



## Compensation Policy without Proof Fault on Adverse Events in Thai Healthcare During 2004–2016

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### Abstract

Comprehensive knowledge about healthcare policy should be encouraged among Thai people. Especially, compensation policy without proving fault on adverse events is useful for Thais. Various documents related to the compensation policy that have been reviewed are able to develop this policy. This study used the method of documentary analysis from Thai healthcare compensation policy during 2004–2016. It presented preliminary compensation regulations from the past until now. This presented operational data, analysis and synthesis of regulations, discussions, problems and suggestions. Results of documentary analysis explained the process of compensation policy as follows: 1) Regulations of preliminary compensation funds, 2) Concept and objectives of allocated funds, 3) Definition of damage, 4) Scope and conditions of damage, 5) Types of damage payment rates, 6) Procedures of the rights to claim, 7) Process of considering and deciding on preliminary compensation, 8) Appeals process of claimants, 9) Number of claimants in each year, 10) Rates of accepted claimants in three periods, 11) Types of files to claim, 12) Budgets of preliminary compensation funds, 13) Rates of allocated and actually paid budgets, 14) Satisfaction to initial assistance mechanism, and 15) Number of medical lawsuits that were sued. All details above should benefit the development of the compensation policy appropriate to the Thai people.

**Keywords:** Reimbursement Policy, Adverse Event, Healthcare System

### Introduction

Sometimes healthcare services cause damage to patients (National Health Security Office (NHSO), 2003). Consequently, it needs Court to prove that offender got damage, and this made a poor relationship between service providers and patients (National Health Security Office (NHSO), 2004a). This reason, the policy of preliminary compensation to patients who got damaged from healthcare services under the National Health Security Act 2003, Section 41 was developed from public organizations, health professions, and public sector organizations (National Health Security Office (NHSO), 2004a). These also consist of providers, patients, practitioners, and funds. In addition, the guidelines were also beneficial to patients who have suffered with damage due to public health services of the unit. (National Health Security Office (NHSO),

2004a). In this case, providers need mediator to mediate and assist in event of providers were alleged or lawsuit from healthcare services.

This study aimed to review contents of compensation policy without proof fault on adverse events in Thai healthcare during 2004–2016. It presented criteria, procedures, and conditions to pay of preliminary compensation from the past to nowadays. It offered operational data, analysis and synthesis of preliminary compensation discussions, problems and suggestions.

### Methods and Materials

This documentary research reviewed contents and synthesized of regulation, discussions, problems and suggestions of compensation policy without proof fault on adverse events in Thai healthcare during 2004–2016. This study used secondary documents numbering



21 papers that produced by National Health Security Office, Law Office, Office of the Permanent Secretary of MOPH, and Office Policy Development and Strategy who did not present in this scene but received eye-witness accounts to compile documents, or have read eye-witness accounts (Bailey, 1994, p. 194), and documents were visible signs of what happened at previous time. It was in contradistinction to proximate or direct access whereby researcher and his sources were contemporaneous or co-present and researcher was a direct witness of occurrences or activities (Scott, 1990). In this process researcher concerned in authenticity, credibility representativeness and meaning after summarized to indentify in each important issue as shown in conclusion. All processes of reviewing were approved as mentioned above.

## Results

**Results of reviewing and analyzing data were consisted of 15 aspects as follows:**

### 1. Regulations of preliminary compensation funds

Preliminary compensation regulation in event that patients cause damaged from healthcare services was drafted and developed by the Ministry of Public Health (MOPH) in 2003 and has adopted Law of the National Health Security (NHSO) on November 19, 2002. When enacted this law and established in NHSO, the MOPH has presented draft to NHSO offer to the National Health Security Board (NHSB) considered and approved on January 8, 2003.

Board of Quality and Control Standard of the Public Health Services has resolved to acknowledge and offered to implement draft on January 10, 2003. This regulation has been effective since June 10, 2003 (Regulations of National Health Security Office (NHSO), 2003; National Health Security Office (NHSO), 2004a). However, enforcement of such regulations has evaluated performance periodically. It improved contents of regulations governing criteria, procedures and conditions to pay preliminary

compensation twice in 2006 and 2012 respectively.

### 2. Concept and objectives of allocated funds

Law of National Health Security (NHSO) in year 2004, section 41 stipulates that NHSB must allocated funds not more than one percentage of funds paid to registered service unit for preliminary compensation to injured patients. In case of patients got damaged resulting by medical treatment from service unit, and could not find wrongdoers or offenders, injured patients have not received compensation within a reasonable period. These actions need implementing according to regulation by the Board (National Health Security Office (NHSO), 2002).

### 3. Definition of damage

The spirit of section 41 intended to provide basic compensation to claimants who got damaged by healthcare services. Therefore, term of "Medical treatment" of the preliminary compensation regulation by year 2003 meant as term of "public health service" in Law on section 3 for implementation to extent of damage from services provided in above regulations. It cause damaged by medical treatment meaningful covering damage from public health service in all aspects which consists of health promotion, disease prevention, diagnosis, medical treatment, and rehabilitation. All level of public health services had opportunity to cause damage to patients.

Damage from medical treatment occurred at "service units" of both public and private sector which registered in NHSO. Intention of private body's desire to an accident or emergencies illness services without registration as a service units. If it was happened damage from medical treatment, injured patients were not entitled of preliminary compensation in any way (Regulations of National Health Security Board, 2003; National Health Security Office (NHSO), 2004b; 2004c).

### 4. Scope and conditions of damage

Patients who got damage from healthcare services which have registered in NHSO and they wanted to have the right to request preliminary

compensation for funds, it consisted of two criteria. Firstly: damage was not caused by the normal operation of pathology of disease. Secondly: damage was not caused by medical complications from routine diagnostic or therapeutic standards. However, consider and decide that damage resulted from conditions of medical treatment or not, it depended on the authority and discretion of subcommittee in Provincial Health Office who considered and decided petition to receive of preliminary compensation by themselves. If subcommittee has been considered preliminary facts that it did not meet conditions both criteria. But damage caused by others reason such as force majeure from medical, from the system, or from drug allergy. This subcommittee would pay preliminary compensation based on type of damage and rate of payment according to criteria established. (Regulations of National Health Security Office (NHSO), 2003; National Health Security Office (NHSO), 2004b; 2004c).

In year 2006 edition, it defined a criterion that injured patients had the right to request a preliminary compensation as year 2003 edition, but scope and payment conditions which provided in new regulation in case of damage more clearly than the year 2003. Damage results to receive a preliminary compensation including force majeure from the system, but it was not caused by operation according to pathology or complications of disease that follow normal condition of disease already exists and also disease which diagnosed and treated by general standards. (Regulations of the National Health Security Office (NHSO), 2006b). Since 2012 edition, it had a new issued of regulation. Scope and payment conditions in case of damage were still determined as well as year 2006 edition, difference only some contents of word "This disease is diagnosed and treated by a general" (Regulations of National Health Security Office (NHSO), 2012b).

In summary, year 2006 edition of regulations defined scope and conditions of damage to pay of preliminary compensation included damage which is

caused by "force majeure from healthcare system" which had more than year 2003 edition. At the same time, it was limited scope of liability to narrow down that associated with standard treatment which used term as "standard therapy" to "maintain standards" in edition of year 2006. Meanwhile edition of year 2012 adopted from year 2006 edition, but it was excluded content of "The disease was diagnosed and treated by a general" which has been cut off.

### **5. Types of damage payment rate**

Typically, body damage received from healthcare services was able to categorized into 3 groups: 1) Consist of damage to life and permanent disability, 2) Dismemberment or disability, and 3) Injury. Determining amount of preliminary compensation based on assistance to alleviate suffering or humanitarian assistance, it was not damage compensation. Therefore, it had set of preliminary compensation on advanced level as necessary and appropriate for subcommittee to decide a request under discretion of reality in each case and in local area. If the case was severe and negative impact on injured patients or their heirs, it offered an opinion to Board of Quality and Standard Control of Public Health Service (QCSC) for reconsider preliminary compensation at a rate which have more than the scheduled each type.

Those ideas during June 10, 2003 to January, 31 2006, type of damage and rate of payment has been divided into three groups. Firstly: Death or permanent disability which payment of preliminary compensation should not more than 80,000 Bahts. Secondly: Dismemberment or disability which payment should not more than 50,000 Bahts, and thirdly: injury or illness of preliminary compensation which payment should not more than 20,000 Bahts (Regulations of National Health Security Office (NHSO), 2003; National Health Security Office (NHSO), 2004b; 2004c). Later, from February 1, 2006 to September 30, 2012, it increased amount of damage. Firstly, Death or permanent disability which payment should not more than 200,000 Bahts. Secondly, Dismemberment or



disability which payment of preliminary compensation should not more than 120,000 Bahts, and thirdly: the injury or illness which payment should not more than 50,000 Bahts (Regulations of National Health Security Office (NHSO), 2006b).

During October 1, 2012 to present. It increased an amount of damage a second time. Firstly: Death or permanent disability which payment should not more than 240,000 Bahts or not exceed 400,000 Bahts. Secondly: Dismemberment or disability which payment should not more than 100,000 Bahts or exceeds 240,000 Bahts. Thirdly: The injury or illness which payment should not more than 100,000 Bahts. In addition, in year 2012 edition, it had additional compensation for infants dead at gestational age in 37 weeks or more. If their mother has regularly went to antenatal care unit. The further principle of compensation for mother who infant got damaged from prenatal care defined by type of damage. if it occurred damage but it did not classified as prescribed. In this case, regulation No. 2012 edition gave powers to QCSB for reconsider comparable to type of damage as appropriate.

In summary, it has been adjusted to increase payment rate for all types of damage in year 2006 was 2.4 to 2.5 times of year 2003. It has been adjusted to increased again in year 2012 was 1.4. –2 times of year 2006, or 3.3 to 5 times of year 2003 as all types of damage.

## **6. Procedures of the rights to claim**

From June 10, 2003 to January 2006, when patients got damaged by medical service unit. Injured patients or heirs which consist of parents; spouse; descendant; brethren with father or mother, aunt, uncle; and grandparents was able to file a complaint about preliminary compensation to a branch of NHSO or complaints unit or Provincial Public Health Office (PPHO) without status hierarchical of those persons. However, they need to file within 90 days after damage occurred or injured patients had known about damage

and measures to force were exercised within specific time (National Health Security Office (NHSO), 2003). In practice, agency which received request need to refer case to PHHO and after that, PHHO should propose this case to subcommittee. Later, from February 1, 2006 to September 30, 2012 injured patients or heirs or foster or provider was able to file a complaint about preliminary compensation at a branch of NHSO or complaints unit or PPHO within one year after injured patients known of damage (National Health Security Office (NHSO), 2006a; National Health Security Office (NHSO), 2012a).

The right to claim and deadline of filing. In year 2006 edition, it was still entitled injured patient who got damaged or their heirs in the claim already. It also requires a person who had additional entitled to file a claim as "the patron of the injured patient or provider." At the same time, it was determined to extend claim of existing, "... within 90 days from damage occurred or claimant known of damage "of edition year 2003 as" ...within one year from date that claimant known of damage "for edition of year 2006 and currently used same criteria in edition year 2012.

Appointment of body claim for preliminary compensation. In edition of year 2003 and edition of year 2006 before April 1, 2011, subcommittee was appointed by QSCB. However, since April 1, 2011 onwards, power to appoint subcommittee was appointed by "Secretary of the National Health Security" While edition of year 2012, power to appoint the subcommittee was appointed by QSCB as well as edition of year 2003 and edition of year 2006 before April 1, 2011.

## **7. Process of considering and deciding on preliminary compensation**

After Complaint unit received a claim from injured patient, this unit need to check documents or other evidence which submitted by injured patient. It may seek facts or decide information along with summary of facts presented to the subcommittee to





consider and preliminary compensation in each area which had a tripartite composition. First part of the subcommittee was qualified person or senior who has been recognized in this area, the second part was representative from providers, and the third part was representatives from the patients. These subcommittee need speedily to consider and decide on preliminary compensation completely within 30 days from date of receipt complaint. If subcommittee was not able to complete within stipulated time, they need to explained necessary reason to claimants. Meanwhile, subcommittee established within concept of a tripartite composition.

It was an important mechanism for creating understanding and reconciliation between providers and patients as well. The subcommittee need to consider the claim which met primary criteria assisted in its entirety or not. If it was met criteria, they would consider amount of budgets for compensation according to type of damage which defined. Then, subcommittee secretary wrote notice about the results of considering and deciding by subcommittee with a notice of right to appeal to claimant as soon as possible. Meanwhile, they would notify results of subcommittee to NHSO for payment through PPHO to claimant further (Regulations of National Health Security Office (NHSO), 2003; National Health Security Office (NHSO), 2004b; 2004c).

#### **8. Appeal process of claimant**

In case of claimant dissatisfied with decision of subcommittee such as claim did not meet on criteria, the claim was filed an overdue, approval of type of damage was not based on the criteria, approval of rates did not fully define on criteria, and approval of damage categorized was incorrect on criteria.

The claimant was able to appeal to QSCB under NHSO through PPHO or complaints unit within 30 days since claimant was already known of diagnosis. The NHSO need basic considers appeal which was follows criteria of an appeal or not. If it did not meet the conditions, they would inform the claimant to know

soon. If it met the conditions, they would gather and seek some information, some facts or any evidences which was an important for Board to decision further. These were summary update content.

Appeal process of claimant and some conditions of appeal decision of claimant in edition of year 2003 were split into two parts. The first one was responsibility of subcommittee which offered claim proposal to increase amount of preliminary compensation for payment twice, if Board considered that it was necessary. The second part was the right to appeal of injured patient or heirs who did not agree with the decision of subcommittee about payment according to type of damage. However, edition of year 2006 and edition of year 2012, it had a right to appeal of injured patient as "patients or heirs or dependents" which was specific in case of disagreement between claimant and subcommittee about payment rate of damage or incorrect rate of payment in specific rate.

#### **9. Number of claimants in each year**

During 2004–2016, number of file a claim offered about 9,942 cases and an average 765 cases per year. All of these claimants who accepted preliminary compensation were 8,221 cases and only 632 cases were accepted claimants average per year. In year 2013 found highest of accepted claimants were 995 cases. While, in year 2004 accepted claimants were only 73 cases. Accepted claimants which separated by type of damage found that, death or permanent disability were 4,336 cases and there were 334 cases of average presented per years. From this type, found that accepted claimants were highest in year of 2013 and lowest in year of 2004 as 995 and 73 cases respectively.

Dismemberment or disability offered 1,239 cases and there were 95 cases presented on average per years. It found that accepted claimants about disable were highest in year of 2011 and lowest in year of 2004 as 141 and 11 cases respectively. While, accepted of injuries or illness offered 2,646 cases and



there were 204 cases on average per years. It found that accepted claimants were highest in year 2013 and 2014 but lowest in year 2004 by 337,337 and 13 cases respectively. Accepted claimants from reviewed

content of compensation policy found that, there were offered 972 cases and there were 75 cases of average presented per years (National Health Security Office, Legal Division, 2016), (Table 1).

**Table 1** Overview of number of file a claim and claimants for preliminary compensation fund during 2004–2016

Year	Number of all Claimants	Judgment					
		Rejected (no.)	Accepted (no.)	Dead (no.)	Disabled (no.)	Minor Injuries (no.)	Reviewed (no.)
2004	99	26	73	49	11	13	12
2005	221	43	178	113	29	36	32
2006	443	72	371	215	71	85	60
2007	511	78	433	239	74	120	59
2008	658	108	550	303	73	174	74
2009	810	150	660	344	97	219	67
2010	876	172	704	361	139	204	72
2011	965	182	783	401	141	241	114
2012	951	117	834	401	140	293	88
2013	1,182	187	995	533	125	337	98
2014	1,112	181	931	478	116	337	112
2015	1,045	221	824	442	105	277	82
2016	1,069	184	885	457	118	310	102
<b>Total</b>	<b>9,942</b>	<b>1,721</b>	<b>8,221</b>	<b>4,336</b>	<b>1,239</b>	<b>2,646</b>	<b>972</b>
<b>Mean</b>	<b>765</b>	<b>132</b>	<b>632</b>	<b>334</b>	<b>95</b>	<b>204</b>	<b>75</b>

**Source:** Applied from National Health Security Office, Legal Division, 2016

#### 10. Rate of accepted claimants in three periods

During 2004–2016 it categorized in three periods consisted of period 1: During year 2004–2006, period 2: During year 2007–2012, and period 3: During year 2013–2016. The results found that overall rates of file a claim have been average decreased over this period. But rates of accepted claimants have been average increased over this period, however it did not include average of reviewed claimants. Rates of file a claim found that in three periods, it had average clearly decreased rates from 141.23% to 114.01%, and 103.66% of all claimants respectively.

Rates of claimants who accepted preliminary compensation were average 82.04% of all claimants, it found that all accepted in three periods had average a few increased of rates from 79.34% to 81.31%, and

up to 82.39% respectively. If compared rates accepted of death or permanent disability in three periods, it was found that in three periods had average decreased of rates from 62.85% to 52.16%, and down to 48.39% respectively. If compared rates accepted of dismemberment or disability, it found that three periods had average a few increased rates from 16.83% down to 16.60%, and up to 18.20% respectively. If compared rates accepted of injuries or illness, it was found that in three periods had average increased of rates from 20.31% to 31.24%, and 34.68% respectively. Rates of accepted claimants who have been reviewed preliminary compensation were average 11.82% of all accepted claimants. It found that in three periods had average decreased from 16.86% to 12.10%, and to 11.29% respectively (Table 2).

**Table 2** Overview of rates of accepted claimants and reviewed for preliminary compensation funding during 2004–2016

year	Claimants		Judgment									
	No.	Period (%)	All Accepted		Dead Accepted		Disabled Accepted		Injuries Accepted		Reviewed	
			No. / (%)	Period (%)	No.	Period (%)	No.	Period (%)	No.	Period (%)	No. / (%)	Period (%)
2004	99		73(73.74)		49		11		13		12(16.44)	
2005	221	141.23	178(80.54)	79.34	113	62.85	29	16.83	36	20.31	32(17.98)	16.86
2006	443		371(83.75)		215		71		85		60(16.17)	
2007	511		433(84.74)		239		74		120		59(13.63)	
2008	658		550(83.59)		303		73		174		74(13.45)	
2009	810	114.01	660(81.48)	81.31	344	52.16	97	16.60	219	31.24	67(10.15)	12.10
2010	876		704(80.37)		361		139		204		72(10.23)	
2011	965		783(81.14)		401		141		241		114(14.56)	
2012	951		834(87.70)		401		140		293		88(10.55)	
2013	1,182		995(84.18)		533		125		337		98(9.85)	
2014	1,112	103.66	931(83.72)	82.39	478	48.39	116	18.20	337	34.68	112(12.03)	11.29
2015	1,045		824(78.85)		442		105		277		82(9.95)	
2016	1,069		885(82.79)		457		118		310		102(11.53)	
<b>Total</b>	<b>9,942</b>		<b>8,221(82.04)</b>		<b>4,336</b>		<b>1,239</b>		<b>2,646</b>		<b>972(11.82)</b>	

**Source:** Applied from National Health Security Office, Legal Division, 2016

During 2004–2016, it was considered separately number of file a claim by division of services and found that, number of file a claim by division of obstetric (childbirth) were highest of 3,633 cases, the division of general surgery and general medicine presented 1,679 cases and 1,607 cases respectively.

In division of obstetric, found that numbers of file a claim were highest in year 2013 and lowest in year 2004 as 430 and 47 cases respectively. In division of general surgery, numbers of file a claim were highest offered in year 2010 and lowest in year 2004 as 186 and 10 cases respectively. In division of general medicine, found that numbers of file a claim were highest shown in year 2013 and lowest in year 2004 as 182 and 38 cases respectively (National Health Security Office, Legal Division, 2016). (Table 3).

### 11. Type of file a claim

During 2004–2016, it was considered separately number of file a claim by division of services and found that, number of file a claim by division of obstetric (childbirth) were highest of 3,633 cases, the division of general surgery and general medicine presented 1,679 cases and 1,607 cases respectively. In division of obstetric, found that numbers of file a claim were highest in year 2013 and lowest in year 2004 as 430 and 47 cases respectively. In division of general surgery, numbers of file a claim were highest offered in year 2010 and lowest in year 2004 as 186 and 10 cases respectively. In division of general medicine, found that numbers of file a claim were highest shown in year 2013 and lowest in year 2004 as 182 and 38 cases respectively (National Health Security Office, Legal Division, 2016). (Table 3).

**Table 3** Overview type of file a claim for preliminary compensation fund which are separated by division of services during 2004–2016

Division	Year													Total
	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	
Medicine (General)	38	79	113	94	91	126	136	161	140	182	137	155	115	1,607
Obstetric (Childbirth)	47	91	158	179	217	276	307	364	356	430	409	396	403	3,633
Gynecology	-	-	-	14	25	4	4	23	13	31	23	24	22	183
Sterilization	-	-	2	32	43	64	48	51	71	85	94	109	114	713
General Surgery	10	32	75	86	128	171	186	147	166	170	184	161	163	1,679
Orthopedics (Bone)	-	-	-	-	1	17	6	33	24	43	41	50	36	251
Pediatric	-	-	76	57	99	87	97	105	109	152	136	93	97	1,108

**Table 3** (Cont.)

Division	Year													Total
	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	
Dental	-	-	-	11	7	5	13	11	11	13	9	9	7	96
Medicine (Allergic)	-	-	-	7	6	14	19	19	23	28	15	17	13	161
Optic	-	-	2	11	13	22	37	28	17	16	23	11	19	199
Ear, Nect, Nose	-	-	-	-	3	4	1	3	2	3	2	6	8	32
Psychiatry	-	-	-	-	-	-	-	4	1	5	7	3	3	23
Other	4	19	17	20	25	20	22	16	18	24	32	11	29	257
<b>Total</b>	<b>99</b>	<b>221</b>	<b>443</b>	<b>511</b>	<b>658</b>	<b>810</b>	<b>876</b>	<b>965</b>	<b>951</b>	<b>1,182</b>	<b>1,112</b>	<b>1,045</b>	<b>1,069</b>	<b>9,942</b>

**Source:** Applied from National Health Security Office, Legal Division, 2016

## 12. Budgets of preliminary compensation funds

During 2004–2016, National Health Security Committee (NHSC) allocated all budgets for preliminary compensation funds about 1,194,699,398 Bahts and all allocative budgets on average per year was 108,609,036 Bahts. In year 2016, it was found that allocative budgets were highest as 263,449,800 Bahts. In year 2008 and 2010 found that allocative budgets were lowest at zero. In the same time, NHSC has been actually paid to accept claimants about 1,343,141,313 Bahts and all actually paid on average per year were 103,318,563 Bahts. In year 2016 found that actually paid were highest as 212,952,000 Bahts.

In year 2004 found that actually paid were lowest by 4,865,000 Bahts. In addition, when

calculated actually preliminary compensation per accepted claimants in all years, it was found that actually paid were average claimed about 163,379.31 Bahts per head of accepted claimant. In year 2015, average of highest paid was 246,273.42 Bahts per a head of accepted claimant. In year 2004, average lowest paid was 66,643.84 Bahts per head of accepted claimant. In years 2004–2016 categorized allocative budgets and actually paid in three periods, third period allocated budgets more than second period and the first period about 9 times and 3 times respectively. Actually preliminary compensation of the third period paid more than the second period and the first periods about 2 times and 15 times respectively (National Health Security Office, Legal Division, 2016). (Table 4)

**Table 4** Overview of number of allocative budgets and actually paid for preliminary compensation fund during 2004–2016

Year	Allocative Budget for Compensation		Budget for Actually Compensation		Number of accepted claimants	No. of paid per accepted claimants (Baht)
	No. of budget per years (Baht)	No. of budget per Period (Baht)	No. of paid per years (Baht)	No. of paid per period (Baht)		
2004	230,000,000		4,865,000		73	66,643.84
2005	9,400,000	264,700,500	12,815,000	54,333,500	178	71,994.38
2006	25,300,500		36,653,500		371	98,796.50
2007	26,411,800		52,177,535		433	120,502.39
2008	-		64,858,148		550	117,923.91
2009	47,000,000	91,558,988	73,223,000	462,912,013	660	110,943.94
2010	-		81,920,000		704	116,363.64
2011	12,830,888		92,206,330		783	117,760.32
2012	5,316,300		98,527,000		834	118,137.89
2013	251,429,550		191,575,300		995	192,537.99
2014	162,188,640	838,439,910	218,439,200	825,895,800	931	234,628.57
2015	161,371,920		202,929,300		824	246,273.42
2016	263,449,800		212,952,000		885	240,623.73



**Table 4** (Cont.)

Year	Allocative Budget for Compensation		Budget for Actually Compensation		Number of accepted claimants	No. of paid per accepted claimants (Baht)
	No. of budget per years (Baht)	No. of budget per Period (Baht)	No. of paid per years (Baht)	No. of paid per period (Baht)		
<b>Total</b>	<b>1,194,699,398</b>		<b>1,343,141,313</b>		<b>8,221</b>	<b>163,379.31</b>
<b>Mean</b>	<b>108,609,036</b>		<b>103,318,563</b>		<b>632</b>	<b>142,548.50</b>

Source: Applied from National Health Security Office, Legal Division, 2016

**13. Rates of allocated budgets and the actually paid** In year 2008 and 2010, rates of number of budgets were lowest allocated zero. In year 2014 rates of number of budgets were highest paid as 0.156% (4.52 Bahts). In year 2004 found rates of budgets were lowest as 0.008% (0.10 Bahts) of one UC population (National Health Security Office (NHSO), 2015a; 2015b). (Table 5).

During 2004–2016, NHSC need average allocated all budgets for preliminary compensation fund as defined by law was not more than 1% of one UC population. In practically, The NHSO had average allocated all years as 0.084% (1.91 Bahts) 0.094% (2.14 Bahts). In year 2004 rates of numbers of budgets were highest allocated 0.376% (4.92 Bahts).

**Table 5** Rates of numbers of allocative budgets and actually paid for preliminary compensation fund by law during 2004–2016

year	Number of budget by a UC capitulation (Baht / person / year)	Preliminary Compensation Fund				
		Amount of allocated by law up to 1% (Baht / person / year)	Amount of Actually Allocated (person / year)		Amount of Actually Paid (person / year)	
			Baht	% By law	Baht	% By law
2004	1,308.50	13.08	4.92	0.376	0.10	0.008
2005	1,396.30	13.96	0.20	0.014	0.27	0.019
2006	1,659.20	16.59	0.53	0.032	0.77	0.046
2007	1,899.69	18.99	0.57	0.030	1.12	0.059
2008	2,100.00	21.00	-	0.000	1.38	0.066
2009	2,002.00	22.02	0.99	0.049	1.54	0.077
2010	2,401.33	24.01	-	0.000	1.72	0.072
2011	2,546.48	25.46	0.27	0.011	1.92	0.075
2012	2,755.60	27.56	0.11	0.004	2.03	0.074
2013	2,755.60	27.56	5.17	0.188	3.94	0.143
2014	2,895.09	28.95	3.36	0.116	4.52	0.156
2015	2,895.09	28.95	3.34	0.115	4.20	0.145
2016	3,028.94	30.28	5.40	0.178	4.37	0.144
<b>Mean</b>	<b>2,280.29</b>	<b>22.80</b>	<b>1.91</b>	<b>0.084</b>	<b>2.14</b>	<b>0.094</b>

Source: Applied from National Health Security Office, Legal Division, 2016

**14. Satisfaction of initial assistance mechanism** composition by subcommittee was appropriate and 80.47% and 76.98% presented that consideration from subcommittee was fast. But claimants had lowest satisfied (73.30%) on the system of payment for alleviate suffering in initial preliminary (National Health Security Office, Legal Division, 2011).

In year 2011, NHSO conducted a satisfaction survey of preliminary compensation funds by collecting data from 965 claimants, respond rate was 22.59%. Results showed 76.26% of claimants satisfied, If considered separate of each item, claimants had highest satisfied on process of consideration by subcommittee and 81.04% had good relationship. Item of

#### 15. Number of medical lawsuits was sued

MOPH by legal division (Ministry of Public



Health, The Legal Group, 2016) showed prosecution of defendant during 1993 to May 2016 stated that there were 255 civil cases, 38 criminal cases, and 2 administrative cases (Ministry of Public Health, The Legal Group, 2016). 142 civil cases defendant withdrew charges, 9 cases displacement by Courts and 6 sued cases did not meet Courts. Number of cases processed by MOPH ended to 48, in total won 27 cases and lost 21 cases. The MOPH had paid judgment to 36 million Bahts. It was under consideration in Court 17 cases, appeals 17 cases (in the first Court, the MOPH, won 16 and lost 1 case), and Supreme Court, 16 cases (in this appeal, the MOPH, won 14 and lost 2 cases).

During this time, 50 civil case and consumer cases in Courts (separate to civil cases 10 and 40 consumers cases), approximately 3,029 million Bahts attend the Court. The civil cases Case of those who received preliminary assistance under Article 41, in Law of National Health Security, after receiving preliminary compensation to offensive they brought matter to civil suit against the MOPH during 2002–2014 with a total of 68 cases (representing 31.9% of total civil lawsuit in that time, included 210 cases). Civil judgment that MOPH lost, the Ministry of Finance has taken recourse to service providers, mostly doctors and nurses, made reimbursement in proportion from 30%–100% of judgment of Court, including 5 cases such as intolerance, orthopedics, snake bites, stitches, wound, and removing tube out of neck. Only removing tube, the Ministry of Finance had recoured and paid to complainant by physicians and nurses.

In respect of criminal cases, 38 cases was allegations in official level of 17 cases, top prosecutor of 5 cases, under judicial by the first Court 1 cases and appeals Court 4 cases, the case ended at 2 cases. Nine injured party has withdrawn sued and complaint. Considering errors led to indictment, during 1996–2012 found that 76 cases were prosecution of mistake on treatment with highest level of specialized

hospital/general hospital and community hospital errors of childbirth, poor care providing, misdiagnosis, allergies, medications, lower standards treatment, and used of incorrect equipment were 38, 18, 17, 10, 6, and 2 cases, respectively (Ministry of Public Health, The Legal Group, 2016)

### Discussion

In section 41 Law of National Health Security 2002 need determined that "NHSB was able to use their judgment in annually budgets which paid to providers unit not more than one percent of the funds as preliminary compensation for injured patients who got damaged by healthcare service and this was prescribed in accordance with criteria, procedures and conditions by the Board, but the main objective of this was to provide moral support and relief injured patients who was initially received damages from healthcare service without proof fault, this included process of reconciliation, to reduce conflicts between providers and patients. Thus, in practice, discretion of the Board within this section must not be violate or distort the objective of the Law.

During 2004–2016, these actions of the policy implied to success situation of policy such as: Increment trend of the rate of accepted claimants, Reduction trend of rate of death or permanent disability, Increment trend of rate of injuries or illness, Reduction trend rate of reviewed (Farrell, Devaney and Dar, 2010), and may be also imply to satisfaction of claimants that are shown on survey of NHSO, but, the item ability of the system to alleviate suffering of initial preliminary is found lowest and satisfaction of such features may be limited because of reference was made by year to year.

In difference way, may be imply to the obstacles situation of the policy such as: Reduction trend rate of file a claim, Increment trend of a numbers of file a claim which are sort by division are obstetric (childbirth) general surgery and general medicine in

rate relatively high (69.59% of accepted claimants), Budgets allocated and actually paid of preliminary compensation fund did not meet the goals which were imposed by law. There were still more sued cases of healthcare care into the MOPH as defendant include civil cases, criminal cases, and administrative cases, especially sued by cases under Article 41, that had been brought the dispute to civil Court with a total of 68 cases. Six civil cases after judgment of Court, providers must be taken reimbursement in high rate (Regulations of National Health Security Board, 2003; National Health Security Office (NHSO), 2004b; 2004c; Farrell, Devaney and Dar, 2010; National Health Security Office, Legal Division, 2016).

From above, it showed that there were many conditions that caused an impact on the policy such as, accessibility of the mechanisms that have been damaged of injured patients, high incidence of adverse events which were effected to file a claim in some service, divisions allocation budgets of the policy were not meet purpose of Law, healthcare cases were still offered into the Court, and recourse from the providers were still taken. Under the existing of these situations, what were the most important conditions that respond the policy objective? This was an adequate budget and procedure of the policy implementation as a tool which incentives injured patients.

The consideration of performance and behavior of funds body by objectives of law and content of prescribing of this criteria, procedures and conditions for preliminary compensation have considered by the Board since year 2004 to present found that National Health Security Board had interpreted or implemented that did not meet fully objectives of Law under section 41 as mentioned. These actions were directly affected to rate of funds and rate of preliminary compensation by type of damage in each year (it has been interpreting as paying for "preliminary compensation" but, were not for "reasonably compensation for the damage," thus, rate of preliminary compensation was lower approved

than market price).

It was found that during 2004–2016, the Board did not approved funds as closely defined by Law which it was highest expected up to one percent of one UC population (America's Health Insurance Plans, 2006). In practically, The NHSO had been average allocated about 0.084% per year (1.91 Bahts) of one UC population which was less than highest expected average about 12 times. Also it had been average paid to accepted claimants about 0.094% (2.14 Bahts) of one UC population which was less than highest expected average about 11 times. Moreover, in year 2008 and 2010 found that allocative budgets were lowest by zero. In the year 2010, a policy study of the fund for strengthening relationships in the public health service system was proposed to be fixed premiums per capita between 5–11 Bahts (Pitayangsarit and Sumalee, 2010) which was 50% (24.01 Bahts) of allocative budgets from NHSO in year.

From above, after the Board estimated funds in each year that depended on rate of claimants that may qualify as experience of past year, it was approved with an average rate of less than 1% of all time. These actions were also indirectly affected to deciding of injured patients whether used the right to claim within mechanism of the policy or sued Court (Farrell, Devaney and Dar, 2010). If amount was paid less than prosecution, injured patients would be sued Court, particularly case who had high social status. In the same way, it also indirectly affected to period of recourse from providers by Ministry of finance.

Recourse was effect to providers after judgment of the Court, if injured patients had used the right to claim with mechanism of this policy. The authority of Ministry of Finance to recourse it would finish for a time. Unless the injured patients would be sued Court and providers were guilty of gross negligence. The Ministry of Finance had an authority to recourse again. In these periods, the Ministry of finance cannot take reimbursement from the providers, because Ministry of



finance could not find wrongdoers. Moreover, it also indirectly affected to decide subcommittee to use this process to consider understanding between providers and injured patients in case of damage by nature of the division especially division of obstetrics (childbirth) that adverse events may be more occurred from system error (Kalra, 2004; Gilmour, 2006; Kalra, Kalra and Baniak, 2013; National Health Security Office, Legal Division, 2016). If amount of preliminary compensation were reasonable allocated for the damage by the spirit of the Law as more than rate and procedure which were not flexible at present. The policy implementation of the subcommittee will be more response to policy objectives.

### Conclusion and Suggestion

Law of National Health Security in 2004, Section 41 was stipulates that the Board of the NHSO must be allocated funds not more than one percentage of the funds to be paid the injured patients who have damaged resulting from medical treatment. This action must be implement according to the regulations which were prescribed by the Board. In practice, the discretion of the Board within this section need not violate or distort the objectives of the Law. From 2004 to present, NHSO had been regularly taken to develop and improve the contents of the regulations twice in year 2006 and in year 2012 respectively which payment rate were along adjusted to increase for all types of damage. After, there were consider the performance of the policy, some success situation was shown. However, it had some conditions that caused an impact on the policy as accessibility of the mechanisms that have been damaged of the injured patients, high incidence of adverse events which were effected to file a claim in some service divisions. The allocation budgets of the policy were not meet the purpose of Law, healthcare cases were still offered into the Court, and recoured from providers were still taken

After reviewed the considered of performance and behavior of funds body found that NHSB had

interpreted or implemented that did not meet fully objectives of Law under section 41 as mentioned. These actions were directly affected to rate of the fund and rate of preliminary compensation by type of damage in each year, and were also indirectly affected to decided of injured patients whether it would be used the right to claim with mechanism of the policy or will sued the Court. If the amount that was less than prosecution, injured patients would be sued the Court, particularly the case that had high social status. In the same way, it also indirectly affected to period of the recourse from providers by the Ministry of finance after the judgment of the Court, if injured patients used the right to claim with mechanism of the policy. In these period, the Ministry of finance could not took reimbursement from the providers, because of the Ministry of finance cannot find wrongdoers. Moreover, it also indirectly affected to decide of the subcommittee to use the process for consideration as a tool to promote understanding between providers and injured patients in case of damage by the nature of division especially division of Obstetrics (childbirth) that adverse events may be more occurred from system error. If amount of preliminary compensation are reasonable allocated for damage by the spirit of Law as more than rate and procedure which were not flexible at present.

NHSB need to interpreted or implemented successful objectives of the Law under section 41 as mentioned and may be approved funds as defined by Law which it was medium expected up to nearly one percent of one UC population. If the amount was less than the prosecution, the injured patients would be sued Court more. In same way, if injured patients have use the right to claim within mechanism of the policy, opportunity of recourse to providers of Ministry of finance will be less effect or finish for a time. If amount of preliminary compensation were reasonable allocated for the damage by the spirit of Law as more than the rate and procedure which were not flexible in. The policy implementation of the subcommittee will be





more response to the policy objectives.

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