NHS
Corby
Clinical Commissioning Group

NHS
Nene
Clinical Commissioning Group

DEFINING THE BOUNDARIES BETWEEN NHS AND PRIVATE HEALTHCARE

April 2019

Document Version Control

NAME	CHANGES	DATE
Nene CCG and Corby CCG	Review / no changes to previous version of April 2015	22/02/2019

Target Audience	Providers, Primary Care, Commissioners, Contracting, prior approval team and informatics
Brief description	Principle and guidance underpinning all procedures of limited clinical value including the process for approval and payments
Action Required	Following approval contracting will ensure that the policy and related process as in appendix 1 is incorporated into relevant provider contracts and commissioner disseminate the policy to all General Practitioners, Joint Commissioning, Community Contracting, all providers (acute, community and primary care)
Related policies	Prior Approval Scheme (updated April 2019)
Applicable Age Range	Patients and service users of all ages, to include adults and children
Date for Review	April 2020

1. INTRODUCTION

This document is designed to explain the boundaries between NHS and private healthcare as understood by NHS Nene Clinical Commissioning Group and NHS Corby Clinical Commissioning Group (The CCGs)

2. DEFINITIONS

Private patients are patients who receive private healthcare, funded on a pay-as-you-go basis or via a medical insurance policy.

Private healthcare means medical treatments or medical services which are not funded by the NHS, whether provided as a private service by an NHS body or by the independent sector. A patient may choose to seek treatment on a private basis even where that treatment is available from an NHS provider.

NHS commissioned care is healthcare which the patient's responsible primary care trust has agreed to fund. The CCG has policies which define the elements of healthcare which the CCG is and is not prepared to commission, and IFR processes to consider commissioning care for individual patients outside those policies.

Co-payment is seldom permitted in the NHS, other than where, pursuant to Regulations made under the National Health Service Act 2006, specified patients are required to make a specified contribution to the cost of NHS commissioned care.

Co-funding of NHS care is any arrangement, apart from the permitted co-payment defined above, under which the cost of an episode of healthcare for an NHS patient, which in part involves NHS commissioned care, is or is proposed to be partly funded by the patient. Co-funding is not permitted within the NHS.

Attributable costs are the financial costs to be considered when privately funded treatment is provided within an NHS setting. Attributable costs refer to all costs which would not have been incurred by the NHS had the patient not sought private treatment. If an NHS patient has also gone to a private provider (ie: in connection with the same medical condition for which they are receiving NHS care) to buy a drug not available as part of the NHS care package, then they are expected to pay for any consequential costs (these can include additional monitoring needed for the drug, blood tests, CT Scans, etc) and also pay for the treatment of predictable complications of receiving the drug. If a patient chooses to seek private healthcare for a treatment that is not normally commissioned by the NHS, the patient is expected to pay all attributable costs. It is not acceptable, for example, to 'piggy back' a private monitoring test onto routine monitoring which the patient might be having, in parallel, within the NHS.

3. THE POLICY

3.1 This policy applies to any patient for whom the CCG is the Responsible Commissioner.

Entitlement to NHS Care

3.2 NHS care is made available to patients in accordance with the policies of the CCG. However, individual patients are entitled to choose not to access the NHS care and/or to pay for their own healthcare through a private arrangement with doctors and other healthcare professionals. Save as set out in this policy, a patient's entitlement to access NHS healthcare should not be affected by a decision by a patient to fund part or all of their healthcare needs privately.

3.3 An individual who is having treatment which would have been commissioned by the CCG, but who has commenced that treatment on a private basis, can at any stage request to transfer to complete the treatment in the NHS. In this event, the patient will, as far as possible, be provided with the same treatment as the patient would have received if the patient had had NHS treatment throughout. This may mean the patient having to wait for the continuation of treatment, to ensure that he or she receives care on the same basis as any other NHS patient and is not advantaged by having begun their treatment on a private basis.

3.4 Patients are entitled to seek part of their overall treatment for a condition through a private healthcare arrangement and part of the treatment as part of NHS commissioned healthcare. However the NHS commissioned treatment provided to a patient is always subject to the clinical supervision of the NHS treating clinician. There may be times when an NHS clinician declines to provide NHS commissioned treatment if he or she considers that any other treatment given, whether as a result of privately funded treatment or for any other reason, makes the proposed NHS treatment clinically inappropriate.

3.5 An individual who has chosen to pay privately for an element of their care, such as a diagnostic test, is entitled to access other elements of care as NHS commissioned treatment, provided the patient meets NHS commissioning criteria for that treatment. However, at the point that the patient seeks to transfer back to NHS care, the patient should:

- be reassessed by the NHS clinician;
- not be given any preferential treatment by virtue of having accessed part of their care privately; and
- be subject to standard NHS waiting times.

3.6 A patient whose private consultant has recommended treatment with a medication normally available as part of the NHS commissioned care in the patient's clinical circumstances can ask his or her NHS GP to prescribe the treatment as long as:

- the GP considers it to be medically appropriate in the exercise of his or her clinical discretion;
- the drug is listed on the CCG's formulary or the drug is normally funded by the CCG; and
- the GP is willing to accept clinical responsibility for prescribing the medication.

3.7 There may be cases where a patient's private consultant has recommended treatment with a medication which is specialised in nature and the patient's GP is not prepared to accept clinical responsibility for the prescribing decision recommended by another doctor. If the GP does not feel able to accept clinical responsibility for the medication, the GP should consider whether to offer a referral to an NHS consultant who can consider whether to prescribe the medication for the patient as part of NHS funded treatment. In all cases there should be proper communication between the consultant and the GP about the diagnosis or other reason for the proposed plan of management, including any proposed medication.

3.8 Medication recommended by private consultants may be more expensive than the medication options prescribed for the same clinical situation as part of NHS treatment. In such circumstances, local prescribing advice from the CCG should be followed by the NHS GP without being affected by the privately recommended medication. This advice should be explained to the patient who will retain the option of purchasing the more expensive drug via the private consultant.

Joint NHS and private funding

3.9 NHS care is free of charge to patients unless regulations have been brought into effect to provide for a contribution towards the cost of care being met by the patient. Such charges include prescription charges and some clinical activity undertaken by opticians and dentists. These charges are not "co-funding" but constitute a rarely permitted form of "co-payment". The specific charges are set by Regulations. These charges have always been part of the NHS.

3.10 Co-funding and other forms of co-payment, other than those limited forms permitted by Regulations, are currently contrary to NHS policy. The CCG will not consider any funding requests of this nature.

3.11 Patients are entitled to contract with NHS Acute Trusts to provide privately funded patient care as part of their overall treatment. It is a matter for NHS Trusts as to whether and how they agree to provide such privately funded care. However NHS Trusts must ensure that private and NHS care are kept as clearly separate as possible. Any privately funded care must be provided by an NHS Trust at a different time and place to NHS commissioned care.

In particular:

- Private and NHS funded care cannot be provided to a patient in a single visit to an NHS hospital;
- If a patient is an in-patient at an NHS hospital, any privately funded care must be delivered for the patient in a separate building or separate part of the hospital, with a clear division between the privately funded and NHS funded elements of the care, unless separation would pose overriding concerns for patient safety;
- Subject to the patient safety exception outlined above, a patient is not entitled to "pick and mix" elements of NHS and private care within the same treatment, and so is unable to have privately funded and NHS funded treatment provided as part of

the same episode of care. (eg: a patient undergoing a cataract operation as an NHS patient cannot choose to pay an additional private fee to have a multi-focal lens inserted during his or her NHS surgery instead of the standard single focus lens inserted as part of NHS commissioned surgery).

3.12 Private prescriptions may not be issued during any part of NHS commissioned care. A common enquiry concerns fertility treatment, where a patient who is paying for IVF treatment, ask their GP to issue NHS prescription drugs required as part of that treatment or to seek NHS funding for investigations which are part of the privately funded IVF treatment. This is not permitted. If the patient does not meet the CCG's commissioning criteria for funding IVF, the NHS should not prescribe drugs or support other medical procedures required as part of the privately funded treatment.

3.13 If a patient is advised to be treated with a combination of drugs, some of which are not routinely available as part of NHS commissioned treatment, the patient is entitled to access the NHS funded drugs and can consult a clinician privately for those drugs which are not commissioned by the NHS. If a combination of drugs or other treatments is or are required to be administered at the same time, part of which is not funded by the NHS, the patient must fund all of the drugs provided and the other costs associated with the proposed treatment. Patients in such circumstances may approach the CCG to apply for funding for the whole of the treatment. However, if the CCG policies do not allow routine commissioning for such treatment, the patient will only be entitled to seek funding on an individual basis on the grounds that the patient has exceptional circumstances. The fact that a patient was prepared to fund part of their own treatment is not a proper ground to support a claim for exceptional circumstances.

3.14 Trusts are entitled to make an exception to the policy in the above paragraph, to permit privately funded and NHS funded care to be delivered at the same time where individual patient safety considerations make it imperative for the NHS and privately funded treatments to be delivered simultaneously. The decision to depart from the policy of clearly separating private and NHS treatment should taken by the Trust Medical Director and the reasons should be fully recorded in the patient's medical records.

3.15 When a patient wishes to pay privately for a treatment not normally funded by the patient's CCG, the patient will be required to pay all costs associated with the privately funded episode of care. The costs of all medical interventions and care associated with the treatment include assessments, inpatient and outpatient attendances, tests and rehabilitation.

3.16 The CCG will not make any contribution to the privately funded care to cover treatment that the patient could have accessed via the NHS.

3.17 Any privately funded arrangement which is agreed between a patient and a healthcare provider (whether an NHS Trust or otherwise) is a commercial matter between those parties. Save as set out above, the CCG is not a party to those arrangements and cannot take any responsibility for the terms of the agreement, its performance or the consequences for the patient of the treatment.

3.18 CCG policies define which treatment the CCG will and thus, by implication, will not fund. Accordingly if a patient commences a course of treatment that the CCG would not normally fund, the CCG will not pick up the costs of treatment through the course.

3.19 A patient is entitled to apply for funding by means of an individual funding request, alleging that his or her clinical circumstances are exceptional. However, where the CCG has decided not to fund a treatment routinely, the fact that the patient has demonstrated a benefit from the treatment to date (in the absence of any other evidence of exceptionality) would not be a proper basis for the CCG to agree to change its policy. Such an approach would result in the CCG approving funding differentially for persons who could afford to fund part of their own treatment. It is the responsibility of the Private Healthcare Provider to ensure the patient is fully informed of the CCGs position relating to on-going funding before commencing the private treatment.

3.20 If a patient commences treatment privately for a drug or other medical intervention that the CCG agrees to fund routinely, then provided that the patient's clinical circumstances are within those defined in the CCG's commissioning policy, the patient is entitled to transfer to NHS funded treatment at any stage. However, the CCG will not reimburse the patient for any treatment received as a private patient before a request is made for NHS funded treatment.

3.21 If a patient seeks funding from the CCG for a drug or other treatment that is not routinely funded and this application is approved on the grounds of exceptionality, the CCG will not meet the costs of any prior privately funded treatment.

3.22 Patients who wish to persuade the CCG to pick up funding for treatments that are not routinely commissioned can:

- make an application for funding for their case an as individual case under the CCG's IFR policy, or
- request the CCG treat the application as an in year service development to be considered under the CCG's In-Year Service Development policy, or
- request that the treatment be considered for inclusion as part of the CCG's annual plan and, if approved, be funded from the commencement of the coming financial year.

3.23 Continuation funding for treatment which has been commenced on a private basis will not be approved in any other circumstances.

3.24 Patients can access treatment on the NHS if and when the treatment is made available to all patients and/or where the CCG services and the patient's clinical needs meet CCG commissioning policies for that particular treatment.

Other

3.25 Individual patients who have been recommended treatment by an NHS consultant that is not routinely commissioned by the CCG under its existing policies are entitled to ask their GP for a referral for a second opinion, from a different NHS consultant, concerning their

treatment options. The CCG's Commissioning Team is available to offer advice on preferred providers in such circumstances. However, a second opinion supporting treatment which is not routinely commissioned by the CCG does not create any entitlement to NHS funding for that treatment. The fact that two NHS consultants have recommended a treatment would not normally amount to exceptional circumstances.

3.26 NHS patients are entitled to make a complaint about any refusal by the CCG to agree to fund NHS care in their individual case. If such a complaint is made, the CCG will investigate the patient's concerns as quickly as possible using the CCG's complaints procedure and will assess the decisions made against this policy and the relevant CCG commissioning policies.

3.27 When grounds for a patient being considered an exception have been established, then the CCG will then assess and prioritise that patient's needs against competing needs within the budgets available. There may be times when the funding of a patient's treatment may need to be brought forward to the next financial year or when money can be released through disinvestment elsewhere.

4. KEY PRINCIPLES SUPPORTING THIS POLICY

4.1 Clinical Commissioning Groups have legal responsibility for NHS healthcare budgets and their primary duty is to live within the budget allocated to them.

4.2 CCG commissioners have a responsibility to make rational decisions in determining the way in which they allocate resources and to act fairly between patients.

4.3 All NHS commissioned care should be provided as a result of a specific policy or decision to support the proposed treatment. A third party has no mandate to pre-commit resources from CCG budgets unless directed by the Secretary of State.

4.4 New treatments should be assessed for funding according to the basic principles of clinical effectiveness, safety and cost effectiveness and then prioritised within an ethical framework that supports consistent and affordable decision making.

4.5 If treatment is provided within the NHS which has not been commissioned in advance by a CCG, the responsibility for ensuring on-going access to that treatment lies with the clinician or other person who initiated the treatment.

5. DOCUMENTS WHICH HAVE INFORMED THIS POLICY

Health and Social Care Act, 2012.
http://www.legislation.gov.uk/ukpga/2012/7/pdfs/ukpga_20120007_en.pdf

World Class Commissioning Assurance Handbook (June 2008).
www.dh.gov.uk/en/managingyourorganisation/commissioning/worldclasscommissioning/assurance/index.htm

The NHS constitution http://www.dh.gov.uk/en/Healthcare/NHSConstitution/index.htm

National Prescribing Centre and Department of Health. Defining DH guiding principles for processes supporting local decision-making about medicines (January 2009). www.dh.gov.uk/en/managingyourorganisation/commissioningdh_093414

NHS Confederation. Priority setting: an overview. (2007). www.nhsconfed.org/publications/prioritysetting/pages/prioritysettingoverview.aspx

NHS Confederation. Priority setting: managing new treatments. (2008). www.nhsconfed.org/publications/prioritysetting/pages/prioritysettingnewtreatments.aspx

NHS Confederation. Priority setting: managing individual funding requests. (2008). www.nhsconfed.org/publications/prioritysetting/ages/prioritysettingfunding.aspx

NHS Confederation. Priority setting: legal considerations. (2008). www.nhsconfed.org/publications/prioritysetting/pages/prioritysettinglegal.aspx

NHS Confederation. Priority setting: strategic planning. (2008). www.nhsconfed.org/publications/prioritysetting/pages/prioritysettingstrategicplanning.aspx

Department of Health's 2004 Code of Conduct for Private Practice http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/D H_085197

Department of Health's Consultation Document: Guidance on NHS patients who wish to pay for additional private care http://www.dh.gov.uk/en/Consultations/Liveconsultations/DH_089926

Improving access to medicines for NHS patients. A report for the Secretary of State for Health by Professor Mike Richards CBE. (November 2008) www.dh.gov.uk/en/publicationsandstatistics/publications/publicationspolicyandguidance/dh_089927