Defining the boundaries between NHS and privately funded healthcare

1. Introduction

This document defines the boundaries between NHS and privately funded healthcare for Integrated Care Boards (ICBs). It considers joint NHS and private funding, and NHS continuation of funding of medicines, medical devices and digital healthcare commenced on a private basis (including clinical trials and compassionate use programmes).

The policy recommendations set out in this document apply to any patient in circumstances where the ICB is the responsible commissioner for their NHS care.

Hereafter, where the term 'medicines' is used throughout this document, the same principles apply to medical devices and digital healthcare solutions.

2. Key principles supporting this policy

ICBs have a legal responsibility for NHS healthcare budgets, and their primary duty is to commission and manage services within the budget allocated to them.

Commissioners of healthcare have a responsibility to make rational decisions in the way in which they allocate resources, and to act fairly between patients.

The ICB budget is exclusively for NHS funded care. There can be no subsidisation of privately funded healthcare, directly or indirectly.

All NHS funded care should be provided as a result of a decision by the ICB. No other body or individual, other than those authorised to take decisions under the policies of the ICB, has a mandate to commit the ICB to fund any healthcare intervention unless directed to do so by the Secretary of State for Health (NHS Act 2006 updated).

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

If treatment is provided within the NHS, which has not been commissioned in advance by an ICB, the responsibility for ensuring ongoing access to that treatment lies with the clinician or other person who initiated treatment.

3. Definitions

The following definitions apply in this policy:

3.1 Privately funded healthcare

Care provided to a patient under a personal and individual contract with their private or independent healthcare provider, and funded either through a private insurance scheme or on a pay as you go basis (i.e. the patient is responsible for providing funding for their care). The healthcare provider could be an NHS Trust, as many have specific wings to provide private services, a private or independent hospital or an individual doctor. The healthcare may include treatment that would have been available to the patient as part of their usual NHS funded care, or it may be healthcare that is not normally commissioned by their local ICB.

Patients attending the private wing of an NHS Provider Trust pursuant to an agreement to provide privately funded healthcare, are private patients, and not NHS patients.

3.2 NHS funded healthcare

Healthcare for patients which is funded by their ICB. ICBs will have policies that define the elements of healthcare which the ICB is, and is not prepared to fund, and Individual Funding Request (IFR) processes to consider purchasing care for individual patients outside of these policies.

This may include care commissioned by the ICB from a local or national non-NHS independent private provider, in accordance with their agreed local commissioned pathways and clinical thresholds, to improve choice and access to timely treatment for their patients. The patient has the right to choose this option if the patient's GP agrees this is the most clinically appropriate option for them. See NHS England Patient choice guidance for further information on Right to Choose. December 2023 NHS England » Patient choice guidance

3.3 Co-payment

Where the Government has passed regulations that require patients to make a financial contribution to the overall cost of their NHS commissioned care.

3.4 Co-funding

The term used to describe proposals that have been made by doctors and patient pressure groups which seek to permit patients to pay for some elements of their care and for the NHS to provide other elements of care within the same episode of care. Co-funding is currently against Department of Health policy and ICBs will not consider any funding requests of this nature.

3.5 Top-up funding

The same as co-funding.

3.6 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 outpatient 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 medicine is required to be given at a series of outpatient appointments, then each attendance will be a separate episode of care.

3.7 Attributable costs

Are to be considered when privately funded treatment is provided within an NHS setting. Attributable costs mean all additional costs which would not have been incurred by the NHS, had the patient continued with NHS care and not sought private treatment. If an NHS patient has also gone to a private provider to buy a medicine not available as part of the NHS care package, then they are expected to pay for any additional monitoring needed for the medicine (blood tests, CT scans, etc.) and also for the treatment of predictable complications of receiving the medicine. If a patient chooses to seek privately funded 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 the patient might be having in parallel within the NHS.

4. Policy recommendations

4.1 Entitlement to NHS funded care

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

An individual who is having treatment which would have been commissioned by the ICB is entitled to commence that treatment on a private basis but can at any stage request to transfer to complete the treatment in the NHS. In this event the patient is entitled, as far as possible, to be provided with the same treatment as the patient would have received if the patient had had NHS treatment throughout. This cannot be used as a justification to provide care that is not available to other NHS patients and may mean the patient having to wait for the continuation of treatment, to put that patient in the same position as any other NHS patient.

Patients are entitled to seek provision for part of their treatment for a condition by a privately funded healthcare arrangement and part of the treatment to be commissioned by the ICB, provided the NHS funded care is delivered in episodes of care which are clearly differentiated from any privately funded care. However, the NHS funded treatment provided to a patient is always subject to the clinical supervision of the treating clinician. There may be times when an NHS clinician declines to provide NHS treatment if they consider 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, is entitled to access other elements of care through the NHS, 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, if deemed clinically necessary.
- Not be given any preferential treatment by virtue of having accessed part of their care privately.
- Be subject to standard NHS waiting times.

4.2 Prescribing medicines initiated by a healthcare provider as part of privately funded healthcare

Patients electing to receive privately funded specialist care, should do so on the expectation that all recommended tests, procedures, and prescribed medicines will also be paid for privately (not provided on the NHS). This is applicable to patients who have self-referred to a privately funded provider, as well as those accepting a GP referral to a privately funded provider.

Any medicines prescribed, or treatment provided by a clinician in the course of, or following a privately funded consultation, will be at the patient's expense.

A patient, whose privately funded specialist has recommended treatment with a medication normally available as part of NHS commissioned care in the patient's clinical circumstances, may ask his or her NHS GP to consider prescribing the treatment, as long as:

- The GP considers it to be medically appropriate in the exercise of their clinical discretion; **and**

- The medicine is included in the ICB's local formulary, or the medicine is normally funded by the ICB; **and**
- The GP is willing to accept clinical responsibility for prescribing the medication; **and**
- The medicine does not require prescribing under the terms of a shared care agreement as specified in the ICB's local formulary.

However, a recommendation from a privately funded specialist for a medicine that is available on the NHS does not entitle the patient to NHS prescriptions for that medicine, and there is no obligation on the part of the GP to prescribe the recommended treatment if it is contrary to his/her normal clinical practice.

The privately funded specialist's advice on choice of treatment should be considered advisory, and the GP may choose to prescribe an alternative product, bearing in mind national and local guidelines/formulary. By prescribing, a clinician assumes clinical responsibility for the treatment.

There may be cases where a patient's privately funded consultant has recommended treatment with a medication which is highly 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 it is appropriate to accept clinical responsibility for the medication, the GP should consider whether to offer a referral to an NHS funded consultant who can consider whether to prescribe the medication for the patient as part of NHS funded treatment. See section 4.3 for information on medicines prescribed under shared care arrangements. 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.

Medication recommended by privately funded healthcare services may be more expensive than the medication options prescribed for the same clinical situation as part of NHS treatment. This may be due to the fact that a particular choice of treatment may have been deemed not to be clinically effective and/or cost-effective and consequently is not included in local formularies. In such circumstances, the NHS GP should follow local prescribing advice from the ICB. This advice should be explained to the patient, who will retain the option of purchasing the more expensive medicine via the privately funded healthcare service.

Patients should be aware that discharge medication following an in-patient stay, or medication to take home with them following an outpatient appointment may not be included within their insurance or the quoted cost of the procedure/consultation, and they may need to pay for this separately.

4.3 Shared care medicines

Some NHS funded medicines that require ongoing monitoring and specialist clinical input are prescribed under joint shared care arrangements with an NHS specialist and a GP.

Where a patient has elected to receive privately funded specialist care, GPs should not enter into shared care arrangements with the privately funded specialist for these medicines. This constitutes co-funding, which is not permitted and is applicable to patients who have self-referred to a privately funded provider, as well as those accepting a GP referral to a privately funded provider.

Note: This does not apply to shared care medicines initiated by a specialist from an independent sector provider, where the service is commissioned and funded by the NHS, the patient meets locally commissioned criteria for treatment, and the patient has been referred to the service by their GP. Although services are being provided by an independent sector provider, they are wholly NHS funded.

GPs may enter into shared care arrangements with the NHS commissioned and funded independent sector provider if they would normally do so if the patient were seen by an NHS-funded specialist service, and where an approved shared care agreement exists.

Further guidance on prescribing can be found in PrescQIPP Bulletin 238: Prescribing on the NHS following a private consultation.

4.4 Joint NHS and private funding

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, known as co-payment, include prescription charges and some clinical activity undertaken by opticians and dentists. These charges are not "co-funding" (as defined above) but are specific NHS charges set by regulations, which have always been part of the NHS.

Co-funding, which involves both private and NHS funding for a single episode of care, is not permitted for NHS care. ICBs will not consider any funding requests of this nature.

Patients are entitled to request NHS provider 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. ICBs will not commission any privately funded care within the same episode of care as NHS commissioned care. In particular:

- Each visit by a patient to a hospital can be an "episode of care" (as defined above). This means that 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 of patient safety.
- A patient is not entitled to combine elements of NHS and private care in the same episode of care, and so is not allowed to have privately funded treatment delivered/administered within an NHS-funded episode of care.

Private prescriptions may not be issued during an NHS consultation except where allowed by regulations. These include provision for GPs to prescribe the following on a private prescription:

- Medicinal products listed in Part XVIIIA - Drugs, Medicines, and Other Substances not to be ordered under a General Medical Services Contract of the Drug Tariff
- Medicinal products listed in Part XVIIIB - Drugs, Medicines and Other Substances that may be ordered only in certain circumstances (where patients do not comply with the criteria for NHS funding)
- Medicines for prevention of malaria, or vaccines not included in current public policy and travel packs or medicines solely in anticipation of the onset of an ailment while outside the UK.

Where patients are paying for surgical treatments or procedures, including those accessed from overseas providers, GPs are not permitted to issue NHS prescriptions for medicines required as part of that privately funded treatment or to seek NHS funding for investigations which are part of the privately funded treatment. If the patient does not meet the ICB's commissioning criteria for funding the surgery or procedure, the NHS should not prescribe medicines or support other medical procedures required as part of the privately funded treatment.

If a patient is advised to be treated with a combination of medicines, some of which are not routinely available as part of NHS commissioned treatment, the patient is entitled to access the NHS funded

medicines from NHS services and can consult a clinician in the private sector (in a separate episode of care) to access those medicines which are not commissioned by the NHS.

If the combination of medicines are required to be administered at the same time or within the same episode of care, there are no patient safety issues, and the NHS-funded element of care and the privately funded element of care cannot be delivered separately, the patient may access the combination treatment as an entirely private episode of care. The patient must fund all of the medicines provided and the other costs associated with the proposed treatment.

In such circumstances, NHS clinicians may approach the ICB to apply for NHS funding for the whole of the treatment via an Individual Funding Request (IFR). However, treatment (medicines or other treatments) outside of those usually provided as part of NHS care can only be provided on grounds of exceptionality via the IFR process. The fact that a patient is prepared to fund part of their own treatment is not proper grounds to support a claim for exceptional circumstances.

When a patient wishes to pay privately for a treatment not normally funded by the ICB, the patient will be required to pay all costs associated with the privately funded episode of care. The costs of all medical services and care associated with the treatment include accommodation, assessment, inpatient and outpatient attendances, tests, rehabilitation, and management of side-effects. The ICB will not make any contribution to the privately funded care to cover treatment or associated costs that the patient could have accessed via the NHS. 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 medicines or other treatment which would have been provided to an NHS patient in the same clinical situation.

Further guidance on prescribing can be found in PrescQIPP Bulletin 238: Prescribing on the NHS following a private consultation.

Any privately funded arrangement agreed between a patient and a healthcare provider (whether an NHS Trust or otherwise), is a commercial matter between those parties.

4.5 NHS continuation of funding of care initiated under privately funded healthcare

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

- An individual cannot afford ongoing private treatment costs; or
- Private healthcare insurance does not cover the full treatment costs; or
- The patient requests the NHS to pick up the costs on the grounds that the treatment is clinically effective; or
- Revision of a procedure/ intervention carried out in the private sector initially.

An NHS clinician is entitled to request funding for a patient they are treating on an individual case, based on exceptionality and in accordance with the ICB's IFR policy. However, where the ICB 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 ICB to agree to change its policy. Such an approach would result in the ICB approving funding differently for persons who could afford to fund part of their own treatment. It is the responsibility of the privately funded healthcare provider to ensure that the patient is fully informed of the ICB's position relating to ongoing funding before commencing the private treatment.

If a patient commences privately funded treatment for a medicine or other medical intervention that the ICB routinely agrees to fund, provided the patient's clinical circumstances are within those defined in the ICB's commissioning policy, the patient is entitled to transfer to NHS funded treatment at any stage.

However, the ICB will not reimburse the patient for any treatment privately funded before a request is made for NHS funded treatment. If a patient seeks funding for a medicine or other treatment that is not routinely funded and this application is approved on the grounds of exceptionality, the ICB will not normally reimburse the costs of any prior privately funded treatment.

Individual patients who have been recommended treatment by an NHS consultant that is not routinely funded by the ICB 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.

A patient has no legal right to a second consultant opinion under current NHS guidance. However, they are entitled to request one and this should normally be approved if:

- the request is supported by the patient's GP or consultant (the 'first consultant opinion')

AND

- the second opinion is available from a clinical specialist who practices within a relevant mainstream NHS commissioned service. This opinion needs to provide a balanced view of the benefits and risks, and for care which is not routinely funded by the ICB it should be from a specialist who is:
    - independent of the first 'consultant opinion' provider
    - independent of the specific service, service provider or provider of the intervention that is being requested (unless no other specialist is available who could provide that balanced opinion).

AND

    - the patient is seeking to establish access to care on the grounds of clinical ability to benefit and not social factors (that are not taken into account under Individual Funding Request processes).

However, a second opinion supporting treatment that is not routinely funded by the ICB does not create any entitlement to NHS funding for that treatment. The fact that two NHS consultants have recommended a treatment that would not be routinely funded, does not in itself, amount to exceptional clinical circumstances.

NHS patients are entitled to make a complaint about any refusal by the ICB to agree to fund care in their individual case, whether the care has been previously privately funded or not. If such a complaint is made, the ICB will investigate the patient's concerns as quickly as possible using the ICB's complaints procedure and will assess the decisions made against this policy and the relevant ICB commissioning policies.

There is no legal or policy requirement for an ICB to take over funding responsibility for treatment which has been commenced outside the NHS and which is not routinely commissioned by the NHS. ICB commissioners have a responsibility to make rational decisions in the way in which they allocate resources and to act fairly and equitably between patients. ICBs make prioritisation decisions each year which determine how resources are to be allocated. In addition, ICBs are prepared to consider in-year service developments and exceptional individual cases.

If an NHS clinician wishes to persuade an ICB to fund treatments that are not routinely commissioned, they:

- Must be the clinician treating the patient.
- May submit an individual funding request (IFR) for their patient's case on the grounds of exceptionality, or

- Request the ICB to treat the application as a service development so that the requested treatment will be made available to all NHS patients in defined clinical conditions, or
- Request that the treatment be included as part of the ICB's annual plan and, if approved, be funded from the commencement of the coming financial year.

Continuation of funding for treatment that has been commenced on a privately funded basis will not be approved in any other circumstances.

It follows therefore that, in instances where an ICB has not yet agreed to fund a particular treatment, the ICB will also not normally fund the costs of ongoing treatment.

This approach includes the following situations:

- Ongoing funding of treatment for patients leaving clinical trials carried out in the private sector. The responsibility for ongoing care rests with the sponsors of the trial – usually the pharmaceutical industry and the Provider initiating treatment
- Ongoing funding of treatment for patients who have been started on a treatment through drug company sponsorship (frequently known as compassionate use funding). The responsibility for ongoing care rests with the drug company and the Provider Trust initiating treatment
- Ongoing funding for patients who have opted for privately funded treatment and who can no longer afford private treatment.

Note: Different funding rules apply to the continuation of treatments initiated under NHS sponsored clinical trials, but these are not expected to be initiated in the private sector.

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

If a patient develops a non-emergency complication as a result of a private procedure/intervention, the private healthcare provider will normally treat these; the patient will be expected to meet these costs which would not be funded by the ICB. An example of this would be revision surgery of procedures originally performed in the private sector.

If the cause of the complication is unclear or is an emergency, the NHS will treat the patient and, in this situation, the patient will not be expected to pay for the treatment.

5. Responsibilities

- All SNEE ICB Commissioned Providers and Member Practices are strongly advised to adhere to this policy.
- The SNEE ICB Clinical Priorities Team will ensure that any individual funding requests (IFRs) relating to the transfer from privately funded to NHS funded care, comply with this policy.
- The SNEE ICB Medicines Optimisation Teams will ensure that GP Practices are fully aware of this policy when asked to advise on the transfer of patients from Privately funded to NHS funded Care.
- Any Providers commissioned under the terms of the standard NHS Contract are required to adhere to all relevant national/regional guidance. If and when concerns arise that any providers are not adhering to these terms, the SNEE ICB Contracting team will raise with the Provider and ensure any required remedial action is taken to ensure compliance.

6. Equality Impact Assessment

An Equality and Health Inequalities Impact Assessment (EHIA) was undertaken prior to approval of this policy.

Author: Joanne Lowe on behalf of PAC.

Document history

PAC approval date	13th May 2024	**Version**	v4
Document history	V4.1 Addition of reference to BMA guidance: General practice responsibility in responding to private healthcare. V4 update to include clarification between privately funded healthcare, and NHS commissioned and funded healthcare delivered by a non-NHS (private) service provider, and information on shared care medicines. V3.1 published 7th July 2020 Clarification to wording in section 4.1 v3 published 12th May 2020 These recommendations replace PAC policy, PACCP0005: Defining the boundaries between NHS and private healthcare Version 2 – October 2010		
Consultation process	PAC members		
QA process	Katie Smith, Director of Clinical Quality, PrescQIPP. 6th June 2024.		

Documents informing these policy recommendations

The National Health Service Act 2006; updated https://www.legislation.gov.uk/ukpga/2006/41/contents

Health and Social Care Act 2012
https://www.legislation.gov.uk/ukpga/2012/7/contents

Health and Care Act 2022
https://www.legislation.gov.uk/ukpga/2022/31/contents/enacted

World Class Commissioning Assurance Handbook. June 2008
Department of Health (nationalarchives.gov.uk)

The NHS Constitution for England. Updated August 2023
https://www.gov.uk/government/publications/the-nhs-constitution-for-england/the-nhs-constitution-for-england

NHS Confederation. Priority setting: an overview. January 2007
https://www.nhsconfed.org/publications/priority-setting-overview

NHS Confederation. Priority setting: managing new treatments. March 2008
https://www.nhsconfed.org/publications/priority-setting-managing-new-treatments

NHS Confederation. Priority setting: managing individual funding requests. January 2008
https://www.nhsconfed.org/publications/priority-setting-managing-individual-funding-requests

NHS Confederation. Priority setting: legal considerations. February 2008
https://www.nhsconfed.org/publications/priority-setting-legal-considerations

NHS Confederation. Priority setting: strategic planning. April 2008
https://www.nhsconfed.org/publications/priority-setting-strategic-planning

Department of Health. Code of Conduct for Private Practice. January 2004
https://www.nhsemployers.org/system/files/2021-06/consultants-code-of-conduct-private-practice-guide.pdf

Improving access to medicines for NHS patients. A report for the Secretary of State for Health by Professor Mike Richards CBE. November 2008
Department of Health (nationalarchives.gov.uk)

Department of Health and Social Care. Guidance on NHS patients who wish to pay for additional private care. March 2009
https://www.gov.uk/government/publications/nhs-patients-who-wish-to-pay-for-additional-private-care

Commissioning Policy: Defining the boundaries between NHS and Private Healthcare (Interim Policy). April 2013
NHS Commissioning Board (nationalarchives.gov.uk)

PrescQIPP Bulletin 238: Prescribing on the NHS following a private consultation. December 2023
https://www.prescqipp.info/our-resources/bulletins/bulletin-238-prescribing-on-the-nhs-following-a-private-consultation/

NHS England. Patient choice guidance. December 2023
https://www.england.nhs.uk/publication/patient-choice-guidance/

PrescQIPP Hot Topic: Right to choose. November 2023
https://www.prescqipp.info/our-resources/webkits/hot-topics/

BMA General practice responsibility in responding to private healthcare. Updated August 2023 General practice responsibility in responding to private healthcare (bma.org.uk)