Private vs NHS Policy final Draft

Decision support framework for defining the boundaries between privately funded treatment and entitlement to NHS funding, under a range of circumstances.

Leeds North CCG, Leeds South and East CCG and Leeds West CCG

Version:	final Draft
Ratified by:	Leeds West CCG Assurance Committee on (date) Leeds North CCG Governance, Performance and Risk Committee on (date) Leeds South and East CCG Governance and Risk Committee on (date)
Name & Title of originator/author(s):	Drs Simon Stockill and Bryan Power, Medical Directors, LWCCG Dr Manjit Purewal, Medical Director LNCCG Dr David Mitchell, Medical Director LSECCG Dr Fiona Day, Consultant in Public Health Medicine, Leeds City Council
Name of responsible committee/individual:	Leeds West CCG Assurance Committee Leeds North CCG Governance, Performance and Risk Committee Leeds South and East CCG Governance and Risk Committee
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Produced on behalf of NHS Leeds West CCG, NHS Leeds North CCG and NHS Leeds South and East CCG

Introduction

This framework supports Leeds Clinical Commissioning Groups (CCGs), Leeds North CCG, Leeds South & East CCG and Leeds West CCG in defining the boundaries between privately funded treatment and entitlement to NHS funding, under a range of circumstances. This framework applies to any patient where the CCGs are the responsible commissioners for NHS care. It equally applies to any patient needing medical treatment where the Secretary of State has prescribed that the CCGs are the responsible commissioner.

This document is intended as an aid to decision making. It should be used in conjunction with Leeds CCG policies on Individual Funding Requests and associated decision making frameworks.

Entitlement to NHS Care

NHS care is made available to patients in accordance with the commissioning policies of the CCGs. However, individual patients are entitled to choose to pay for their own healthcare through a private arrangement with doctors and other healthcare professionals. A patient's entitlement to access NHS healthcare is not usually affected by a decision to fund part or all of their healthcare needs privately. However, there are certain limitations if they are "topping up" their care privately (see below).

An individual who has commenced treatment that would have been routinely commissioned by the CCGs (NHS-commissioned healthcare) on a private basis can, at any stage, request to transfer to complete the treatment within 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. However, the CCGs will not reimburse the patient for any treatment received as a private patient before a request is made to move back into the NHS.

Patients are entitled to seek part of their overall treatment for a condition through a private healthcare arrangement and part of the treatment as NHS-commissioned healthcare. However, the NHS-commissioned treatment provided to a patient is always subject to the clinical supervision of an 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.

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

- the CCGs can request the patient be reassessed by an NHS clinician
- the patient will not be given any preferential treatment by virtue of having accessed part of their care privately,

AND

- the patient will be subject to standard NHS waiting times

A patient whose private consultant has recommended treatment with a medication normally available as part of NHS-commissioned care can ask his or her NHS clinician to prescribe the treatment as long as:

- the NHS clinician considers it to be medically appropriate in the exercise of his or her clinical discretion
- the drug is normally funded by the CCGs

AND

- the NHS clinician is willing to accept clinical responsibility for prescribing the medication

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 may prescribe the medication as part of NHS funded treatment. In all cases there should be proper communication between the NHS consultant and the GP about the diagnosis or other reason for the proposed plan of management, including any proposed medication.

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 the NHS GP,

should follow prescribing advice from the CCGs eg use of generic prescription. This advice should be explained to the patient who will retain the option of purchasing the more expensive drug via the private consultant.

The CCGs will *not* fund care, at the request of the patient, in the private sector in an NHS Trust or from an Independent provider:

- even if some components of treatment could have been accessed via the NHS.
- as an alternative to NHS care where NHS eligibility criteria or thresholds are not met

Parallel provision of NHS and privately funded care

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 permitted form of "co-payment". The specific charges are set by Regulations. These charges have always been part of the NHS.

Patients are entitled to contract with NHS trusts to provide privately funded 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 separate as possible. Any privately funded care must be provided by an NHS trust at a different time and place from NHS commissioned care. In particular:

- Private and NHS funded care cannot be provided to a patient in a single episode of care at a NHS hospital
- If a patient is an in-patient at a NHS hospital, any privately funded care must be delivered to 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 regarding patient safety

A patient is entitled to "top up" elements of care within NHS funded treatment provided as part of the same episode of care. (e.g. a patient undergoing a cataract operation as an NHS patient can 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, however it is a matter for the private provider to determine how to separate NHS and private treatment and to ensure the is no NHS subsidy of private care costs)

Private prescriptions may not be issued during any part of NHS commissioned care.

When a patient wishes to pay privately for additional treatment not usually funded by the CCGs, the patient will be required to pay all costs associated with the privately funded episode of care. This includes costs of all medical interventions and care associated with the treatment include the costs of assessments, inpatient and outpatient attendances, tests and rehabilitation. This also includes any costs associated for any complications of treatment where these are solely a consequence of the privately funded treatment, except where the cause of the complication is unclear or the patient is admitted under emergency care (for example poor aesthetic outcome or post-operative infection).

Any privately funded arrangement which is agreed between a patient and a healthcare provider (whether a NHS trust or otherwise) is a commercial matter between those parties. The CCGs are not 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.

Co-funding

The NHS cannot "top up" a patient's private treatment. Co-funding and forms of co-payment, other than those limited forms permitted by Regulations, are currently *ultra vires*. The CCGs will not usually consider any funding requests of this nature.

If a patient is advised to be treated with a combination of drugs, some of which are not routinely available as part of CCG 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. Funding of all high cost cancer drugs is a matter for NHS England.

If a patient being treated privately requires a combination of drugs or other treatments to be administered simultaneously, some of which are funded by the NHS, and there are no patient safety

issues, the patient must fund *all* of the drugs and the other costs associated with the proposed treatment.

Patients in such circumstances can apply under the individual funding request process for the drugs or treatments that are not usually funded by the NHS, however, the fact that a patient has been prepared to fund part of their own treatment does not constitute an exceptional circumstance.

If a combination of drugs or other treatments is to be administered simultaneously, some of which are funded by the NHS, but where there are concerns about patient safety, an individual funding request is required setting out the reasons why the clinician feels that the patient would be put at risk in separating private and NHS care. The CCGs will seek expert opinion concerning issues of patient safety in this context.

NHS continuation of funding of care commenced on a private basis

If a patient commences a course of treatment privately that the CCGs would not usually fund, the CCGs will not automatically pick up the costs of the patient either completing the course of treatment or receiving on-going treatment if they can no longer fund this privately.

The patient is, however, entitled to apply for funding by means of an individual funding request. 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 meeting the criteria for exceptionality) would not necessarily be a proper basis for the CCGs to agree to support the treatment in the future as this could result in the CCGs approving funding differentially for persons who could afford to fund part of their own treatment. Each case will, however, need to be considered on its own merits. If the funding request is approved, the CCGs will not reimburse the patient for any treatment received as a private patient before the IFR was successful.

Other

Individual patients who have been recommended treatment by an NHS consultant that is not routinely commissioned by the CCGs under their existing policies would need to apply for funding by means of an individual finding request. They are also entitled to ask their GP for referral for a second opinion, from a different NHS consultant, on their treatment options. However, a second opinion supporting treatment which is not routinely commissioned by the CCGs does not create any entitlement to NHS funding for that treatment. The fact that two NHS consultants have recommended a treatment would not usually amount to exceptional circumstances.

Monitoring requirements

A provider does not need to seek prior approval for private treatment which is provided separately from NHS care. The CCGs expect private providers to keep records of NHS patients who have also received parallel private treatment.

The CCGs will expect NHS providers to routinely report details on the number of patients who sought additional private care alongside NHS care, the indications and how the trust put separate facilities in place. This is to ensure there was no NHS subsidy of the private care.

References

Department of Health. Handbook to the NHS Constitution March 2013 (page 20) https://www.gov.uk/government/publications/the-nhs-constitution-for-england accessed August 2013

Department of Health. Guidance on NHS patients who wish to pay for additional private care. March 2009. http://webarchive.nationalarchives.gov.uk/20130107105354/http:/www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_096576.pdf Accessed August 2013

BMA. The interface between NHS and private treatment: a practical guide for doctors in England, Wales and Northern Ireland Guidance from the BMA Medical Ethics Department May 2009 http://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=21&cad=rja&ved=0CCwQFjAAOBQ&url=http%3A%2F%2Fbma.org.uk%2F-%2Fmedia%2FFiles%2FPDFs%2FPractical%2520advice%2520at%2520work%2FEthics%2Finterfaceguidanceethicsmay2009.pdf&ei=YpwAUt-ADKmf0QXIsIFg&usg=AFQjCNGXcM-wV6bBTw-

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Appendix A: Version Control Sheet

Version	Date	Author	Status	Comment
Draft 1	1.8.13	Jon Fear	Draft	For legal comment
Draft 2	13.08.13	Beechcrofts	Draft	Legal comments
Draft 3	30.08.13	Fiona Day	Draft	Acceptance of legal comment
Draft 4	9.9.13	Fiona Day	Draft	Addition of cover sheet

Appendix B: Plan for Dissemination of Framework Documents

To be completed and attached to any document which guides practice when submitted to the appropriate committee for consideration and approval.

Acknowledgement: University Hospitals of Leicester NHS Trust.

Title of Framework:			
Date finalised:		**Dissemination lead: Print name and contact details**	CCG Medical Director
Previous framework already being used?	**No**		
If yes, in what format and where?	n/a		
Proposed action to retrieve out-of-date copies of the document:	n/a		

To be disseminated to:	**How will it be disseminated, who will do it and when?**	**Paper or Electronic**	**Comments**
Clinicians		Electronic	
Clinicians		Electronic/ Paper	
Panel Members		Electronic and	

Dissemination Record - to be used once framework is approved.

Date put on register / library of framework documents		**Date due to be reviewed**	

Disseminated to: (either directly or via meetings, etc)	**Format (i.e. paper or electronic)**	**Date Disseminated**	**No. of Copies Sent**	**Contact Details / Comments**

Appendix C: Equality Impact Assessment

To ensure the Individual Funding Requests Policy for the Clinical Commissioning Groups in Leeds reflects due process for identifying the effect, or likely effect, of the policy on people with Equality Act protected characteristics – age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation - and that the policy demonstrates due regard to reducing health inequalities, addressing discrimination and maximising opportunities to promote equality the following steps have been taken.

The update to the policy results from the iterative refresh process, and the requirement to make changes to care as indicated by an evolving evidence-base. This means that access is broadened as more treatments and interventions become available without the need for an IFR. There is no change to the underlying principles of the policy. In order for an IFR to be approved according to the core principles for managing Individual Funding Requests, it must be demonstrated that the patient's case is exceptional.

The following consultation and engagement activities have been undertaken. The evidence-based policy has been circulated to all GPs and secondary care consultants for comment, and has been made available on the internet to the

public, along with Plain English patient information leaflets. The core principles for managing Individual Funding Requests in Leeds have been made available online for twelve weeks and disseminated through Patient Advisory Groups and Patient Reference Groups along with a cascade through the Community and Voluntary Service network. Feedback from all these sources has been collected by the Clinical Commissioning Groups. There is also an open and transparent approach to the processes of the decision making panel with an established mechanism for appeals.