

# PROPOSED REVISED GUIDANCE TO NHS BOARDS – FOR CONSULTATION

Dear Colleague

## Arrangements for NHS Patients Receiving Private Healthcare

1. This letter provides revised guidance to NHS Boards covering situations where patients obtain private healthcare in addition to NHS care. It replaces CMO(2007)3<sup>1</sup> and is intended to provide NHS Boards with a framework within which arrangements for NHS patients receiving private healthcare can be managed.

2. The NHS provides treatment free at the point of access. Unless legislation allows, the NHS cannot charge patients for NHS care which means that patients are not able to upgrade individual elements of their NHS care. Patients may, however, exercise their choice to receive some or all of their care from the independent healthcare sector. There is also legislation which enables the NHS to make services and accommodation available for NHS consultants to provide private treatment on NHS premises for private patients. Consultants working in the NHS and providing care to private patients need to have regard to the requirements of the NHS consultant contract<sup>2</sup> and other professional guidelines. While NHS consultants will continue to work in accordance with the terms and conditions of the NHS consultant contract, this guidance supersedes one of the recommendations set out in Appendix 8 (1<sup>st</sup> bullet point at paragraph 2.13 of the Code of Conduct for Private Practice: Recommended Standards for NHS Consultants) restricting patients being treated as both an NHS and a private patient for the same condition during a single visit to an NHS organisation.

3. Where, as part of their care a patient wishes to include elements of NHS care and private healthcare in combination and where this does not compromise patient safety; clinical accountability; probity; and existing treatment arrangements, NHS Boards should have arrangements in place to enable this to happen and in doing so should keep NHS and private care elements clearly separate. In making these arrangements it will be necessary to continue to ensure the provision of safe, evidence based care on an equitable basis; and to ensure the governance and probity of these arrangements. Where this concerns the provision of a drug not recommended for use in the NHS in Scotland, local processes for exceptional prescribing must be considered first. Where approval is given through this route, the drug should be provided as part of the patient's NHS care.

4. Further details on these arrangements are provided as follows:

- Annex A sets out the key principles and requirements against which any arrangements for combining NHS and private care for individual patients should be managed.
- Annex B provides guidance on managing these arrangements.

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<sup>1</sup> CMO(2007)3 [Patients Receiving Concurrent Treatment from NHS and Private Providers](#)

<sup>2</sup> PCS DD 2007 11 [www.sehd.scot.nhs.uk/pcs/PCS2007\(DD\)11.pdf](http://www.sehd.scot.nhs.uk/pcs/PCS2007(DD)11.pdf)

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### **Action**

5. NHS Boards should ensure that arrangements are in place to provide information to patients who may wish to combine NHS and private healthcare; and to ensure these arrangements are managed appropriately in order to ensure NHS patients continue to receive the NHS care to which they are entitled.

6. The guidance does not override the individual responsibility of health professionals to make decisions in the exercise of their clinical judgement in the circumstances of the individual patient.

**HEALTH POLICY AND STRATEGY DIRECTORATE  
SCOTTISH GOVERNMENT**

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## Annex A

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
- NHS and private care should be kept as clearly separate as possible
- in all cases, it must be clearly understood by all parties involved whether an individual procedure or treatment is privately funded or NHS funded
- the NHS should never subsidise private care with public money, which would breach core NHS principles
- private care should be carried out at a different time and place to the NHS care being provided. 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 fact that some NHS patients also receive private care separately must not be used as a means of downgrading the level of services that the NHS offers

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## Annex B

In making arrangements for NHS and private care, the following points should be given full consideration:

### Clinicians

- Where particular drugs are approved by the Scottish Medicines Consortium (SMC), or through NICE technology appraisals endorsed for Scotland by NHS QIS, it is expected that these, or their equivalents, will be funded by the NHS in accordance with the clinical needs of the patient. However, where a patient expresses interest in a drug which is not routinely available through the NHS, clinicians should exhaust all reasonable avenues for securing NHS funding before suggesting that the patient explores the option of securing the drug via the independent healthcare sector. Such circumstances are likely to be the exception rather than the rule, and clinicians should work within the established arrangements of their NHS Board to identify possible options for funding, including exceptional prescribing arrangements.
- NHS consultants must manage any private practice, including private practice described in this guidance, as set out in the Code of Private Practice and in the Terms and Conditions of the Consultant Contract or any future versions of these documents. This includes paragraphs 3.7 and 3.8 of the Code of Conduct for Private Practice which states:

*NHS consultants may not use NHS staff for the provision of private services without the agreement of their NHS employer*

*The consultant responsible for admitting a private patient to NHS facilities must ensure, in accordance with local procedures, that the responsible manager and any other staff assisting in providing services are aware of the patient's private status.*

- NHS clinicians who carry out private care should avoid any actual or perceived conflict of interest between their NHS and their private work. NHS clinicians should make all care options available to patients, including those not offered by themselves or their NHS organisation, in line with GMC guidance *Consent: Patients and Doctors Making Decisions Together*. However, NHS consultants should continue to comply with paragraph 2.9 of the Code of Conduct for Private Practice, which states that:

*In the course of their NHS duties and responsibilities, consultants should not initiate discussions about providing private services for NHS patients, nor should they ask other NHS staff to initiate such discussions on their behalf.*

- If a patient seeks information about private services, NHS clinicians should provide them with full and accurate information about the private services which could be provided and the NHS services their NHS organisation can provide. As good practice, a record should be kept of all discussions with

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patients about care not routinely funded on the NHS and in the patient's NHS medical notes.

- NHS clinicians should maintain at all times, effective communication with patients and patient representatives about treatment options in order that they can make an informed decision about their care. When decisions involve a child or a young person, clinicians should follow the good practice guidance set out in the 2007 GMC's publication: *0-18 years: Guidance For All Doctors*.
- On advising patients or patient's representatives about additional private care, clinicians should respect the patient's right to seek a second opinion, as set out in the GMC's *Good Medical Practice* guidance published in 2006.
- NHS clinicians who have regular conversations with patients and their representatives regarding difficult and sensitive issues such as end of life care management should consider undertaking training on how to handle these conversations in a balanced and sensitive way.
- Any clinician who does not wish to carry out any element of private practice is not compelled to do so.

### Management Arrangements

- This guidance should be read alongside the legislative framework, including equality duties, and organisations should have regard to all relevant considerations in support of decision making.
- Any situations where patients receive additional private care alongside NHS care should be handled with the highest standards of professional practice and clinical governance.
- Transferring between private and NHS care should be carried out in a way which avoids putting patients at unnecessary risk. Protocols should be in place to ensure effective risk management, continuity of care and co-ordination between NHS and private care at all times. If different clinicians are involved, these protocols should include arrangements for safe and effective handover of the patient between the clinician in charge of the NHS care and the clinician in charge of the private care. It must always be clear which clinician and organisation is responsible for the assessment of the patient, the delivery of any care and the management of any complications.
- As with any other patient who changes between NHS and private status, patients who pay for private care in these circumstances should not be put at any advantage or disadvantage in relation to the NHS care they receive. They are entitled to NHS services on exactly the same basis of clinical need as any other patient.
- The patient should bear the full costs of any private services. NHS resources should never be used to subsidise the use of private care.

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- There should be clear separation of legal status, liability and accountability between NHS care and any private care that a patient receives. For example, if complications arise, it should be clear which clinician and provider is responsible for which element of care. The NHS clinical negligence schemes should not be expected to contribute towards any clinical negligence claim where responsibility lies with the clinician providing the private element of care.
- Charges for any element of care provided by a consultant acting in a private capacity and using NHS facilities should be set in accordance with paragraph 3.4 of the Code of Conduct for Private Practice which states:

*Where the employer has agreed that a consultant may use NHS facilities for the provision of private services:*

*The employer will determine and make such charges for the use of its services, accommodation or facilities as it considers reasonable;*

*Any charge will be collected by the employer, either from the patient or a relevant third party; and*

*A charge will take full account of any diagnostic procedures used, the cost of any laboratory staff that have been involved and the cost of any NHS equipment that might have been used.*

- The NHS should not be expected to meet any predictable costs resulting from the private element of care. The NHS should continue to treat any patient in an emergency.
- NHS providers are responsible for recovering all appropriate charges from private patients.
- Any monitoring or follow-up care which the NHS would have provided for the patient had he or she not had the additional private care should continue to be provided on the NHS.
- The patient's agreement to the likely costs should be sought in advance of any private care being provided.
- It is important that the NHS should not be seen to be profiting unreasonably from patients in these circumstances. Any income generated under this guidance should be treated in the same way as any other income generated by the NHS acting in a private capacity.
- Indemnity provided by a NHS clinical negligence scheme will only apply to the NHS element of care. Clinicians providing private care must have private indemnity arrangements in place.

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### Complaints

- Any complaints which arise regarding the NHS elements of care should be dealt with through the NHS complaints procedure. Complaints regarding the private elements of care should be directed to the consultant in charge of the patient's private care.

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