Defining the Boundaries between NHS and Private Healthcare Policy

NHS Devon

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Policy Sponsor	Chief Medical Officer
Policy Lead	Rebecca Owen, Clinical Effectiveness Governance and IFR Panel Manager
Approved by	Chief Medical Officer and Chief Nursing Officer
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Document change history			
Date	**Change**	**Version number of policy**	**Comments**
01/05/2022	New Policy	1.0	
24/04/2024	Policy Amendment	1.0	Moved to new template for NHS Devon
24/04/2025	Policy Amendment	1.1	Routine review of policy, edited to reflect new Policy Lead, checked references and some reformatting but no material changes to content

Equality, diversity and inclusion statement

NHS Devon is committed to the promotion of equal opportunities, addressing health inequalities and fostering of good relations between people protected under the terms of the Equality Act 2010, the Health and Social Care Act 2012 and Human Rights legislation. We are equally committed to the elimination of unlawful discrimination, harassment and victimisation. To demonstrate this commitment, we develop, promote and maintain policies, strategies and operating procedures. Every effort is made to ensure that patients, employees, contractors or visitors do not experience discrimination; either directly or indirectly, because of their vulnerability; disadvantage; age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion and belief; sex (gender) or sexual orientation.

All staff must comply with this policy. Compliance must reflect our organisational commitment to and policy on, equality, diversity and inclusion. In addition, each manager and member of staff involved in implementing this policy must give due regard to the needs of those protected under law.

If you, or any other groups, believe you are discriminated against under the terms of the Equality Act, the Health and Social Care Act 2012 or Human Rights legislation by anything contained in this document; or you need this document in an alternative format, for example, large print, Braille, Easy read or other languages; please contact our Patient Advice and Complaints Team (PACT):

Tel: 0300 123 1672 Email: d-icb.patientexperience@nhs.net

Contents		
Section	**Title**	**Page**

1. Introduction

1.1 This policy describes the required separation of private and NHS healthcare in line with national legislation and guidance.

1.2 Patients are entitled to utilise a combination of NHS and private healthcare (utilising private health insurance or direct payment). There are opportunities for inequalities to develop between those who are able to access elements of their care privately and those who are not.

1.3 This policy provides guidance on the ICB role in funding care for patients moving between NHS and private healthcare in order to ensure that no undue advantage is provided to any patient, and that the role of the NHS in the promotion of equity through provision of services is upheld, in line with the NHS Constitution.

2. Scope

2.1 This policy applies to any patient for whom NHS Devon is the responsible commissioner

3. Definitions

Terms	Definition
Private patients	Patients who receive private healthcare, self-funded on a pay- as-you-go basis or via a medical insurance policy.
Private healthcare	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	Healthcare that the patient's responsible Integrated Care Board (ICB) has agreed to fund. NHS Devon has policies that define the elements of healthcare which the ICB is and is not prepared to commission, and care pathways for certain conditions which patients are expected to follow. Care is not routinely commissioned for these conditions outside these pathways. The ICB has an individual funding request process 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.

Attributable costs	Financial costs to be considered when there is a mix of privately and NHS funded treatment and 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 ICBs	The ICB which discharges the Secretary of State's functions under the National Health Service Act 2006 for an individual patient.

4. Responsibilities

4.1 All ICB Commissioned Providers are required to adhere to this Policy.

4.2 The ICB IFR Team/Panel/Treatment Decision Review Panel will ensure that any individual funding requests relating to the NHS to Private Care transfer comply with this policy.

4.3 Prescribers must read this policy to understand their patients' entitlements to NHS/private care and how best to manage the interface between them.

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

5. Entitlement to NHS Care

5.1 NHS care is made available to patients in accordance with the policies and pathways of the ICB. 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 healthcare should not be affected by a decision by a patient to fund part or all of their healthcare needs privately.

5.2 An individual who is receiving treatment that would have been commissioned by the ICB, 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. If the clinical treatment is part of a commissioned pathway, the patient will be expected to follow the pathway even if the private care has bypassed part of the pathway. For example, if a patient has a private outpatient appointment at which a knee replacement is recommended, and then wishes to transfer to the NHS for the surgery, they will be expected to undergo physiotherapy in line with the ICB's commissioned pathway prior to surgery being considered.

5.3 The ICB will not reimburse the patient for any treatment received as a private patient before a request is made to move back into the NHS.

5.4 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.

5.5 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

5.6 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 their NHS GP or consultant to prescribe the treatment as long as:

- The GP or consultant considers it to be medically appropriate in the exercise of their clinical discretion
- The drug is listed on the Devon Joint Formulary, or the drug is normally fund by the ICB and
- The GP or consultant is willing to accept clinical responsibility for prescribing the medication

5.7 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.

5.8 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 ICB 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.

5.9 The ICB 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.

6. Parallel Provision of NHS and privately funded care

6.1 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. 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.

6.2 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:

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

6.4 If a patient is an in-patient at an NHS hospital, any privately funded care must be delivered to the patient in a separate 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.

6.5 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 (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).

6.6 Private prescriptions may not be issued during any part of NHS commissioned care.

6.7 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 commissioning criteria for funding IVF, the NHS should not prescribe drugs or support other medical procedures required as part of the privately funded treatment.

6.8 When a patient wishes to pay privately for additional treatment not normally funded by the patient's ICB, 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 does not apply to emergency medical related condition.

6.9 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 ICB 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.

7. Co-funding

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

7.2 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 clinician privately for those drugs which are not commissioned by the NHS.

7.3 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 ICBs for funding for the whole treatment on the grounds that the patient has exceptional circumstances. These will be considered through the individual funding request process.

7.4 The fact that a patient has been prepared to fund part of their own treatment, or has received some benefit from privately funded treatment, is not a proper ground to support a claim for exceptional circumstances.

7.5 If a combination of drugs or other treatments is to be administered simultaneously, some of which are not funded by the NHS, but where there are concerns to patient safety, the provider trust must apply to the ICBs in the form of an individual funding request, 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.

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

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

8.1 NHS Devon policies define which treatments the ICB will and will not fund. Accordingly if a patient commences a course of treatment that the ICBs would not normally fund, the ICBs will not pick up the costs of the patient either completing the course of treatment or to receive ongoing treatment.

8.2 A patient's clinician is entitled to apply for funding by means of an individual funding request. 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 evidence of exceptionality) would not be a proper basis for the ICB to agree to support the application. To adopt any other stance would result in the ICB approving funding differentially for persons who could afford to fund part of their own treatment. If funding is granted, the ICB will not reimburse the patient for any treatment received as a private patient before the exceptional request was successful.

8.3 Where a commissioning policy exists and the patient has not been in receipt of NHS services for that particular treatment, response to treatment per se will not be considered exceptional as a factor for funding in the NHS.

9. Other

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

9.2 NHS Devon is able to offer advice on preferred providers in such circumstances. However, a second opinion supporting treatment which is not routinely commissioned by the ICB does not create any entitlement to NHS funding for that treatment.

9.3 The fact that two NHS consultants have recommended a treatment would not normally amount to exceptional circumstances.

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

9.5 When grounds for a patient being considered exceptional have been established, the ICBs Individual Funding Panel will then take a decision on whether the other criteria have been met (see Individual Funding Request Policy).

10. Statutory Basis

10.1 This policy is guided by the legislative duties bestowed on ICBs under the National Health Service Act 2006 (as amended by the Health and Social Care Act 2012), NHS Constitution 2021, the Human Rights Act 1998, and Equality Act 2010, amongst others.

11. Accountabilities, Duties and Responsibilities

Chief Executive Officer	The Chief Executive Officer has ultimate accountability for the strategic direction and operational management of NHS Devon, including compliance with all legal, statutory and policy requirements.
Policy Sponsor	The Policy Sponsor is responsible for: • ensuring that policy is appropriate for consideration for approval; • endorsing this policy ahead of submission for approval; • with the Policy Lead, maintaining and updating procedures/ protocols and other supporting documents for this policy
Policy Lead / Author	It is the responsibility of the Policy Lead / author to: • ensure as far as possible that the policy is in line with Department of Health and Social Care guidance, legal requirements and advice from clinical bodies; • to complete an EQIA and Implementation Plan where required • undertake a fair and proportionate consultation period with the relevant stakeholders as part of the document's development • to ensure that the policy is in alignment with NHS Devon's strategy and values • ensure that the policy is developed, approved, disseminated and monitored as set out in the document;

	• with Policy Sponsors, maintaining and updating procedures / protocols and other supporting documents for this policy.
IFR Team/ Panel/Treatment Decision Review Panel	The ICB IFR Team/Panel/Treatment Decision Review Panel will ensure that any individual funding requests relating to the NHS to Private Care transfer comply with this policy.
Prescribers	Prescribers must read this policy to understand their patients' entitlements to NHS/private care and how best to manage the interface between them
Line Managers	Line managers have a responsibility to ensure their staff comply with NHS Devon policies and standards within their areas of responsibility.
All Staff	Employed or engaged staff have a duty to comply with NHS Devon policies and standards as outlined in their contracts of employment and codes of conduct

12. Implementation

12.1 All staff will be informed of the approval of the Policy via the Staff Bulletin which will provide a link to the document on the NHS Devon Intranet.

12.2 NHS Devon Senior Managers, or their designated representatives, will implement this policy by:

- Notifying all staff of its existence. New staff will be informed of this policy as part of their induction.
- Destroying all superseded paper-based versions of the policy and electronic versions retained in their area.
- Having adequate knowledge of, and / or access to, all relevant legislation in order to ensure that compliance with such legislation is maintained.
- Discussing with staff as part of their regular one-to-ones how they seek to achieve their individual objectives around policy review and maintenance.

13. Approval and Review

13.1 The approval route for this policy is via the Chief Medical Officer and Chief Nursing Officer.

13.2 This policy will be reviewed annually, or sooner if required, in order to ensure that it is current, relevant and reflects the strategic aims, objectives, organisational structures and responsibilities of NHS Devon.

14. Monitoring compliance and effectiveness

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

14.2 Any provider that is found the have provided care which is co-funded without the approval of the responsible commissioner will be reported to the appropriate authorities.

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

15. Impact Assessment

15.1 An Equality and Quality Impact Assessment (EQIA) is not required for this policy as it has received a review and refresh only.

16. References

- Department of Health. Guidance on NHS patients who wish to pay for additional private care. 23 March 2009. Gateway reference: 11512. Accessed via: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/404423/patients-add-priv-care.pdf on 02/04/25
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- Department of Health, NHS patients who wish to pay for additional private care 23 March 2009. Accessed via: https://www.gov.uk/government/publications/nhs-patients-who-wish-to-pay-for-additional-private-care on 02/04/25