

Defining the Boundaries between NHS and Private Healthcare

MECCG Policy Reference: MECCG142

Target Audience	Providers of private healthcare and private patients.
Brief Description (max 50 words)	This document defines the boundaries between NHS and Private Healthcare for Mid Essex Clinical Commissioning Group (MECCG). It considers Joint NHS and Private funding and NHS continuation of funding of care commenced on a private basis (including clinical trials and compassionate use programmes).
Action Required	To be approved by the CCG Board then disseminated to all staff
Equality Impact Assessment	This policy has been assessed for equality impact on the protected groups, as set out in the Equality Act 2010. This Policy is applicable to CCG staff, Board, members and those who work on behalf of the CCG irrespective of their age, disability, sex, gender reassignment, pregnancy, maternity, race (which includes colour, nationality and ethnic or national origins), sexual orientation, religion or belief, marriage or civil partnership.

Document Information

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Accountable Director	Director of Governance and Performance
Responsible Officer	Chief Pharmacist
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Stakeholders engaged in development/review	Quality & Governance Committee

Amendment History

Version	Date	Reviewer	Comments
1.0	August 2019	Angela Bell, Senior Pharmacist	Minor amendments made to accountable director, responsible officer, and also reference to Medicines Optimisation Team at the CCG rather than Medicines Management Team

1.0	May 2017	Chief Pharmacist	New policy adapted from Bedfordshire CCG "Defining the Boundaries between NHS and Private Healthcare Policy". (With acknowledgement to Bedfordshire CCG)
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Related Documents	Commissioning Policy Individual Funding Request and Exceptional Cases Applications MECCG21, March 2014
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Compliance with all CCG policies, procedures, protocols, guidelines, guidance and standards is a condition of employment. Breach of policy may result in disciplinary action.

POLICY DEVELOPMENT PROCESS

Names of those involved in policy development

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1. Equality Impact Assessment

Mid Essex Clinical Commissioning Group is committed to promoting equality in all its responsibilities – as commissioner of services, as a provider of services, as a partner in the local economy and as an employer. This policy will contribute to ensuring that all users and potential users of services and employees are treated fairly and respectfully with regard to the protected characteristics of age, disability, gender, reassignment, marriage or civil partnership, pregnancy and maternity, race, religion, sex and sexual orientation.

2. Introduction

This document defines the boundaries between NHS and Private Healthcare for Mid Essex Clinical Commissioning Group (MECCG). It considers Joint NHS and Private funding and NHS continuation of funding of care commenced on a private basis (including clinical trials and compassionate use programmes).

3. Purpose

This document defines the boundaries between NHS and Private Healthcare. It is required that all providers to the CCGs will comply with this policy.

4. Key Principles Supporting this policy

- Clinical Commissioning Groups have legal responsibility for NHS healthcare budgets and their duty is to live within the budget allocated to them.
- MECCG commissioners have a responsibility to make rational decisions in the way in which they allocate resources and to act fairly between patients.
- The budgets of Clinical Commissioning Groups are for the exclusive use of NHS patients. There can be no subsidisation of private patients, directly or indirectly.
- All NHS commissioned care should be provided as a result of a specific policy or decision to support the proposed treatment. A third party has no mandate to pre-commit resources from MECCG budgets unless directed by the Secretary of State.
- 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 decision making.
- If treatment is provided within the NHS which has not been commissioned in advance by a CCG, the responsibility for ensuring ongoing access to that treatment lies with the clinician or other person who initiated treatment.

5. Definitions

The following definitions apply in this policy:

Private patients are patients whose care is provided under a contract with their healthcare provider, i.e. through a private insurance scheme, on a pay as you go basis, compassionate or charitable use funding, or clinical trial. The healthcare provider could be an NHS Trust, a private hospital or an individual doctor. The healthcare may include treatment which would be available to the patient as part of NHS care or it may be healthcare which is not normally commissioned by their local CCG.

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.

Save as set out in this policy, MECCG is not a party to a private healthcare contract and cannot take any responsibility for the terms of the agreement, its performance or the consequences for the patient of the treatment.

NHS commissioned care is healthcare for patients, which is funded by their Primary Care Organisation. MECCG will have policies which define the elements of healthcare which MECCG is and is not prepared to commission and Individual Funding Request processes to consider commissioning care for individual patients outside of these policies.

Co-payment is where the Government has passed Regulations which require patients to make a financial contribution to the overall cost of NHS commissioned care.

Co-funding is the term used to describe proposals which 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 MECCG has resolved not to permit it within Mid Essex, as set out in the policy below.

Top-up funding is the same thing as co-funding.

An episode of care is 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 outpatients 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 drug is required to be given at a series of outpatient appointments then each attendance will be a separate episode of care.

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

6. The Commissioning Policy

6.1 This policy applies to any patient in circumstances where MECCG is the

responsible commissioner for their NHS care.

6.2 All policies, practices and procedures are constantly checked against equality legislative requirements and best practices to ensure that no person is treated less favourably on the grounds of their race, gender, religion, disability, age, sexual orientation, pregnancy status, and religion or belief.

6.3 MECCG will ensure that reasonable adjustments (such as interpretation and translation, hearing loops, British Sign Language) are made available, should these be needed, to ensure that patients are fully informed about the policy and its implications.

Entitlement to NHS care

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

6.5 An individual who is having treatment which would have been commissioned by MECCG 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.

6.6 Patients are entitled to seek provision for part of their treatment for a condition by a private healthcare arrangement and part of the treatment to be commissioned by MECCG, provided the NHS care is delivered in episodes of care which are clearly differentiated from any privately funded care. However the NHS commissioned 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 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.

6.7 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
- not be given any preferential treatment by virtue of having accessed part of their care privately
- be subject to standard NHS waiting times

6.8 A patient, whose private consultant has recommended treatment with a medication normally available as part of NHS commissioned care in the patient's clinical circumstances, can ask his or her NHS GP to prescribe the treatment as long as:

- the GP considers it to be medically appropriate in the exercise of the GP's clinical discretion

- the drug is listed on MECCG's drug formulary or the drug is normally funded by MECCG
- the GP is willing to accept clinical responsibility for prescribing the medication.

6.9 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.

6.10 Medication recommended by private consultants 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, local prescribing advice from MECCG 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.

Joint NHS and private funding

6.11 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.

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

6.13 Patients are entitled to request 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, provided that the requirements of '[Managing Conflicts of Interest in the NHS Guidance for staff and organisations](#)' is followed when offering such services. 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. MECCG 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.

- A patient is not entitled to “pick and mix” elements of NHS and private care in the same treatment, and so is unable to have privately funded and NHS funded drugs provided as part of the same care episode.

6.13 Private prescriptions may not be issued during an NHS consultation except where allowed by Regulations e.g. GP’s may prescribe limited (black) list drugs or drugs on the Selected List Scheme (where patients do not comply with the criteria for NHS funding) privately.

6.14 A common enquiry concerns patients who are paying for surgical treatment or procedures asking their GP to issue NHS prescriptions drugs required as part of that treatment or seek NHS funding for investigations which are part of the privately funded treatment. This is not permitted. If the patient does not meet MECCG’s commissioning criteria for funding the surgery or procedure, the NHS should not prescribe drugs or support other medical procedures required as part of the privately funded treatment.

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

6.16 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 attend a clinician separately (in a separate episode of care) for those drugs which are not commissioned by the NHS. If the combination of drugs are required to be administered at the same time or within the same episode of care, the patient must fund all of the drugs provided and the other costs associated with the proposed treatment. Patients in such circumstances may approach MECCG to apply for NHS funding for the whole of the treatment. However treatment outside of drugs and other treatments usually provided as part of NHS care can only be provided on grounds of exceptionality. The fact that a patient is prepared to fund part of their own treatment is not a proper ground to support a claim for exceptional circumstances.

6.17 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.

NHS continuation of funding of care which was commenced privately

6.18 MECCG policies define which treatment MECCG will and thus, by implication, will not fund.

Accordingly if a patient commences a course of treatment that MECCG would not normally fund, MECCG will not usually pick up the costs of treatment if, for example,

through the course:

- 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 ground that the treatment is clinically effective.

A patient is entitled to request funding on an individual case based on clinical exceptionalism. However, where MECCG 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 exceptionalism) would not be a proper basis for MECCG to agree to change its policy. Such an approach would result in MECCG approving funding differently for persons who could afford to fund part of their own treatment. It is the responsibility of the Private Healthcare Provider to ensure that the patient is fully informed of MECCG's position relating to ongoing funding before commencing the private treatment.

6.19 If a patient commences treatment privately for a drug or other medical intervention that MECCG routinely agrees to fund, provided the patient's clinical circumstances are within those defined in MECCG's commissioning policy, the patient is entitled to transfer to NHS funded treatment at any stage. However MECCG 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 drug or other treatment that is not routinely funded and this is an application approved on the grounds of clinical exceptionalism, MECCG will not normally reimburse the costs of any prior privately funded treatment. MECCG is under no obligation to meet such costs but may do so at its discretion. Each case will be considered on its own merits, via MECCG's Individual Funding Request Policy route.

6.21 Individual patients who have been recommended treatment by an NHS consultant, which is not routinely commissioned by MECCG 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:

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

AND

2. 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 commissioned 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

3. 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).

MECCG's Contracts Team is available to offer advice on preferred providers in such circumstances. However, a second opinion supporting treatment which is not routinely

commissioned by MECCG, does not create any entitlement to NHS funding for that treatment. The fact that two NHS consultants have recommended a treatment would not normally, in itself, amount to exceptional circumstances.

6.22 There is no legal or policy requirement for MECCG to take over funding responsibility for treatment which has been commenced outside the NHS and which is not routinely commissioned by the NHS.

MECCG commissioners have a responsibility to make rational decisions in the way in which they allocate resources and to act fairly between patients. MECCG makes prioritisation decisions each year which determine how resources are to be allocated. In addition, MECCG is prepared to consider in-year service developments and clinical exceptional individual cases.

Patients who wish to persuade MECCG to pick up funding for treatments that are not routinely commissioned can:

- make an individual application for funding for their case on the grounds of clinical exceptionality, or
- request MECCG 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 MECCG's annual plan and, if approved, be funded from the commencement of the coming financial year.

Continuation funding for treatment which has been commenced on a private basis will not be approved in any other circumstances.

It follows therefore that, in instances where MECCG has not yet agreed to fund a particular treatment, MECCG will not normally pick-up the costs of ongoing treatment.

This approach includes the following situations:

- Ongoing funding of treatment for patients leaving clinical trials. The responsibility for ongoing care rests with the sponsors of the trial – usually the pharmaceutical industry and the Provider Trust 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 private treatment and who can no longer afford private treatment.

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

7. Responsibilities

- The CCG IFR Team/Panel/Appeals Panel will ensure that any individual funding requests relating to the NHS to Private Care transfer comply with this policy.
- The CCG Medicines Optimisation Team will ensure that GP Practices are fully aware of the policy when asked to advise on the transfer of patients from NHS to Private Care.
- The CCG Contracting Teams will ensure that providers comply with this policy.

- The CCG PALS team will investigate complaints regarding MECCG refusal to fund care in an individual case, whether the care has been previously privately funded or not. The CCG PALS team will investigate the patient's concerns as quickly as possible using MECCG's complaints procedure and will assess the decisions made against this policy and the relevant MECCG commissioning policies.

8. Development process

This policy has been in place for several years, first as an NHS Mid Essex then as a MECCG Policy December 2012, which was then adapted by Bedfordshire CCG and then re-drafted into the MECCG template.

9. Training Requirements

None

10. Monitoring

- Ongoing monitoring of cases referred via the Individual Funding Request Policy, reported to MECCG Board.
- Ongoing monitoring of secondary/tertiary care Trust compliance with policy by MECCG Contract Leads during performance review after inclusion of policy in contract.
- 'Ad-hoc' monitoring of primary care compliance with policy (prescribing issues) by the Medicines Optimisation Team.

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