
1. Purpose of Policy

Guidance produced by the Scottish Government¹ in 2009 provided a framework to support decisions concerning the possible combination of elements of NHS and private care for individual patients (co-payment arrangement).

This policy document builds on the principles of that guidance and provides support for the implementation of processes to manage all such situations where elements of NHS and private care need to be combined for individual patients in a way which protect the interests of the patient and the NHS more widely. It is consistent with relevant legislation, Government and professional guidance.

The principles in this policy apply to all aspects of care and are not restricted solely to access to medicines. However, where the policy is applied to the access of medicines, it focuses on situations regarding:

- medicines not recommended for use by the Scottish Medicines Consortium (SMC) or NHS Healthcare Improvement Scotland (for NICE Multiple Technology Appraisals)

and

- where a request for access to the medicine for the individual patient, i.e. via the Peer Approved Clinical System Tier 2 (PACS2) or Individual Patient Treatment Request (IPTRs), which may or may not include a review or appeal, has been rejected declined or is not considered appropriate or following failure to meet the pre-determined referral criteria.

This means that all avenues for obtaining the medicine via the NHS will have been fully considered and exhausted. However, where a clinician and the NHS health board agree that it might be appropriate to provide NHS care in combination with private healthcare then existing legal powers and contractual requirements provide the basis for putting the necessary arrangements in place.

2. NHSGG&C Processes for Obtaining Medicines Not Routinely Available in NHS Scotland

Within NHS Scotland, there are processes in place to access medicines that are not routinely available for use on the NHS on a case-by-case basis.

Where these routes of access have been exhausted, the consultant may consider the options that remain for the patient, including the use of private facilities to access the medicine, and communicate these to the patient / carer. Any arrangements which the Health Board wishes to facilitate for patients to receive elements of NHS and private healthcare in combination must be lawful, maintain the integrity of the founding principles of the NHS, should ideally be separated for delivery purposes and must not compromise patient safety, clinical accountability, governance or probity.

3. Principles of Conduct

¹ Scottish Government. Arrangements for NHS patients receiving healthcare services through private healthcare arrangements. CMO (2009) 3. Published March 2009. Accessible via www.sehd.scot.nhs.uk

Where a patient and clinician have requested a treatment that is not recommended by SMC and has not been approved by the relevant processes for access, NHS and private healthcare can be provided in combination (co-payment arrangement). The following principles of conduct apply:

- 3.1.** The primary purpose of any NHS organisation is to provide NHS care and the provision of services to NHS patients shall not be compromised by the elective treatment of private patients.
- 3.2.** In the case of a medicine, all avenues for obtaining it via the NHS should be fully considered and exhausted as appropriate before provision of combined NHS and private care is considered. It is expected that the co-payment process will only follow on from an unsuccessful application via the Peer Approved Clinical System (PACS) Tier 1 or Tier 2 routes, or the Individual Patient Treatment Request (IPTR) and their subsequent review processes.
- 3.3.** Guidance in NHS Scotland states that private and NHS elements of care must be fully delineated so that they are capable of being delivered independently at a different time and place and by a different set of healthcare professionals from each other. In addition, there should be clear separation in legal status, liability and accountability between the NHS and private care provision. Where the complexity of care or the absence of suitable private provision means that such delineation might compromise the delivery of clinical care, Boards may decide to offer, in the best interests of the patient, arrangements for both the private and NHS elements of care to be provided by the NHS using co-payment arrangements. Such arrangements must reflect the principles of delineation as far as possible and should be the exception rather than normal practice. The separation of elements of care must be fully understood and agreed by clinicians and patients in advance.
- 3.4.** Any arrangements to combine NHS and private care must not compromise the legal, professional or ethical standards required of NHS clinicians.
- 3.5.** Arrangements should be considered in the context of this guidance and in conjunction with the legislative framework including equality principles, and any other relevant standards and guidance relevant to the NHS.
- 3.6.** Clinicians and managers will assess the proposed combined care for any risks to patient safety, clinical accountability, governance and probity including the risks associated with sustainability and continuity of care.
- 3.7.** Individual clinicians remain responsible for clinical decisions regarding care of individual patients.
- 3.8.** Clinicians and patients should be advised that where a patient has used private treatment, either independently or via a co-payment arrangement with the NHS, to access a medicine not routinely available through the NHS, that they are not expected to be eligible to apply for that medicine to be funded by the NHS during that episode of care.
- 3.9.** This is in keeping with the principles laid down in the guidance to the NHS in Scotland and helps avoid the development of inequity in access to NHS services. If, during the course of the patient's treatment, the medicine becomes routinely available for use within NHS Scotland, the individual case will be reconsidered for NHS funding and provision from the point in time when SMC or HIS advice is released into the public domain.
- 3.10.** If new clinical evidence emerges for an individual case which results in a new request for access (e.g. via PACS2 or IPTR) and approval by the relevant panel, at directorate or board level, then the subsequent transfer of care back to the NHS will take effect from the date of the positive decision. Reimbursement cannot be backdated and will be determined prospectively from this point to the completion of any previously agreed cycle of private aspects of care.

- 3.11.** if a patient accesses laboratory tests in the private sector, then any treatment that may be indicated by the outcome of those tests will normally be delivered in the private sector

4. Documentation of Co-payment Process

Form CPF1 (Appendix 1) provides a checklist of components which require to be completed and signed off by the relevant NHS officers, responsible clinicians (NHS and private care), patient (or representative) and the person financing the private aspects of care prior to any initiation of private treatment. It also acts as an accurate record of the agreement of separation of elements of care. It includes sections:

- to corroborate that the patient fully understands the basis on which the decision has been reached
- for patient consent for treatment
- for the documentation of referral arrangements between care settings
- for description of the governance issues
- to outline the financial aspects of the care, including agreement for funding and payment process
- to ensure agreement with the private healthcare provider (where applicable)

In addition to the completion of Form CPF1, clinicians should ensure that an accurate record of all decisions regarding combined NHS and private healthcare are made, and the grounds on which these were reached, in the patient's notes.

5. Financial Aspects

In cases where it is agreed that the private episode of care will be provided within NHS facilities, clear identification of the costs attributed to the private episode of care will be documented. There will also be documentation of the costs of any elements of care which are associated with the total episode of care but not charged to the patient.

In these cases, the patient (or person funding the private elements of care) will need to enter into an agreement with the NHS Board outlining how and when the payment of treatment will be processed. It is expected that full payment of the private elements of care would be settled prior to the purchase, and initiation, of treatment.

Where full payment has been received and the patient, for whatever reason, has been unable to complete the full treatment course, the NHS Board will be expected to reimburse the person funding the treatment for the sum for any unused medicine and/or associated costs paid, on the basis that the costs can be recouped by the NHS Board.

If, during the course of the patient's treatment, the medicine becomes routinely available for use within NHS Scotland, the individual case will be reconsidered for NHS funding and provision from that point in time when SMC advice is released into the public domain.

6. Liability Aspects

The NHS cannot be held liable for the standards of care of any external private healthcare provider or any treatment they provide such as:

- Any complications of treatment(s) provided by a private healthcare provider

- Any failure of treatment(s) provided by a private healthcare provider
- Any malpractice resulting from the care provided by the private healthcare provider

Where the private aspects of care are being delivered within the NHS in accordance with agreed policy, the NHS board will assume vicarious liability for those staff delivering those aspects of care.

7. Responsibilities

The Private Consultant:

- takes clinical responsibility for all aspects of private treatment and care delivered
- liaises with the NHS Consultant to ensure appropriate transfer of information and care between the NHS and private elements of care
- ensures that all relevant clinical information is shared with relevant NHS colleagues prior to, during and upon completion of treatment in a timely way

The NHS Consultant:

- has a duty to provide effective communication with patients and their representatives about available treatment options. This should not include any assumptions about the patient's ability or willingness to pay for additional private treatment.
- should only prescribe or recommend treatments that they consider to be in the patient's best interests
- liaises with the Private Consultant to ensure appropriate transfer of information and care between the NHS and private elements of care in a timely way
- adheres to this policy when considering a co-payment situation
- ensures that all relevant clinical information is shared with relevant Private Healthcare colleagues prior to, during and upon completion of treatment in a timely way

Director of Services or equivalent e.g. Service Manager/Finance Manager:

- liaises with appropriate support services to obtain a breakdown of costs relating to the requested treatment and any necessary monitoring or service costs
- obtains payment from the person(s) funding the treatment for all predictable costs of the private treatment before treatment commences.
- ensures that any payments are documented and charged accordingly for privately funded treatments given to patients within the designated service area
- arranges for the reimbursement of necessary costs to the person funding treatment should a situation requiring reimbursement arise (as outlined in section 5: Financial Aspects)
- ensures that this policy is being adhered to through established formal governance arrangements.

The patient:

- asks the relevant consultant if he/she does not have a clear understanding of the treatment or the co-payment process
- signs the Patient Consent for Treatment section of Form CPF1
- shares all relevant medical information with the consultants taking responsibility for treatment (both private and NHS) such as medication history, medical history, allergies, adverse effects of previous treatments.

- agrees to the conditions of the co-payment agreement, including the transfer of care and information between the NHS and the private healthcare provider
- accepts that the NHS cannot take responsibility for the direct or indirect consequences related to the elements of care that are delivered privately.

The person(s) funding treatment:

- agrees to and pay the cost of the requested treatment and any related service costs as detailed in the Financial Arrangements section of the co-payment agreement (Form CPF1)

8. Information for the Patient

The patient will be provided with sufficient information:

- regarding the treatment being sought privately to enable them to make an informed decision as to whether to proceed and give written consent
- relating to the co-payment process to ensure clarity regarding the clinical and medico-legal responsibilities of the NHS and the Private Healthcare Provider
- pertaining to the costs directly and indirectly related to the provision of treatment and supporting measures, to ensure clarity.

9. Summary of Processes Leading to a Co-payment Scenario

