

COMMISSIONING POLICY

**DEFINING THE BOUNDARIES BETWEEN
NHS AND PRIVATE HEALTHCARE**

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1. Purpose of this document

- 1.1 This document defines the boundaries between NHS and private healthcare for West Suffolk Clinical Commissioning Group and Ipswich and East Suffolk Clinical Commissioning Group. Many patients entitled to NHS care choose to use a combination of NHS and privately funded services. This document provides guidance on the Clinical Commissioning Groups' (CCGs) role in continued funding when a patient moves between private and NHS healthcare. It considers joint NHS and private funding of care commenced on a private basis and the role of the NHS and private healthcare in managing complications occurring as a result of private treatment. It aims to be transparent, allow for clarity and reduce any areas of dispute in future around responsibility of these costs. It is expected that all providers to the CCGs will comply with this policy.

2. Introduction

- 2.1 Many patients entitled to NHS care choose to have some or all of their investigations or treatment provided privately, using private health insurance or direct payment. Some reasons for this choice include the ability to access treatment more quickly, to access treatment not available within NHS commissioned care, or for the added convenience or comfort of private facilities. With increasing emphasis on patient choice it is recognised that patients may move between NHS and private healthcare at different stages in their treatment. However, there are opportunities for inequalities to develop between those who are able to afford to opt for aspects of their care to be provided privately and those who cannot. A clear policy is required to prevent this and uphold the values of the NHS Constitution, including the role of the NHS in the promotion of equality through the services it provides (1). This policy aims to ensure that, when accessing NHS services, those who have chosen to fund part of their care privately do not have undue advantage over those whose entire care has been provided by the NHS. A clear policy is also required on the role of the NHS in relation to complications occurring as a result of care funded privately, in view of the opportunity cost and the CCGs' wider responsibility for the whole population.
- 2.2 This document aims to set out West Suffolk CCG and Ipswich & East Suffolk CCG's policy on the boundaries between NHS and private healthcare, and responsibility when complications occur after private treatment.

3. Entitlement to NHS care

- 3.1 NHS care is made available to patients in accordance with the policies of West Suffolk CCG and Ipswich & East Suffolk CCG. However individual patients are entitled to choose not to access 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 care should not be affected by a decision by a patient to fund part or all of their healthcare needs privately ⁽²⁻⁵⁾.
- 3.2 Patients are entitled to seek provision for part of their treatment for a condition by a private healthcare arrangement and part of the treatment to be commissioned by West Suffolk CCG and Ipswich & East Suffolk CCG, provided that the NHS care is delivered in episodes of care which are clearly differentiated from any privately funded care, delivered at a separate time and place (unless clinically inappropriate to do so) ⁽⁵⁾. This is to ensure there is no risk of the NHS subsidising private care ⁽²⁾. The NHS commissioned treatment

provided to a patient is always subject to the clinical supervision of the NHS treating clinician ⁽⁴⁾. There may be times when an NHS clinician declines to provide NHS 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.

- 3.3 A patient, whose private consultant has recommended treatment with a medication normally available as part of NHS commissioned care in the patient's clinical circumstances, can ask his or her NHS clinician to prescribe the medication ⁽³⁻⁶⁾ as long as:
- a) The NHS clinician considers it to be medically appropriate in the exercise of his or her clinical discretion
 - b) The medication is normally funded by West Suffolk CCG and Ipswich & East Suffolk CCG
 - c) The NHS clinician is willing to accept clinical responsibility for prescribing the medication.
- 3.4 If the NHS clinician, for example the patients' NHS GP, does not feel able to accept responsibility for the prescription as it is of a specialist nature, they should consider referral to an NHS Consultant who can consider prescribing the medication as part of NHS funded treatment ⁽³⁻⁵⁾.
- 3.5 If the medication recommended by the private clinician is more expensive than the medication options prescribed in the same clinical situation in the NHS, the NHS clinician should follow CCG prescribing advice, and explain this to the patient, who retains the option of purchasing the more expensive medication via the private consultant ⁽³⁻⁵⁾.

4. Transfer from services paid for on a private basis to the NHS

- 4.1 An individual who has commenced treatment that would have been routinely commissioned by the CCGs (NHS commissioned care) on a private basis can, at any stage, request to transfer to complete treatment in the NHS ⁽⁵⁾. In this event the individual will, as far as possible, be provided with the same treatment they would receive if they had begun their treatment with the NHS. The CCG will not reimburse the patient for any treatment they received as a private patient prior to requesting to return to NHS care. Patients who transfer from private to NHS commissioned care should not be put at any advantage or disadvantage in relation to the NHS care that they receive because they commenced their treatment privately.
- 4.2 A patient who has paid for an element of their care, such as a diagnostic test, privately is entitled to access NHS-commissioned treatment if they meet the commissioning criteria for that treatment ⁽³⁻⁵⁾. This cannot be used as a justification to provide care that is not available to other NHS patients. At the point the patient seeks to transfer back to NHS care, the CCG can request that the patient be reassessed by an NHS clinician, although this does not need to be done routinely. The patient will not be given preferential treatment by virtue of having accessed part of their care privately. Patients who wish to transfer from private outpatient to NHS commissioned care must go via their GP for assessment and onward referral for NHS commissioned care.

5. Parallel provision of NHS and privately funded care

- 5.1 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 ⁽³⁻⁵⁾. Such charges, known as co-payment, include prescription charges and some clinical activity undertaken by opticians and dentists. These charges are not “co-funding” (as defined below) but are specific NHS charges set by Regulations which have always been part of the NHS.
- 5.2 Patients are entitled to contract with NHS Providers to provide privately funded patient care as part of their overall treatment ^(4, 5). It is a matter for NHS Providers as to whether and how they agree to provide such privately funded care. However, NHS Providers must ensure that private and NHS care are kept as clearly separate as possible. Any privately funded care must where clinically appropriate be provided by an NHS Provider at a different time and where possible place from NHS commissioned care.
- 5.3 In particular, each visit to an NHS hospital is considered an episode of care, and private and NHS funded care cannot be provided to a patient in a single episode of care at an NHS hospital, unless separation would pose overriding concerns regarding patient safety.
- 5.4 If a patient is an in-patient at an NHS hospital, any privately funded care must be delivered to the patient in a separate location and time, with clear division between the privately funded and NHS funded elements of care, unless separation would pose overriding concerns regarding patient safety ^(4, 5). For example, a patient wishing to pay for an unfunded cancer drug in addition to chemotherapy treatment they have been receiving on the NHS may attend their NHS appointment for chemotherapy in the morning, and then attend a separate appointment later in the day for the unfunded drug ⁽²⁾. In addition to paying for the unfunded drug, the patient must pay any costs for staff involved in the provision of the unfunded drug, and any investigations needed as a result of taking the unfunded drug.
- 5.5 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 ⁽²⁻⁵⁾. For example, 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.
- 5.6 The only time when this rule may not apply is if there are overriding patient safety concerns about separating episodes of care ⁽⁷⁾. For example, a patient on a specialist bone marrow transplantation unit in specialist isolation care wishing to pay for an unfunded drug in addition to their NHS treatment may not be deemed safe for transfer ⁽²⁾ to an alternative location by their NHS clinician. In the case of patient safety concerns about separating private and NHS care, the patient can be cared for in line with Department of Health Guidelines ⁽²⁾.
- 5.7 Private prescriptions may not be issued during any part of NHS commissioned care, except where an NHS England exemption applies ⁽⁸⁾. A common enquiry concerns fertility treatment, when a patient paying for private IVF treatment asks their GP to issue an NHS prescription for drugs or arrange NHS funded investigations as part of that treatment. This is not permitted. If the patient does not meet CCG commissioning criteria for funding for a treatment, the NHS will not prescribe drugs or support investigations or procedures required as part of the privately funded treatment ^(3, 4).

5.8 When a patient chooses to pay privately for additional treatment not usually funded by the CCG, the patient will be required to pay all costs associated with the privately funded episode of care, including accommodation, assessments, inpatient and outpatient attendances, tests, monitoring, medical interventions, management of side-effects and rehabilitation ^(5, 8). The CCG will not make any contribution to the privately funded care to cover treatment that the patient could have accessed via NHS commissioned care. However, the patient remains entitled to revert to NHS care at any stage and will, at that point, be entitled to be provided with any drugs or other treatment which would have been provided to an NHS patient in the same clinical situation.

6. Co-funding

6.1 Co-funding, which involves both private and NHS funding for a single episode of care, and forms of co-payment other than those limited forms permitted by Regulations described above, are contrary to current NHS policy ^(3-5, 8). The CCG will not usually consider any funding request of this nature.

6.2 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 private clinician during a separate episode of care for the drugs not commissioned by the NHS ^(5, 8). The patient will be required to pay all costs associated with the privately funded episode of care.

6.3 If a patient is advised to be treated with a combination of drugs to be administered simultaneously, or within the same episode of care, some of which are not funded by the NHS, and there are no patient safety concerns, if the patient chooses to go ahead with this combination they must privately fund all of the drugs provided and all other costs associated with the episode of care ^(5, 8).

6.4 If a patient is advised to be treated with a combination of drugs to be administered simultaneously, or within the same episode of care, some of which are not funded by the NHS, and there are patient safety concerns about separating private and NHS care, then the patient shall meet the full cost of the non-NHS Drugs, the associated costs of administration and any additional costs accruing from the use of the Non-NHS Drugs. If the clinician feels that the patient would be put at risk in separating private and NHS care the patient can be cared for in line with Department of Health Guidance ⁽²⁾.

6.5 Patients should provide written consent to receive private care which should include an explanation of the costs associated with the private care (including any associated costs), the likely outcome of the treatment and the proposed exit strategy should the patient be unable to fund on-going private treatment. Ideally a standard document should be used for this purpose ⁽⁵⁾. It is the responsibility of private healthcare providers to ensure that patients are fully informed of the CCG's position relating to ongoing funding before commencing the private treatment ⁽³⁾.

7. NHS continuation of funding of care commenced on a private basis

7.1 West Suffolk CCG and Ipswich and East Suffolk CCG policies define which treatment the CCG will and thus, by implication, will not fund ⁽³⁻⁵⁾. Accordingly, if a patient commences a course of treatment that the CCG would not usually fund, the CCG will not pick up the costs of the patient either completing the course of treatment or receiving on-going treatment

(e.g. if an individual cannot afford ongoing private treatment costs, private health insurance does not cover the full cost of the treatment, or if the patient requests the NHS to pick up the cost on the grounds that the treatment is clinically effective).

- 7.2 Under no circumstances will the CCGs reimburse a patient for any treatment received as a private patient ^(3-5, 8).
- 7.3 Individual patients who have been recommended treatment by an NHS consultant, which is not routinely commissioned by West Suffolk CCG and Ipswich and East Suffolk CCG under its existing policies, are entitled to ask their GP to be referred for a second opinion from a different NHS consultant concerning their treatment options ⁽⁵⁾. However a second opinion supporting treatment, which is not routinely commissioned by West Suffolk CCG and Ipswich and East Suffolk 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, in itself, amount to exceptional circumstances.

8. Complications

- 8.1 We expect complications of treatment that are solely the consequence of a privately funded episode of care to be managed by the private provider and privately funded. The exception to this is when a patient is admitted under emergency care or the complication is life threatening. As per the Health and Social Care act, a CCG has responsibility for every person present in its area in relation to the provision of services or facilities for emergency care ⁽⁹⁾. The NHS will never turn anyone away in an emergency ⁽¹⁰⁾. Clinicians should use their professional judgement in these instances and always act in the best interests of the patient ⁽⁷⁾.
- 8.2 It is the responsibility of private providers to make patients aware that the NHS is not responsible for complications occurring as a result of privately funded treatment, unless they are admitted under emergency care, or the complication is life threatening.
- 8.3 It must always be made clear who is responsible for the assessment, delivery of care and management of any complications when a patient transfers from private to NHS care or vice versa ⁽¹⁰⁾.
- 8.4 Any privately funded arrangement which is agreed between a patient and a healthcare provider (whether an NHS Provider or otherwise) is a commercial matter between those parties ^(5, 8). Except in those circumstances set out above, West Suffolk CCG and Ipswich & East Suffolk 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.
- 8.5 Clinicians can approach Individual Funding Request (IFR) panel in extenuating or exceptional clinical circumstances.

9. Definitions/Glossary

Opportunity cost:	the loss of other alternatives when one alternative is chosen.
Private patients:	patients who receive private healthcare, funded on a pay-as-you-go basis or via a medical insurance policy. The

	healthcare provider could be an NHS Provider, private hospital or individual doctor. The healthcare may include treatments available via NHS commissioned care, or those not normally commissioned by their local CCG.
NHS commissioned care:	healthcare for patients routinely funded by their responsible NHS commissioner.
Co-payment:	where the Government has passed Regulations requiring patients to make a contribution to the overall cost of NHS commissioned care, e.g. prescription charges.
Co-funding or top-up funding:	Co-funding of NHS care is any arrangement under which the cost of an episode of care within the NHS (for example an out-patient visit, an operation, etc.) is part funded by an NHS commissioner and part funded privately by the patient. Co-funding is not permitted within the NHS apart from the limited forms of co-payment permitted under regulations
An episode of care:	a period of engagement between an NHS commissioned healthcare intervention and the patient in which NHS commissioned care is provided to the patient. The following are examples of episodes of care: a single visit to the GP; an outpatients appointment; a series of diagnostic tests relating to the same person at an NHS hospital on the same day; a day case operation with all the supporting clinical activity before and after the operation on that day; the initial assessment and prescription of a cancer drug (if the drug is required to be given at a series of outpatient appointments then each attendance will be a separate episode of care).
Complication:	any harmful or negative outcome occurring following an episode of care resulting from the processes of care and treatment rather than the natural progression of disease ^(11,12) .

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