Strategic Commissioning Group
West Midlands

Solihull
Care Trust

Commissioning Policy (WM/13)

Defining the boundaries between NHS and Private Healthcare

Version 1 – January 2010

Approved By: Policy Approval Committee

1. 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 Primary Care Trust has policies which define the elements of healthcare which the PCT is and is not prepared to commission, and individual funding request processes to consider commissioning care for individual patients outside those policies.

Co-payment occurs when, according 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 under which the cost of an episode of care within the NHS (for example an outpatient 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.

Attributable costs are the financial costs to be considered when there is a mix of privately and NHS funded treatment. *Attributable costs* refer to all costs which would not have been incurred by the NHS had the patient not sought private treatment. It applies equally whether the private treatment is given in a private facility within an NHS provider trust or in an independent private hospital.

To illustrate: if an NHS patient has gone to a private facility in connection with the medical condition for which they are receiving NHS care, in order to buy a drug which is not available as part of the NHS care package, then they are expected to pay for all related and consequential costs. These can include additional monitoring needed for the drug, such as blood tests and scans, as well as the treatment of predictable complications of receiving the drug. 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.

Responsible Primary Care Trust means the Primary Care Trust which discharges the Secretary of State's functions under the National Health Service Act 2006 for an individual patient.

2. The policy

2.1 This policy applies to any patient for whom the PCT is the Responsible Commissioner.

Entitlement to NHS Care

2.2 NHS care is made available to patients in accordance with the policies of the PCT. 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.

2.3 An individual who is receiving treatment that would have been commissioned by the PCT, but who has commenced that treatment 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 PCT will not reimburse the patient for any treatment received as a private patient before a request is made to move back into the NHS.

2.4 Patients are entitled to seek part of their overall treatment for a condition through a private healthcare arrangement and part of the treatment as 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.

2.5 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.

2.6 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 or consultant to prescribe the treatment as long as:

- the GP / consultant considers it to be medically appropriate in the exercise of his or her clinical discretion;

- the drug is listed on the PCT's formulary or the drug is normally funded by the PCT; and

- the GP / consultant is willing to accept clinical responsibility for prescribing the medication.

2.7 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.

2.8 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 PCT 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.

2.9 The PCT will not make any contribution to the privately funded care to cover the cost of treatment that the patient could have accessed via the NHS.

Parallel provision of NHS and privately funded care

2.10 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.

2.11 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 from NHS commissioned care.

In particular:

2.11.1 Private and NHS funded care cannot be provided to a patient in a single episode of care at an NHS hospital.

2.11.2 If a patient is an in-patient at an 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 of patient safety.

2.11.3 A patient is not entitled to "pick and mix" elements of NHS and private care within 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)

2.12 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 privately for IVF treatment asks 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 PCT'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.

2.13 When a patient wishes to pay privately for additional treatment not normally funded by the patient's PCT, 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 the costs of assessments, inpatient and outpatient attendances, tests and rehabilitation. This also includes complications of treatment where these are solely a consequence of the privately funded treatment.

2.14 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 PCT 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.

Co-funding

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

2.20 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.

2.21 If a combination of drugs or other treatments is to be administered simultaneously, some of which are not funded by the NHS, and there are *no* patient safety issues, the patient must fund all of the drugs provided and the other costs associated with the proposed treatment. Patients in such circumstances can seek exemption by applying to the PCT for funding for the whole treatment on the grounds that the patient has exceptional circumstances. These will be considered under the individual funding request category: *exceptionality requests* (see The West Midlands Strategic Commissioning Group Commissioning Policy 9: Individual Funding Requests). The fact that a patient has been prepared to fund part of their own treatment is not a proper ground to support a claim for exceptional circumstances.

2.22 If a combination of drugs or other treatments is to be administered simultaneously, some of which are not funded by the NHS, but where this are concerns to patients safety the provider trust must apply to the PCT in the form of an individual funding request (category: *exceptionality requests*) setting out the reasons why, in this case, the clinician feels that the patient would be put at risk in separating private and NHS care.

The PCT is entitled to seek expert opinion concerning issues of patient safety in this context.

NHS continuation of funding of care commenced on a private basis

This section should be read in conjunction with the West Midlands Strategic Commissioning Group, Guidance Note 1: Access to NHS funding following third party funded treatment, November 2009

2.23 PCT policies define which treatment the PCT will and thus, by implication, will not fund. Accordingly if a patient commences a course of treatment that the PCT would not normally fund, the PCT will not pick up the costs of the patient either completing the course of treatment or to receive ongoing treatment.

2.24 A patient is entitled to apply for funding by means of an individual funding request (category: *exceptionality requests*). However, where the PCT 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 evidence of exceptionality) would not be a proper basis for the PCT to agree to support the application. To adopt any other stance would result in the PCT approving funding differentially for persons who could afford to fund part of their own treatment.

If funding is granted, the PCT will not reimburse the patient for any treatment received as a private patient before the exceptional request was successful.

Other

2.25 Individual patients who have been recommended treatment by an NHS consultant that is not routinely commissioned by the PCT under its existing policies are entitled to ask their GP for referral for a second opinion, from a different NHS consultant, on their treatment options. The PCT'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 PCT 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.

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

2.27 When grounds for a patient being considered exceptional have been established, the PCT will then assess and prioritise that patient's needs against competing needs within the budget 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.

Monitoring requirements

2.28 A provider does not need to seek prior approval for private treatment *which is provided separately from NHS care*.

The PCT expects providers to keep records of NHS patients who have also received parallel private treatment.

The PCT will expect routine reporting detailing the number of patients who sought additional private care alongside NHS care, the indications and how the trust put separate facilities. This is to ensure there was no NHS subsidy of the private care.

2.29 Any provider which is found the have provided care which is co-funded without the approval of the responsible commissioner will be reported to Monitor or the Strategic Health Authority, whichever is appropriate.

3. Documents which have informed this policy

- Solihull Care Trust Prioritisation Framework And Principles For Commissioning 2009.

- Solihull Care Trust Policy For Processing Commissioning Queries Individual Funding Requests And Consideration Of Exceptional Funding Processes 2009.

- West Midlands Strategic Commissioning Group, Commissioning Policy 1: Ethical Framework to underpin priority setting and resource allocation within collaborative commissioning arrangements

- Department of Health, The National Health Service Act 2006, The National Health Service (Wales) Act 2006 and The National Health Service (Consequential Provisions) Act 2006. http://www.dh.gov.uk/en/Publicationsandstatistics/Legislation/Actsandbills/DH_064103

- Department of Health, World Class Commissioning Competencies, December 2007, http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_080958

- Department of Health, The NHS Constitution for England, July 2009, http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_093419

- The National Prescribing Centre, Supporting rational local decision-making about medicines (and treatments), February 2009, http://www.npc.co.uk/policy/resources/handbook_complete.pdf

- NHS Confederation Priority Setting Series, 2008, http://www.nhsconfed.org/publications/prioritysetting/Pages/Prioritysetting.aspx

- Department of Health's 2004 Code of Conduct for Private Practice http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_085197

- Department of Health, Guidance on NHS patients who wish to pay for additional private care, Guidance on NHS patients who wish to pay for additional private care, march 2009 http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_096428

Patients and clinicians should ensure that they have checked any relevant treatment specific policy on the [organisation's] website as the treatment may not be routinely commissioned by the [organisation].

Regional leads for this policy	Rachel O'Connor Programme Lead – Specialised Neurosciences West Midlands Specialised Commissioning Team Rachel.OConnor@wmsc.nhs.uk
	Dr Daphne Austin Consultant in Public Health West Midlands Specialised Commissioning Team daphne.austin@wmsc.nhs.uk
Version	First
Policy effective from	January 2010
Date of next review	As required – minimum 3 yearly
Acknowledgements	

Equality Impact Assessment Tool

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

Commissioning Policy	**Defining the boundaries between NHS and Private Healthcare**
This policy document addresses the issue of patients moving between NHS and private care.	

		Yes/No	Comments
1	**Does the policy/guidance affect one group less or more favourably than another on the basis of:**		
	• Race	No	
	• Ethnic origins (including gypsies and travellers)	No	
	• Nationality	No	
	• Gender	No	
	• Culture	No	
	• Religion or belief	No	
	• Sexual orientation including lesbian, gay and bisexual people	No	
	• Age	No	
	• Disability - learning disabilities, physical disability, sensory impairment and mental health problems	No	
2	**Is there any evidence that some groups are affected differently?**	No	
3	**If you have identified potential discrimination, are any exceptions valid, legal and/or justifiable?**	No	
4	**Is the impact of the policy/guidance likely to be negative? (If no, please go to question 5.)**	No	
	• If so can the impact be avoided?		
	• What alternatives are there to achieving the policy/guidance without the impact?		
	• Can we reduce the impact by taking different action?		
5	**Health inequalities**	No	

Human Rights Assessment Tool

The Human Rights Act, which came into force in October 2000, incorporates into domestic law the European Convention on Human Rights to which the UK has been committed since 1951. Section 6 of the Human Rights Act makes it unlawful for a public authority to act in a way, which is incompatible with a Convention right. The underlying intention of the Act is to create a Human Rights culture in public services.

We do not consider that infringes a person's human rights, however if it is considered that this policy does infringe on a person's human rights legal advice will be sought before proceeding.

Details (names and roles) of staff involved in this impact assessment

Name	Role	Date completed	Outcome
Daphne Austin	Consultant in Public Health	January 2010	Circulated to PCTs in support of draft policy. Policy was ratified by WMSCG and West Midlands PCTs.