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Dear Colleague

ARRANGEMENTS FOR NHS PATIENTS RECEIVING HEALTHCARE SERVICES THROUGH PRIVATE HEALTHCARE ARRANGEMENTS

Introduction

This guidance replaces CMO(2007)3¹. It has been developed following a period of consultation with key stakeholders. Responses to the consultation reflected the importance of maintaining the integrity of the founding principles of the NHS and ensuring that patient safety, clinical accountability, governance and probity arrangements are robust.

Purpose

The key purpose of this guidance is to provide a framework to support decisions concerning the possible combination of elements of NHS and private care for individual patients. Where such decisions relate to the provision of medicines, these can be extremely complex and therefore where possible, the parameters in which these can be taken are made explicit within the guidance. NHS Boards and clinicians should ensure that in all situations, where consideration is given to combining elements of NHS and private care, these are handled in a way which protects the interests of the patient and the NHS more widely. Further guidance in relation to improved access to new medicines will be issued separately.

Scope

The principles contained in this guidance apply to all aspects of care – i.e. it is not restricted to access to medicines.

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Addresses

For action

NHS Board Chief Executives
NHS Board Directors of Public Health
NHS Board Medical Directors
NHS Board Directors of Pharmacy

For information

Chief Executive, Care Commission
Chief Executives, Independent Sector
Chair, Scottish Medicines Consortium
NHS Board Chairs of Area Drugs and
Therapeutics Committees
NHS Board Exceptional Prescribing
Leads
Area Clinical Forum Chairs
SCAN
WoSCAN
NoSCAN

¹ Patients Receiving Concurrent Treatment from NHS and Private Providers –
[http://www.sehd.scot.nhs.uk/cmo/CMO\(2007\)03.pdf](http://www.sehd.scot.nhs.uk/cmo/CMO(2007)03.pdf)

However, where it applies to medicines, this guidance focuses on situations regarding:

- medicines not recommended by the Scottish Medicines Consortium or NHS Quality Improvement Scotland (for NICE Multiple Technology Appraisals); and
- in relevant cases, where exceptional prescribing arrangements (including any appeals) have determined that the medicine in question would not be of demonstrable benefit in the particular circumstances of individual patients. However, it is recognised that in some cases, it may not be clinically appropriate for clinicians or patients to utilise the exceptional prescribing arrangements.

This means that normally all avenues for obtaining the medicine via the NHS will have been fully considered and exhausted. Wider developments intended to improve access to new medicines should mean that the number of patients receiving NHS and private care will be small in number and by exception.

This guidance does not require any clinician to provide private healthcare; nor does it require NHS Boards to make facilities available for the provision of private healthcare. However, where a clinician and NHS 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, subject to issues set out in this guidance being addressed.

How to use the Guidance

The guidance provides a framework to support local decisions concerning the possible combination of elements of NHS and private care for individual patients. Decisions regarding the provision of NHS services remain matters for NHS Boards; and clinicians remain responsible for clinical decisions regarding the care of individual patients.

The guidance comprises three Annexes:

- **Annex A** sets out a series of key principles and requirements;
- **Annex B** provides areas which should be considered in making decisions regarding combined NHS and private healthcare in the individual circumstances of particular patients; and
- **Annex C** offers a framework to guide decisions.

Actions for NHS Boards

NHS Boards should seek to ensure that:

- (a) where there is evidence that a patient will benefit from a particular intervention, including medicines, that full consideration is given to providing it through the NHS;
- (b) any arrangements which they may wish to facilitate for patients to receive elements of NHS and private healthcare in combination are lawful, maintain the integrity of the founding principles of the NHS, can be fully separated for delivery purposes and do not compromise patient safety, clinical accountability, governance and probity;

- (c) clinicians understand what arrangements may be possible on a case by case basis, and that where appropriate they are supported and provided with training to help manage such situations;
- (d) patients understand that while some elements of combined NHS and private healthcare may be possible, it is also the case that there are circumstances which may prevent the NHS from offering particular types of care in combination with care from the private sector for clinical reasons;
- (e) any arrangements are determined in accordance with the principles set out in this guidance;
- (f) NHS patients continue to receive the NHS care to which they are entitled.

This guidance will be reviewed by the end of 2011, or earlier if required.

Yours sincerely

HARRY BURNS

Key Principles and Requirements for NHS Boards

This guidance takes full account of the core principles of the NHS as set out below:

- the NHS provides a comprehensive service, available to all
- access to its services is based on clinical need not an individual's ability to pay
- the NHS aspires to high standards of excellence and professionalism
- NHS services must reflect the needs and preferences of patients, their families and their carers
- the NHS works across organisational boundaries with other organisations in the interests of patients, communities and the wider population
- the NHS is committed to providing the best value for taxpayers' money, making the most effective and fair use of finite resources
- the NHS is accountable to the public, communities and patients that it serves

The following key requirements should apply:

- the primary purpose of any NHS organisation is to provide NHS care;
- 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;
- NHS and private care should be delivered separately and there should be clear separation in legal status, liability and accountability between NHS and private care provision;
- in all cases the discrete elements of NHS and private care must be understood by all parties;
- the NHS should never subsidise private care with public money, which would breach core NHS principles;
- any arrangements to combine NHS and private care must be lawful;
- any arrangements to combine NHS and private care must not compromise the legal, professional or ethical standards required of NHS clinicians;
- on the basis that the private and NHS elements of care can be fully delineated they should be capable of being delivered independently at a different time and place from each other. This could include the facilities of a private healthcare provider, or part of an NHS organisation which has been designated for private care, including amenity beds;

- the NHS must not offer a two-tier service: the NHS provides treatment free at the point of access. Unless legislation allows, the NHS cannot charge patients for NHS care.

Areas for NHS Boards and Clinicians to Consider in Individual Circumstances

NHS Boards

- NHS Boards should have a clear policy in place to deal with situations which may result in a patient requesting combined NHS and private healthcare including a medicine which is not available in the NHS.
- Such a policy should cover any practical and operational arrangements such as the provision of facilities and staffing; identification and recovery of costs; management of indemnity and risk; handling complaints; and demonstrating how decisions are reached (see Annex C).
- Any arrangements resulting from a local policy should be considered in the context of this guidance and in conjunction with the legislative framework including equality duties, and any other relevant standards and guidance relevant to the NHS.
- There should be clear arrangements, including record keeping and documentation, for situations where patients may be referred or transferred between the NHS and private providers.

Clinicians

- Clinicians should have regard to relevant legal, contractual, clinical or professional standards and requirements².
- Arrangements should be in place to provide information to patients regarding the range of NHS treatment options available. Where a patient or their representative expresses an interest in obtaining care privately, clinicians should exercise judgement regarding the information they feel they can provide (in the context of any relevant professional guidance) and the appropriateness of engaging in such a discussion. Clinicians may wish to offer patients advice regarding other sources of information (including referral to clinical colleagues; or information from within the NHS Board).
- Any training and development needs regarding the handling and management of these arrangements should be addressed through established appraisal and development arrangements.

² For NHS consultants this includes the Terms and Conditions of the NHS Consultants Contract, GMC guidance, and the Code of Conduct for Private Practice.

<http://www.paymodernisation.scot.nhs.uk/consultant/index.htm>

Framework to Guide Decisions

NHS Boards should develop local processes, in the context of this guidance, to support clinicians and patients in reaching decisions about the appropriateness of combining NHS and private healthcare, including the provision of medicines, and the associated clinical management arrangements. In applying the local processes, NHS Boards will wish to take the following factors into consideration in order to establish the feasibility or level of risk in individual cases:

- Have all avenues for NHS funding been exhausted as appropriate in the individual circumstances of the case?
- Where it is a medicine being sought, does the patient understand that it has been determined that the medicine is not considered to offer sufficient benefit in relation to the cost in their particular case?
- If a decision is made to allow combined NHS and private care, will the patient continue to receive the elements of NHS care to which they are entitled?
- Would the arrangements breach any of the core principles of the NHS?
- Can the private and NHS elements of care be fully delineated and delivered separately?
- Are there any substantive risks to patient safety, clinical accountability, governance and probity³?
- Is there any doubt about which clinician is accountable for the private and NHS elements of care?
- Is there any doubt about which elements of care are to be provided by the NHS or privately?
- Is the NHS able to provide the facilities and staff necessary to manage the NHS elements of care in combination with the private elements of care?
- Are the wider interests of NHS patients protected?
- Is it possible to fully establish referral and transfer arrangements, including clear accountability, between the NHS and private provider?
- Is there any doubt about the sustainability and continuity of care and would this expose the NHS to additional risk or exposure?
- Do all parties understand that opting to pay for private treatment for a particular condition would not automatically bar individuals from access to NHS services for the condition in question or other, unrelated conditions?

³ The NHS Board will wish to discuss probity proofing their local processes with their NHS Counter Fraud Champion, NHS Fraud Liaison Officer and with NHSScotland Counter Fraud Services.

- Does the patient fully understand that the particular intervention, including the provision and administration of a medicine (or medicines), may have a number of associated clinical management requirements such as scans, blood tests, follow-up treatments or arrangements to deal with complications and that, due to clinical reasons, it may not be possible to disassociate these from provision of the medicine obtained privately?
- Does the patient fully understand the basis on which the decision has been reached?

NHS Boards should maintain accurate records of all decisions regarding combining NHS and private healthcare and how these were reached. The above factors provide a helpful checklist against which to record decisions and NHS Boards should consider making use of these in this way.