Royal College of Nursing

RCN Policy Unit

Policy Briefing 14/2008

Draft guidance on NHS patients who wish to pay for additional private care - A Consultation

The Department of Health have produced draft guidance on how to proceed in situations where NHS patients want to buy additional secondary care services that the NHS does not fund. The Professor Richards review identified that there was confusion about the rules in this area. The draft guidance issued by the Department of Health is intended to provide clarity for NHS patients who receive private care. The consultation closes on 27th January 2008.

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Introduction

In June 2008 the Government announced a major review of their policy on whether people should be able to top up their NHS care with privately purchased drugs not available on the NHS. The Government's previous policy, which prohibited individuals from funding prescribed drugs themselves while continuing a course of NHS care, had been subject to strong criticism following a number of high-profile cases in which terminally ill patients had to either forego purchasing the drugs or to pay for the care that they would otherwise have received free on the NHS. The Government asked Professor Mike Richards, National Clinical Director for Cancer, to undertake this important review.

On 4th November Professor Richards reported back to the Secretary of State for Health setting out a series of recommendations on improving access to medicines for NHS patients. Professor Richards presented his report to the Secretary of State for Health; who accepted the recommendations in full.

As part of his announcement on 4th November the Secretary of State made it clear that patients can retain their entitlement to NHS treatment as well as paying for private care. This change of policy came into effect immediately.

The Secretary of State also emphasised that under **a new principle of separate care**, private treatment should take place in a private facility away from NHS wards and must not be subsidised by the NHS.

The purpose of this briefing is to provide a short introduction to the 'draft guidance on NHS patients who wish to pay for additional private care' that was issued on 4th November and is now the subject of a further consultation. This draft guidance constitutes part of the Government's response to the review and the consultation on this will close on 27th January 2009.

What are the main recommendations of this consultation?

Professor Richards recommended that:

- The Department of Health should make clear that no patients should lose their entitlement to NHS care they would have otherwise received, simply because they opt to purchase additional care for their condition;

- Revised guidance should be issued as soon as possible to make this clear and to promote greater consistency across the NHS in England; and

- The guidance should set out mechanisms to ensure that these cases are handled in a way that supports good clinical practice and is fully consistent with the fundamental principles of the NHS.

This draft guidance refers to the fundamental principles of the NHS and any decisions about a course of action under the guidance should be taken in accordance with those principles. The fact that some NHS patients also receive private care separately should never be used as a means of downgrading the level of service that the NHS offers.

In accordance with the statement by the Secretary of State the guidance makes it clear that patients may pay for additional private healthcare while continuing to receive care from the NHS. However, in order to ensure that there is no risk of the NHS subsidising private care:

- It should always be clear whether an individual procedure or treatment is privately funded or NHS funded;

- Private and NHS care should be kept as clearly separate as possible;

- Private care should be carried out at a different time and place. A different place would 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 proposed guidance would apply to additional private healthcare that patients received over and above their NHS care. This would not permit a “pick and mix” approach where patients can pay to upgrade any individual elements of their NHS care.

The draft guidance emphasised that departing from these principles of separation should only be considered where there are overriding concerns of patient safety.

The guidance has been drafted with the intention of being implemented by Primary Care Trusts and all providers of services to NHS patients. The boards of all provider organisations covered by this guidance will also be responsible for ensuring their organisations comply with it.

In their system oversight role, Strategic Health Authorities (SHAs) will ensure that, in any separate provision of private and NHS care, the fundamental principles of the NHS are not undermined.

What safeguards for the NHS will be included in the guidance?

To help protect the essential principles of the NHS, the following specific safeguards will also be applied when making decisions:

- NHS clinicians who carry out private care should avoid any actual or perceived conflict of interest between their NHS and private work;
- If a patient seeks information about private services, NHS clinicians should provide them with full and accurate information about the private services they or their NHS organisation can provide. As good practice, a record should be kept of all discussions with patients about care not routinely funded on the NHS in the patient's NHS medical notes;
- 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.
- There should be a 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 performing the private element of care.
- Any clinician who does not wish to carry out any element of private practice is not compelled to do so.

The consultation document applies the principle of separateness to all types of treatments, not just drugs. It provides examples of circumstances where public and private treatment apparently cannot be separated, for example a cataract operation involving a multifocal lens replacement (which is not funded by the NHS). Here, the Department of Health has clarified that an operation to insert the lens cannot be separated from the privately purchased

multifocal lens and therefore the patient cannot expect the NHS to supply the operation while they supply the lens.

What is the RCN position on top-up payments?

As part of its response to the June 2008 consultation the RCN stated clearly that the Government should allow 'top up' payments for private prescriptions for a time limited period alongside funded NHS care in order to publicly work through the wider implications of this issue.

The RCN has consistently highlighted concerns that consumerism in health care will bring consequences for nurses, patients and policy makers which must be carefully thought through. The College has also emphasised that such choice, if not properly deliberated, has the potential to exacerbate inequalities as the public make choices others are not able to make. In this case, there is a clear risk of creating a 'Business class' standard of cancer care for those who have the money, whilst the rest would have to be content with the relative discomfort of the ordinary traveller.

In reality this discussion is part of a much wider debate about the future of healthcare provision. The demand for NHS services will always exceed supply and the RCN recognises that not every treatment can be provided to every person.

Responding to the Health Secretary's statement on NHS Co-payments, Dr. Peter Carter, Chief Executive & General Secretary of the Royal College of Nursing, said: "The Government has made the right decision in lifting the ban on NHS care for those who choose to pay for additional drugs privately…….today's announcement marks the first step in a long journey towards resolving this deeply complicated debate which has huge implications for patients and health professionals in the NHS and beyond. The Government needs to work with nurses and patients to ensure that this does not bring about a business class versus no-frills NHS. There are still significant issues about how this principle is translated into practice, which could have a big impact on the work of nurses and how patients are cared for. We are committed to working with the Government at every step of the way to ensure the best possible outcome."

The RCN believes that clear rules must be applied to ensure that patients also pay for the cost of nursing care, scans, blood tests and other costs associated with the extra treatment. Practical difficulties remain on how patients who choose to pay privately can be moved into private facilities and how the additional costs will be priced.

How can nurses influence the RCN response to this consultation?

This important consultation presents the opportunity for the nursing profession to actively engage and participate in how the Government's change of position on 'top up' payments can be implemented in a practical and effective manner. The following six questions have been included to gain feedback from members during this consultation. Please note that this is not a comprehensive guide to the issues raised in the consultation:

- Does this guidance offer a practical way of balancing the rights of individual patients with the values of equality on which the NHS is based?

- Are sufficient safeguards in place to prevent the principle of NHS care being compromised?

- Does this guidance provide sufficient clarity on how to respond to those who wish to pay for additional private care?

- Will allowing access to 'top up' services encourage patients to spend their savings on expensive treatments? What information will they have to make an informed decision, and what information demands might be placed on nurses?

- Should there be more assurance mechanisms in place to ensure the guidance is followed?

It would be particularly helpful to receive views and comments in relation to;

- **What are the practical issues and challenges that nurses could face in implementing the separate care principle?**

RCN policy development- your Policy Debate

The RCN is seeking views from members about the consultation. Members are encouraged to send their thoughts and views to the RCN by emailing them to policycontacts@rcn.org.uk

Your comments and the issues raised will be used to inform RCN position statements and influence wider RCN policy in the area of top-up payments.