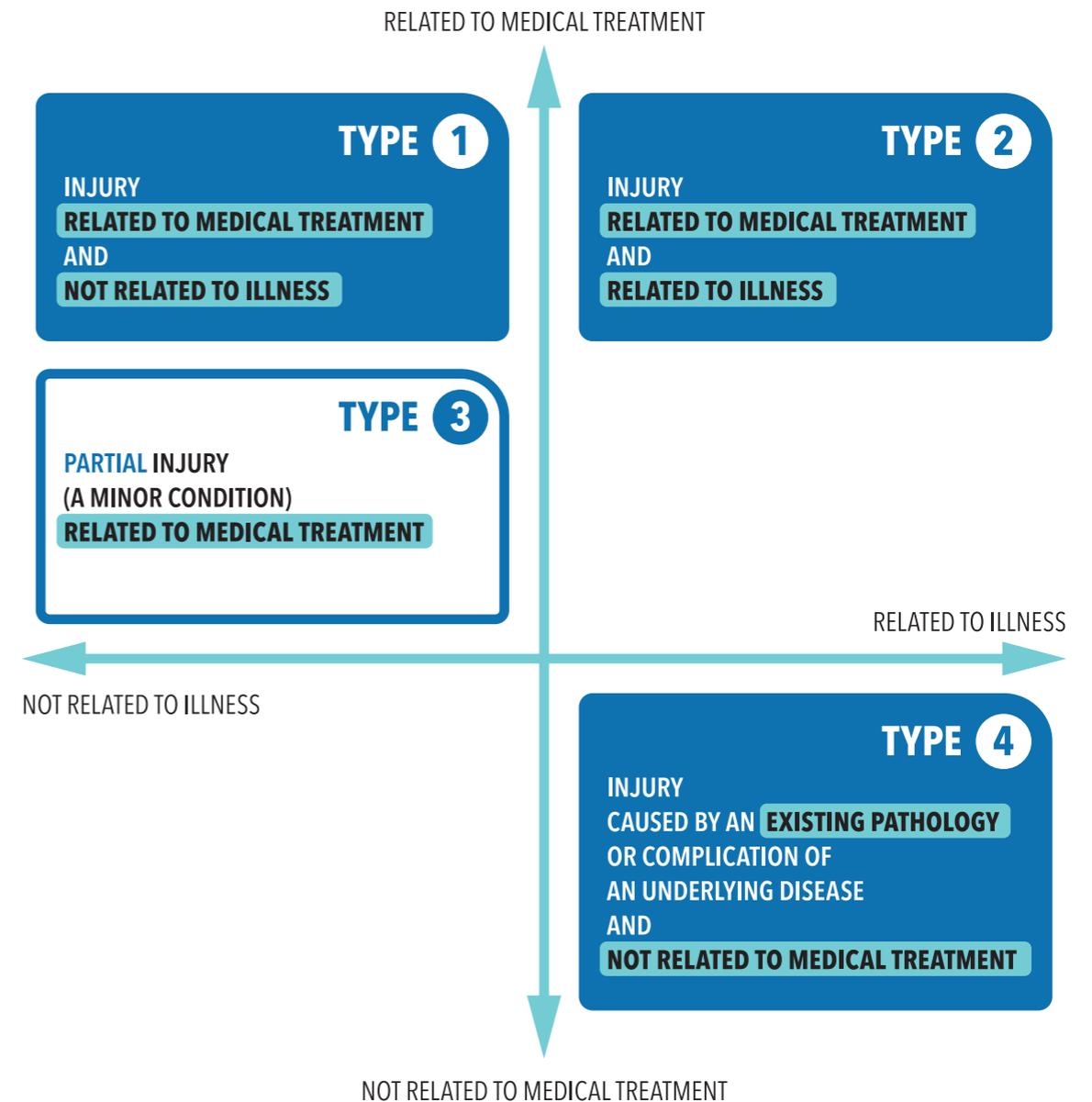
Loss of organ(s) or disability: 100,000 – 240,000 baht

Injury of continuous illness: <100,000 baht

THE QUALITY AND STANDARD CONTROL BOARD MAKES DECISION IN THE CASES OF AN INJURY THAT MAY NOT BE CLASSIFIED

RELATIONSHIP BETWEEN THE INJURY AND THE CARE OR TREATMENT RECEIVED

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 hospitalization, and there are four types.



CONDITIONS FOR CONSIDERATION OF THE ADVERSE IMPACT OF THE INJURY

TYPES OF INJURY

CLAUSE 6(1)

- DEATH
- PERMANENT DISABILITY
- ILLNESS REQUIRING LIFELONG TREATMENT

SEVERITY OF IMPACT

CLAUSE 6(2)
CLAUSE 6(3)

- HIGH
- MODERATE
- SLIGHT

THE METHOD FOR CLASSIFYING THE SEVERITY OF THE IMPACT THAT THE INJURED PARTY (INCLUDING IMMEDIATE RELATIVES AND/OR GUARDIANS) SUSTAINED IS ACCORDING TO CLAUSE 6 OF THE REGULATIONS.

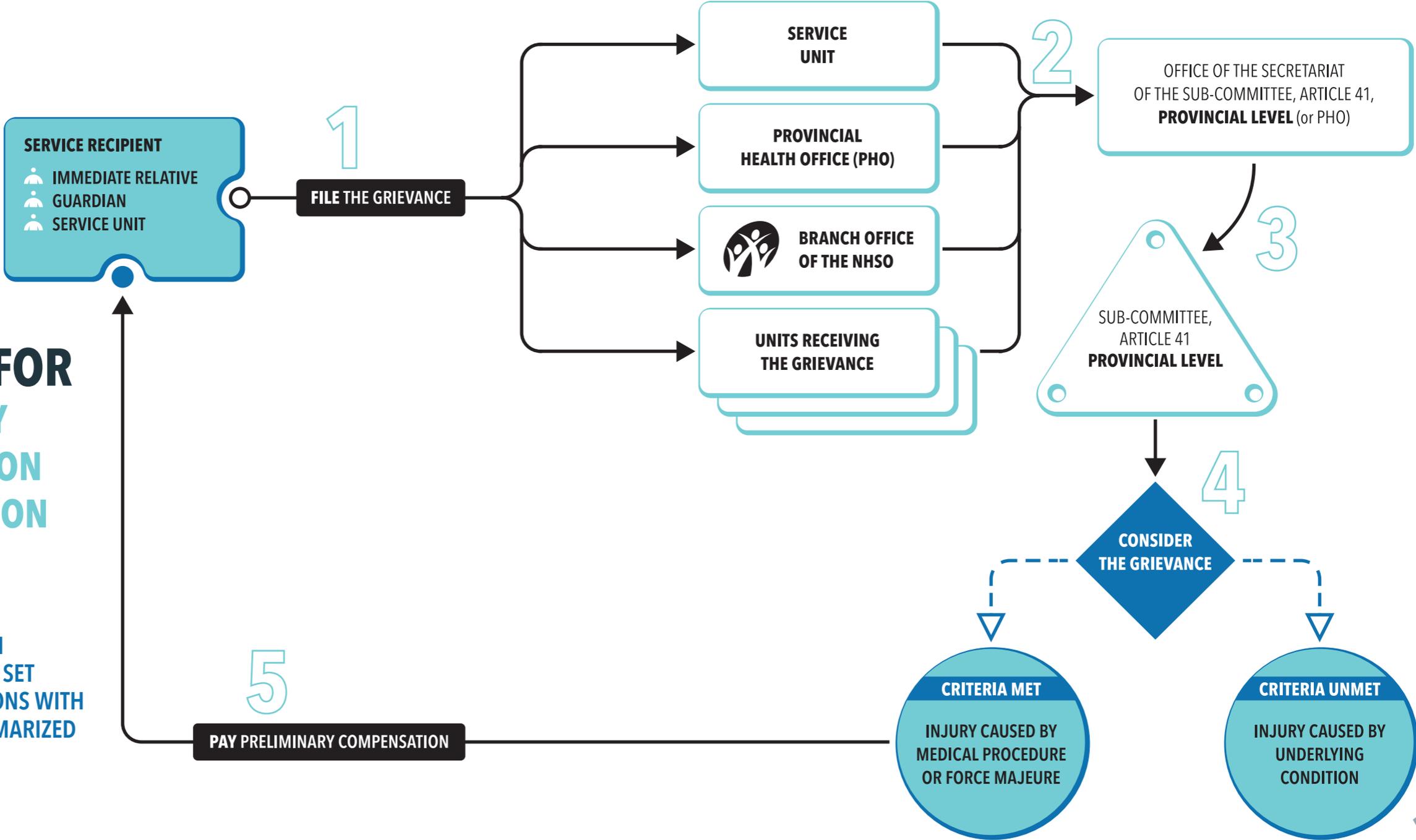
There is consideration of

- the ability to return to work in their regular occupation,
- the 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,
- the duration and cost of treatment and rehabilitation, and
- loss of career opportunities.

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.

PROCESS FOR PRELIMINARY COMPENSATION CONSIDERATION

THE NATIONAL HEALTH SECURITY BOARD HAS SET FORTH THE REGULATIONS WITH THE KEY POINTS SUMMARIZED AS FOLLOWS.

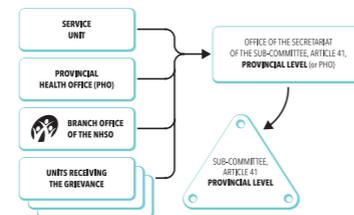


PROCESS FOR PRELIMINARY COMPENSATION CONSIDERATION

NOTES

FILE THE GRIEVANCE

A grievance must be filed in accordance with the case defined or may be filed in writing. People who are entitled to submit the grievance may do this in person or by registered mail. Filing of the grievance must be made within two years from the date the injury was known for it to be considered.



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.



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 based on the rate set by the National Health Security Board.

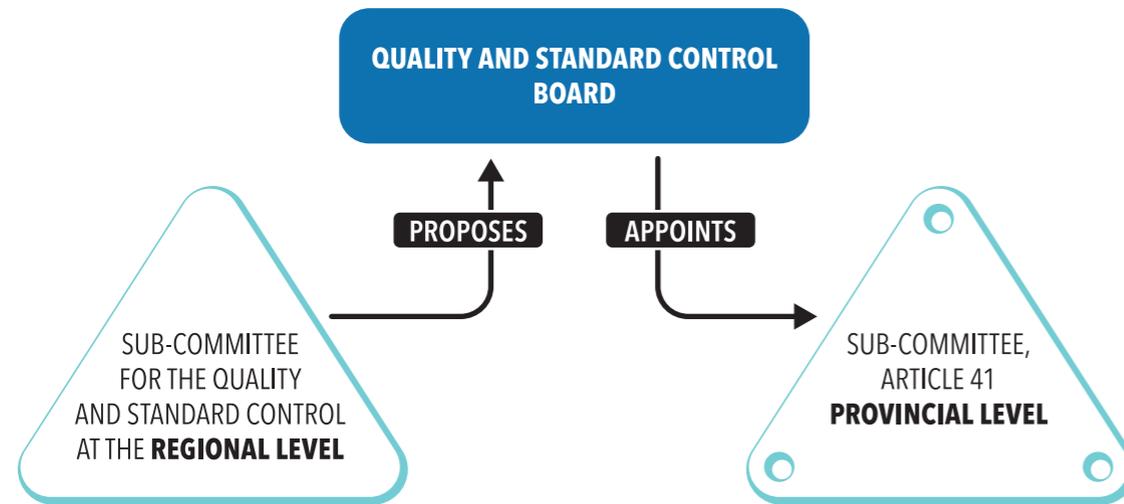
PAY PRELIMINARY COMPENSATION

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.

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.



AUTHORITY OF THE SUBCOMMITTEE UNDER ARTICLE 41 AT THE PROVINCIAL LEVEL



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 **5-7 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.



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

- A competent or senior or respected person;
- A service representative;
- A representative of the client population.

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.

CONSIDERATION OF AN APPEAL BY THE QUALITY & STANDARD CONTROL BOARD

A PERSON FILING A GRIEVANCE WHO HAS ALREADY RECEIVED THE SUB-COMMITTEE'S DECISIONS 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

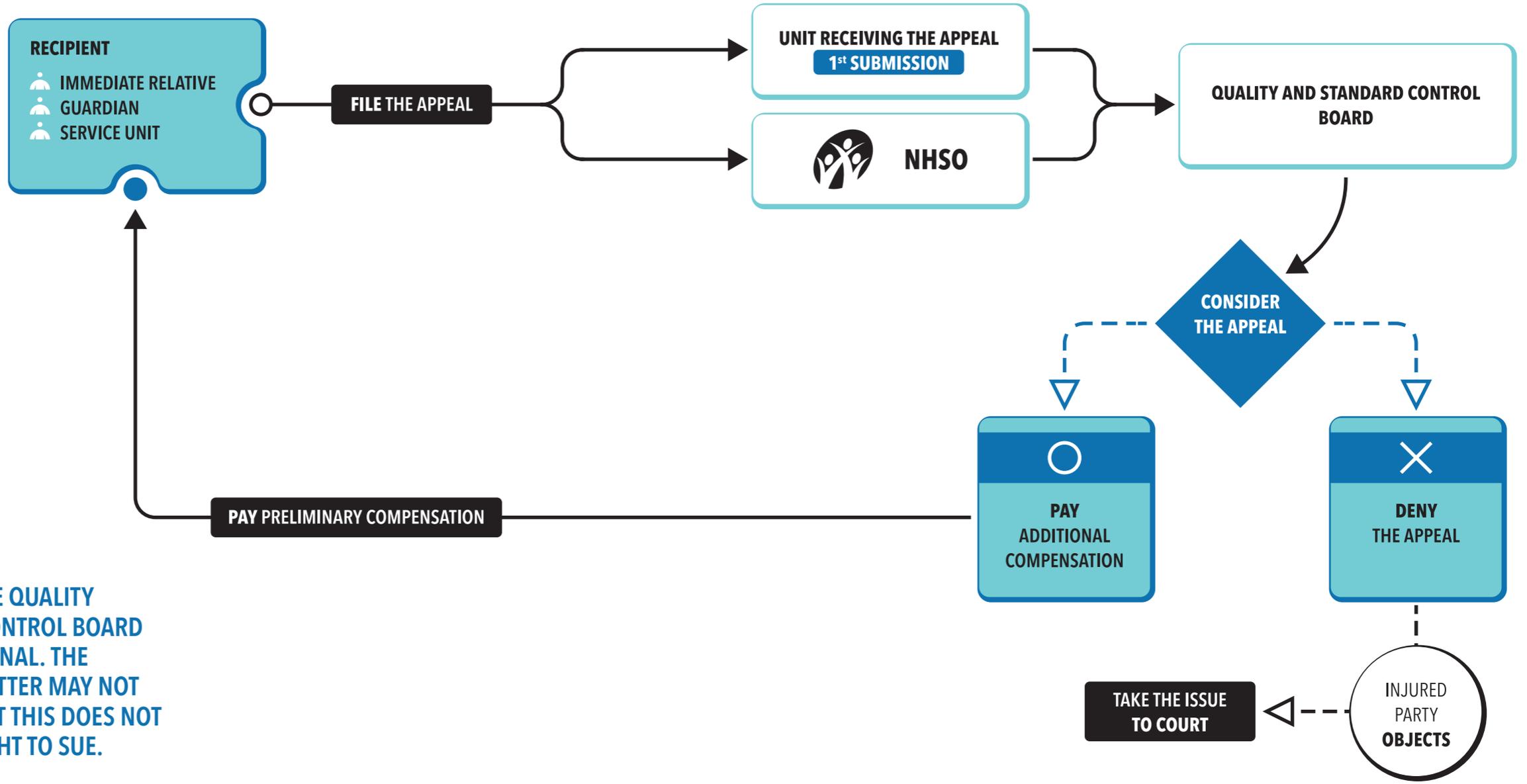
30 DAYS

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

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.



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.

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

**NUMBER OF GRIEVANCES FILED
AS A BASIS FOR APPLYING FOR PRELIMINARY COMPENSATION**



**NUMBER OF RECIPIENTS
OF PRELIMINARY COMPENSATION**

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. More than half of the cases involved a grievance related to death of a service recipient.

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 did qualify, and assistance was received (82.4%).

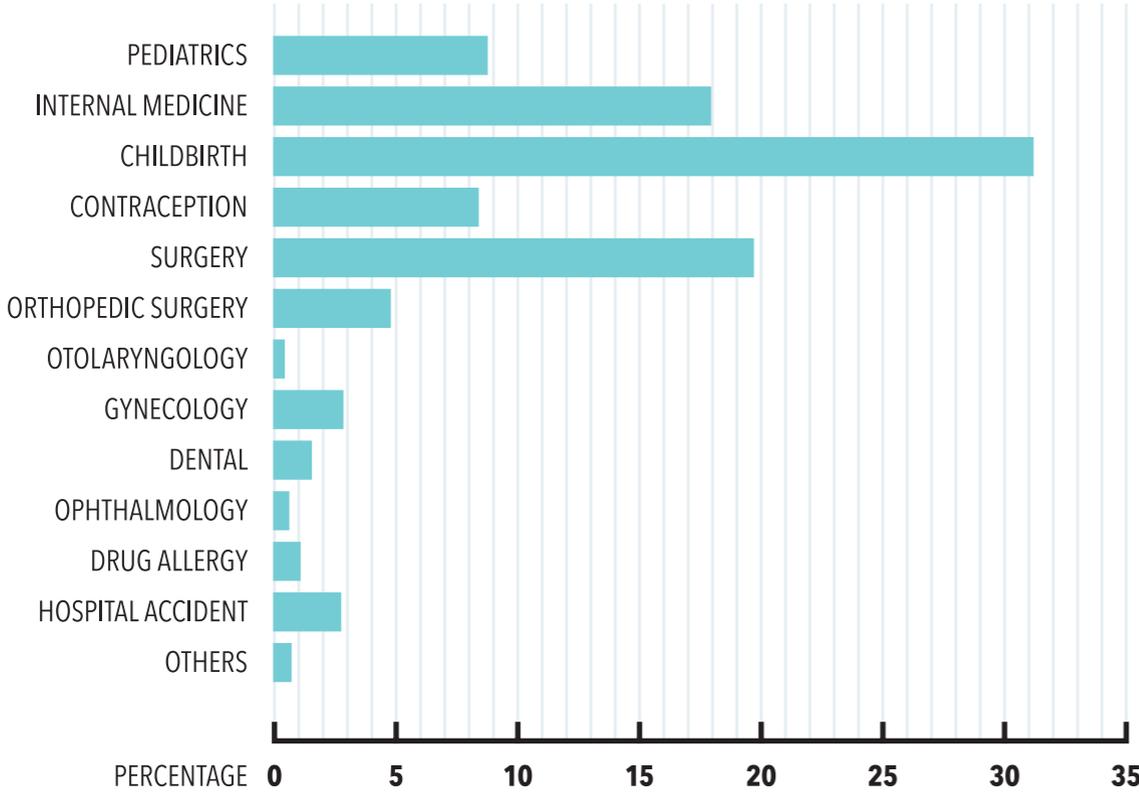
Table 1

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

Source: Adapted from the Report of the NHSO for FY 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	

CLASSIFIED BY THE BRANCH OF SERVICE



Source: NHSO Report for FY2020

The top five clinical areas in which a claim was made were

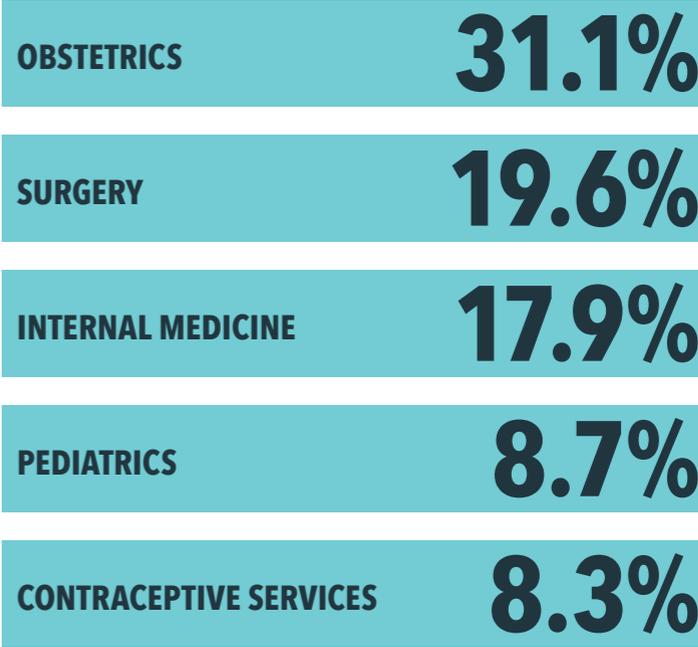
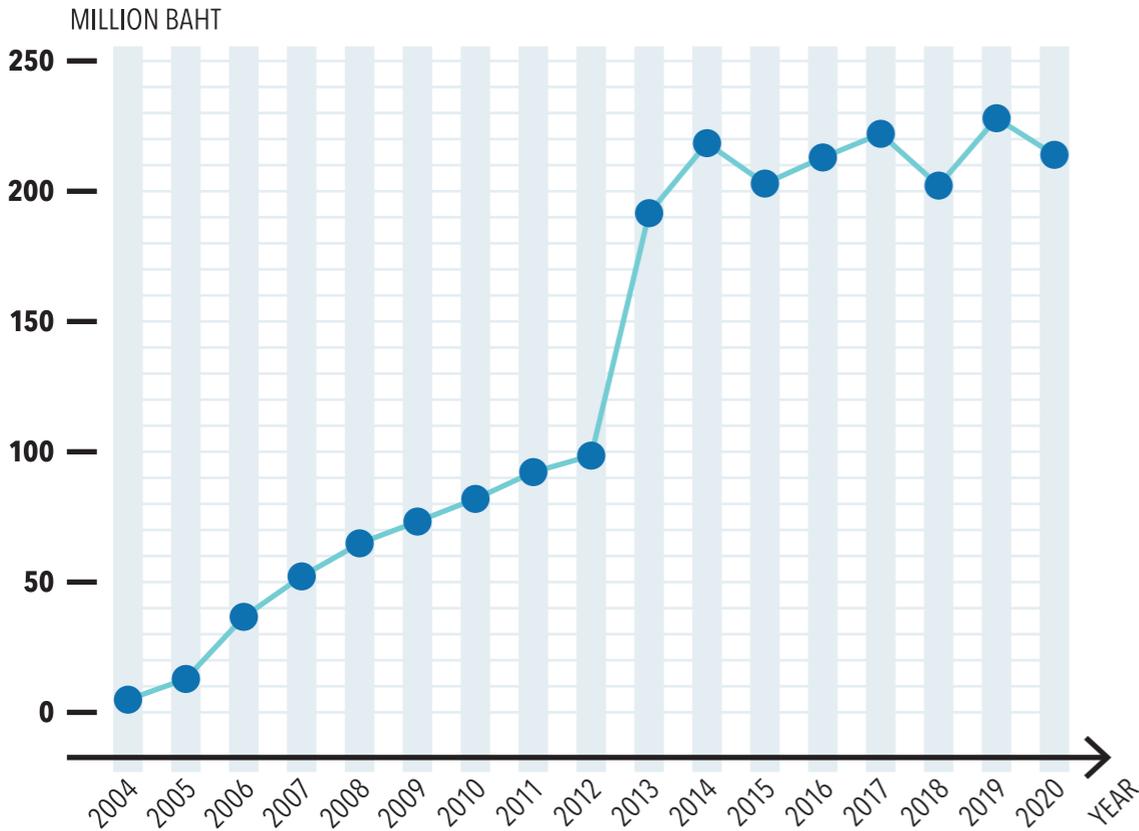


Figure 1

PERCENT OF GRIEVANCES FILED BY THE BRANCH OF SERVICE, FY2020

BUDGET FOR PAYMENT OF PRELIMINARY COMPENSATION



When looking at the statistics of filing a grievance for preliminary compensation, there is the exponential increase from FY2013 onwards. However, 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. 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.

Figure 2

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

Source: Adapted from the NHSO Report for FY2020

NUMBER OF APPLICATIONS

FILED TO APPEAL THE PRELIMINARY COMPENSATION DECISION

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.

Table 2

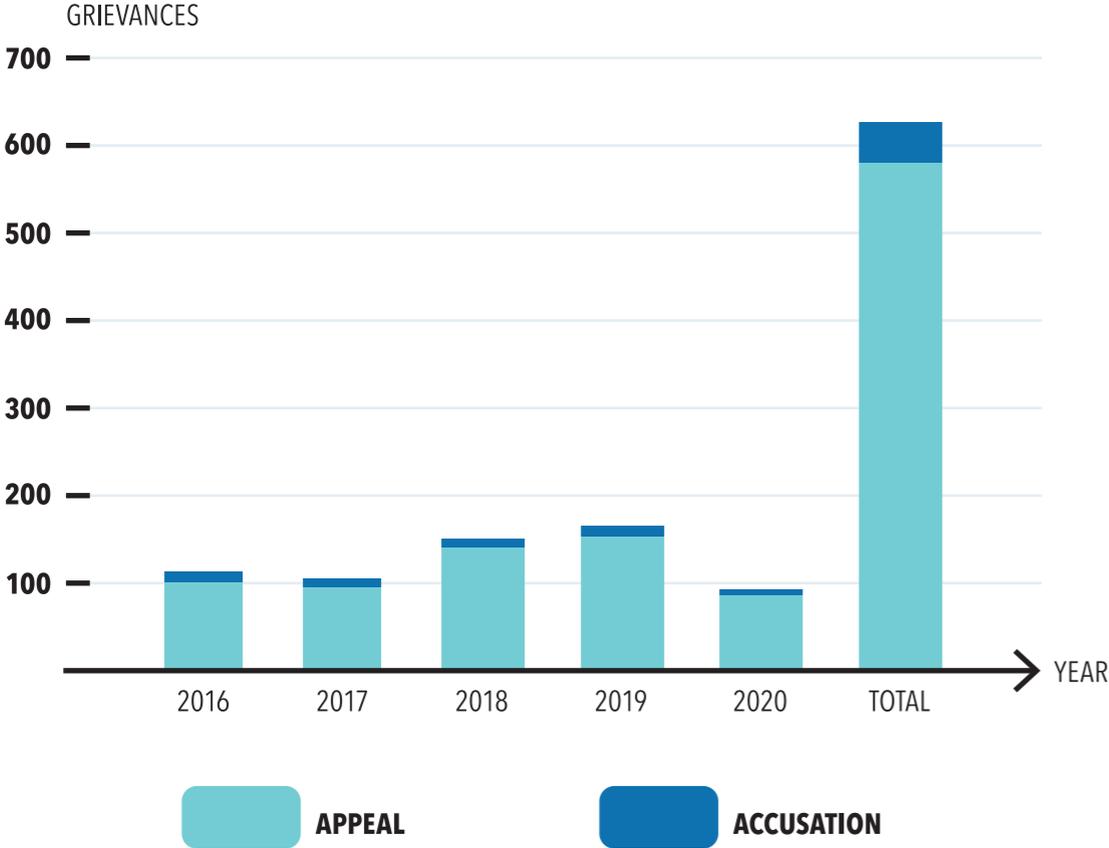
NUMBER OF APPEALS FILED IN ACCORDANCE WITH ARTICLE 41, FY2004-20

Source: Adapted from the NHSO Report for FY2020

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

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 *

NUMBER OF LAWSUIT CASES FILED IN COURT



Source: Rights Protection Group, Legal Affairs Office, NHSO

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, resulting in payment to
- 6 CASES**
- 5 DISMISSALS OF THE LAWSUIT**
- 3 CASE DISTRIBUTIONS**

Figure 3

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

CASE STUDY

POST-OPERATIVE INFECTION LEADING TO BLINDNESS IN CATARACT SURGERY PATIENTS

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

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.

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.

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.

FACTORS

BEHIND THE SUCCESS

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**, the Regulations on the Criteria, Procedures and Conditions for Preliminary Compensation have set a clear time frame for completing consideration of the Sub-committee under Article 41 at the provincial level to '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.

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. These cases are often filed with the administrative court, i.e., referring to a resolution decree.

STAKEHOLDER INVOLVEMENT IN THE DELIBERATION PROCESS

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.

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

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.

CHALLENGING ISSUE

EXPANDING COVERAGE OF THE RIGHT TO APPLY FOR PRELIMINARY COMPENSATION FROM OTHER HEALTH INSURANCE SCHEMES

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)**. 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.

SUMMARY

CONSUMER RIGHTS, CONFLICT REDUCTION, AND SUSTAINABILITY OF THE UNIVERSAL HEALTH COVERAGE

The implementation of 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 patient 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 of paid compensation was only 0.13% of the money set aside for the purpose.

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.



National Health Security Office