

Non-contract activity policy

August 2016

Version control

Version	Date	Name	Comments
1.0	27/04/16	Steve Locke	Document creation
1.1	06/06/16	Steve Locke	Amendments from initial feedback Commissioners, Contracts, IFR team
1.2	14/06/16	Steve Locke	Amendments re high cost drugs, Prescribing
1.3	25/07/16	Steve Locke	Spell check and grammatical changes
1.4	16/08/16	Steve Locke	Amendments re IFR process, private patients and clinical trials, Commissioners, IFR team

Non-contract activity policy

Title:	Non Contract Activity Policy
Document author:	Senior Contract Manager
Document type:	Policy & Procedure
Online Location:	Document Library
Approved by:	Finance Committee
Can this document be published to the internet (publicly available):	Yes
Brief summary of document:	To ensure consistent equitable applications of NHS Kernow's treatment policies in cases of non-contracted activity
This document replaces (exact title of previous document or NA):	Not applicable
Approved Equality Impact Assessment attached:	Yes
Cross referenced to:	NHS Kernow Policies on Procedures of Limited Clinical benefit Equality Act 2010 Human Rights Act 1998
Ratified by	Finance Committee
Date of ratification	30 August 2016
Review date	August 2019

Contents

Introduction	4
NHS funds	4
Scope	4
Policy statement	4
Equality statement	5
Consultation.....	5
Physical health choice.....	5
Mental health choice	6
Non-contract activity.....	7
UK cross border elective referrals	8
UK cross border emergency treatments.....	8
Submission of invoices and validation.....	9
Acute physical care.....	9
Mental health care	10
High cost drugs and appliances - exclusions from tariff	11
National Institute for Health and Clinical Excellence (NICE)	12
Patient transport.....	12
Experimental and unproven treatments.....	13
Novel treatments not previously studied at all	15
Patients changing responsible commissioner	15
Private patients	15
Documents which have informed this policy.....	16
Appendix A: Glossary.....	17
Appendix B: Equality Impact Assessment – initial screening	18

Introduction

NHS funds

NHS Kernow Clinical Commissioning Group (NHS Kernow) buys healthcare on behalf of the local population of Cornwall and Isle of Scilly. The money for this comes from a fixed budget. By law, we are required to keep within this budget.

Demand for healthcare is greater than can be funded from this fixed budget. Unfortunately, this means that some healthcare which patients might wish to receive and which professionals might wish to offer cannot be funded.

This has always been the situation since the start of the NHS, assessing what the overall population most needs.

Our approach to this situation is to prioritise what we spend on contract and non-contract activity, so that the local population gets access to the healthcare that is most needed.

This assessment of need is made across the whole population and, wherever possible, on the basis of best evidence about what works. We also aim to do this in a way that is fair and equitable, so that different people with equal need have equal opportunity to access services, wherever those services are provided.

This approach is not new. It is consistent with other NHS organisations who buy healthcare for their local populations.

Scope

This policy relates to non-contract activity for secondary physical and mental health care. Excluded from scope are:

- Continuing healthcare
- Patient placements
- Registered nursing care
- Looked after children

Policy statement

This policy applies to any patient in circumstances where the NHS Kernow is the responsible commissioner for their NHS care. It equally applies to any patient needing medical treatment where the Secretary of State has prescribed that NHS Kernow is the responsible commissioner for the provision of that medical treatment as part of NHS care to that person. The purpose of this policy is to ensure that NHS Kernow (the Commissioner) for Cornwall and Isles of Scilly fund treatment only for clinically effective interventions delivered to the right patients.

In this policy a reference to “treatment” is a reference to any healthcare intervention provided, or proposed to be provided, by a clinician of any nature whatsoever.

In this policy, references to ‘the responsible commissioner’ refers to the responsibility for paying for treatment.

This policy should be read in conjunction with the Department of Health’s responsible commissioner guidance, currently: [Who Pays? Determining responsibility for payments to providers](#).

Equality statement

NHS Kernow has a duty to have regard to the need to reduce health inequalities in access to health services and health outcomes achieved as enshrined in the Health and Social Care Act 2012. NHS Kernow is committed to ensuring equality of access and non-discrimination, irrespective of age, gender, disability (including learning disability), gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex (gender) or sexual orientation. In carrying out its functions, NHS Kernow will have due regard to the different needs of protected equality groups, in line with the Equality Act 2010. This document is compliant with the NHS Constitution and the Human Rights Act 1998. This applies to all activities for which they are responsible, including policy development, review and implementation.

Consultation

The following teams have been consulted in developing this policy:

- Business Intelligence;
- Commissioning;
- Individual Funding Requests;
- Prescribing;
- Finance and contracting.

Physical health choice

Any person requiring an elective referral for which NHS Kernow is responsible may choose any clinically appropriate secondary care provider for the first outpatient appointment with a consultant or a member of the consultant’s team.

A secondary care provider is “clinically appropriate” within the paragraph above if, in the opinion of the person making the referral, the secondary care provider:

- offers services that are clinically appropriate for that person in respect of the condition for which that person is referred; and
- agrees to contract with an NHS Clinical Commissioning Group for the provision of the said service upon the terms and conditions NHS Standard Contract.

Patient choice does not refer to the following services:

- Accident and emergency services;

Non-contract activity policy

- Cancer services or services provided at rapid access chest pain clinics which are subject to the two week maximum waiting time;
- Maternity services;
- Services for persons detained under the Mental Health Act 1983;
- Any person detained in or on temporary release from prison;
- Any person serving as a member of the armed forces; or
- Any other services where it is necessary to provide urgent care.

In circumstances other than as set out above, NHS Kernow will endeavour to offer the patient a choice of health care provider within the range of service providers from whom services are normally commissioned by NHS Kernow for the patient's presenting condition. This means that NHS Kernow will, where clinically appropriate and subject to the terms of this policy, offer a range of healthcare options and providers from which a patient can choose.

Choice does not mean that a patient can change NHS Kernow's commissioning policy by seeking to extend the range of treatments the NHS is prepared to commission or fund for that patient or for patients generally.

In circumstances other than as set out above, choice will be offered in line with Department of Health policy and guidance.

NHS Kernow will normally support a patient seeking a second opinion for the same condition but will not fund a third or subsequent opinion.

Mental health choice

The legal rights to choice of mental health provider and team apply when:

- the patient has an elective referral for a first outpatient appointment; and
- the patient is referred by a GP; and
- the referral is clinically appropriate; and
- the service and team are led by a consultant or a mental healthcare professional; and
- the provider has a NHS Standard Contract with any CCG or NHS England for the required service.

As is the case in physical health, the legal rights to choice in mental health do not give patients a legal right to choose their treatment. It is for commissioners to decide which services to secure in order to meet the needs of their local population. Where NHS Kernow routinely commissions particular mental health services, eligible patients may choose any provider and team, in line with the description above, to access those services.

If a patient's diagnosis changes significantly, the provider should contact the patient's GP to discuss whether it is still clinically appropriate for the patient to be treated by that provider and whether NHS Kernow will continue to fund the episode of care.

Non-contract activity policy

Where patients, with the support of their GP, wish to access services that are not routinely commissioned by their responsible commissioner, they may apply through the commissioner's Individual Funding Request (IFR) process or if in receipt of a personal health budget through the care planning process.

There are some exclusions from these legal rights to choice. These are where a patient is:

- already receiving mental health care following an elective referral for the same condition; or
- referred to a service that is commissioned by a local authority, for example a drug and alcohol service (unless commissioned under a Section 75 Agreement); or
- accessing urgent or emergency (that is, crisis) care; or
- accessing services delivered through a primary care contract; or
- in high secure psychiatric services; or
- detained under the Mental Health Act 1983; or
- detained in a secure setting. This includes people in or on temporary release from prisons, courts, secure children's homes, certain secure training centres, immigration removal centres or young offender institutions.

Non-contract activity

Non-contract activity is the term used to refer to NHS-funded services delivered to a patient by a provider which does not have a written contract with that patient's responsible commissioner, but which does have a written contract with another NHS commissioner or commissioners.

The Health and Social Care Act 2012 sets out that a CCG has responsibility for all people who are:

- provided with primary medical services by GP practices who are members of NHS Kernow; or
- usually resident in the area covered by NHS Kernow and not provided with primary medical services by a member of any CCG.

When considering Non-contract activity NHS Kernow will apply the guidance "[Who Pays? Determining responsibility for payments to providers](#)".

The responsible commissioner for non-contract activity will be established in the usual manner, following the NHS England guidance "[Who Pays? Determining responsibility for payments to providers](#)" irrespective of the location or status of the provider.

The following arrangements apply, within England, in terms of CCG approval processes for non-contract activity:

- a) No prior commissioner approval is required for emergency treatment on a non-contract basis.

Non-contract activity policy

- b) No prior commissioner approval is required for consultant-led elective care where the patient has exercised choice of provider under the legal rights set out in the NHS Constitution. A GP, dentist or optometrist referral is required in such cases, however, providers should notify NHS Kernow of referrals received, who will issue a Prior Notification reference; the purpose of this is to allow NHS Kernow to manage financial commitments, not to delay patient treatment. Invoices/backing must be submitted with prior notification references. Where this is not present the invoice will not be paid.
- c) For non-emergency treatment where the NHS Constitution does not set out a legal right for a patient to choose their provider, referral by the patient's GP, dentist or optometrist nonetheless constitutes authority for the provider to see and (depending on the content of the referral) treat the patient, and commissioners must pay for activity undertaken in such circumstances.
- d) In other circumstances than those set out in paragraphs a) to c) above, there is no presumption that a provider may see and treat patients, on a non-contract basis, and expect to be paid by NHS Kernow. NHS Kernow has the right to determine which services they wish to commission and from which providers. Where non-emergency non-contract referrals are made other than by the patient's GP, dentist or optometrist, including self-referrals, the provider must seek prior authorisation from NHS Kernow before assessing and treating the patient. In submitting claims for treatment the prior approval reference must be quoted. Where prior approval is not granted, or the prior approval reference is not supplied as part of the patient data set, NHS Kernow is under no obligation to pay for activity which is carried out by providers on a non-contract basis.

Who Pays guidance states that where a patient moves during the course of a high cost treatment (e.g. a hospital spell with a long length of stay leading to a substantial excess bed day payment), the cost of treatment up until the date that the patient ceases to be the responsibility of the originating Commissioner should be borne by the originating Commissioner. Therefore, NHS Kernow will not fund costs associated with delivery of NHS England specialised commissioning funded spells.

UK cross border elective referrals

The same arrangements apply for NHS Kernow approval processes in respect of UK cross-border non-contract activity, except that for all elective referrals, prior approval from NHS Kernow must be sought and obtained by providers. Referral by a GP or consultant does not in itself constitute approval. Where prior approval is not granted, NHS Kernow is under no obligation to pay for activity which is carried out by providers in Northern Ireland, Scotland or Wales on a non-contract basis.

UK cross border emergency treatments

NHS Kernow will approve payments for UK cross border invoices for emergency and non-elective activity that meet the other criteria for payment e.g. responsible commissioner.

Submission of invoices and validation

Non-contract activity is undertaken by the provider on the terms of the NHS Standard Contract in place between that provider and its host commissioner(s). A contract on those terms will be implied as between the patient's responsible commissioner and the provider. Note in particular that:

- services will be delivered in accordance with the service specifications and other terms and conditions of the provider's contract with its host commissioner;
- prices for services will be in line with National Tariff guidance, as applicable, or the local prices set out in the provider's contract with its host commissioner(s); Where local prices are used it is the responsibility of the provider to supply the agreed local prices with supporting data, i.e. Schedule 3A of the contract with their host commissioner. Where such evidence is not provided, NHS Kernow will not authorise payment of that element of the invoice;
- arrangements for submission of activity datasets, invoicing and payment reconciliation in support of non-contract activity should follow National Tariff guidance and the terms and conditions set out in the NHS Standard Contract. NHS Kernow **will not pay** for activity where activity datasets and invoices are not submitted in line with these requirements;
- For invoices with multiple claims, for which there is a partial dispute, NHS Kernow will pay the residual value of the invoice on receipt of a credit note for the disputed element. Where no credit note is received, the full invoice will be removed from payment systems after 60 days;
- Where a full invoice has been challenged and the provider has not responded satisfactorily within flex and freeze timetables, the full invoice will be removed from payment systems after 60 days.

Acute physical care

NHS Kernow will raise queries and challenges on the following principles:

Patient residence:

- Check that a patient is registered on the list of NHS patients of a GP practice within NHS Kernow.
- Where a patient is not registered with a GP practice with NHS Kernow, a check on place of 'usual residence' using the Open Exeter system.

Responsible commissioner: Check for NHS Kernow being the responsible Commissioner for services using the NHS England Prescribed Specialist Services Manual and algorithm.

Use of SuS: NHS Kernow will only pay against SUS; if activity is missing from the sus data we receive NHS Kernow will not agree payment.

Tariff validation: The detail behind this challenge will be contained within the enquiry that accompanies the challenges.

Non-contract activity policy

Kernow Clinical Commissioning Group

Non-tariff validation: Similar to above, any challenges under this line will be made obvious to the provider with this document. It is the responsibility of the provider to supply the agreed local prices with supporting data i.e. Schedule 3A of the contract with their host commissioner.

Multiple firsts: Challenge relates to patients that have been seen under the same treatment function code within six months of their original attendance. Tariff is the variance of first attendance to follow up.

Procedures of Limited Clinical Benefit (POLCB): The procedures form the POLCB list are pulled from SUS data and matched back to individual funding requests. Patients identified within the challenges document are those that have not been approved. CCG challenging on this basis unless provider can provide further evidence. The list of procedures can be found at the NHS Kernow website: www.kernowccg.nhs.uk/

Readmissions same provider YTD: NHS Kernow will follow tariff guidance for emergency readmissions within 30 days of discharge.

Attendance within start and end date of an IP spell: Patients should not have an A&E attendance whilst they are an inpatient and if so, CCG has been incorrectly charged. Start and end day of the spell is excluded from this figure. CCG expect the trust to investigate.

Multi same day IP spell: Same patient presenting as an inpatient on the same day – trust to investigate and report back any findings.

Pre-op LOS offsetting XBD: Elective patients that have spent 1+ days in hospital before any procedure but then have been eligible for excess bed day top up.

Overlapping episodes: This is based on the field 'Overlapping Episodes' in SUS and is raised as a challenge in order to commissioners to investigate.

Overlapping Spells (includes other providers): Taken from SUS, this is where the same patient has two spells recorded on the same dates (first and last day excluded) Trust to investigate and feed back to CCG.

Same patient, same day, multiple provider: Similar to 'overlapping spells (includes other providers)' challenge but limits where the spell start and end dates are exactly the same. Indicates double recording.

Non-elective cancelled operations: WA14A/B (planned procedure not carried out). There should not be any non-elective.

Mental health care

NHS Kernow will raise queries and challenges on the following principles:

Patient residence: Check that a patient is registered on the list of NHS patients of a GP practice within NHS Kernow.

- Where a patient is not registered with a GP practice with NHS Kernow, a check on place of 'usual residence' using the Open Exeter system.

Responsible commissioner: Check for NHS Kernow being the responsible Commissioner for services claimed consistent with the Guidance on mental health currencies and prices, for non-contracted activity, the NHS Kernow expects to receive an invoice for any assessment and/or care provided. Where they exist, daily cluster prices should be used. This will introduce consistency in charging and will reduce the need for lengthy negotiations between providers and NHS Kernow about the price of non-contracted activity.

High cost drugs and appliances - exclusions from tariff

A number of high-cost drugs are excluded from the scope of the National tariff. Some drugs on the excluded list have more than one indication for use and NHS Kernow needs to be clear with exclusions list providers which indications they are willing to pay for and at what price.

The inclusion of a drug on the Tariff exclusions list however does not mean that it will automatically be funded by NHS Kernow. If the drug is not listed as a high cost drug under Tariff rules it should be provided within tariff price, unless there's a local agreement to reimburse over and above tariff.

The vast majority of high cost drugs excluded from tariff are reimbursed directly by NHS England Specialised Commissioning (NHSESC) and only a relatively small number are reimbursed by NHS Kernow. Tariff excluded drugs have historically been paid for by NHS Kernow with limited assurances that they have been used in accordance with NICE Technical Appraisal Guidance (TAGs) or local prescribing policies. It should be noted that the tariff payment system is based on nationally calculated averages. It is expected, therefore, that providers may incur a surplus or deficit against the average in the course of providing care.

These arrangements relate to high cost drugs that are excluded from Tariff guidance and which are used in services for which NHS Kernow has commissioning responsibility.

The drug list on NHS Kernow website provides details of drugs that are not included within the tariff and their uses (conditions) that NHS Kernow routinely funds.

If the drug is not listed, NHS Kernow is either not the responsible commissioner for the service in which it is used or has taken a decision not to routinely reimburse the drug.

Requests for the use of drugs which are not routinely commissioned can be made on an exceptional basis using the Individual Funding Request (IFR) process. The IFR policy, process and forms can be accessed at the NHS Kernow website:

www.kernowccg.nhs.uk/

Non-contract activity policy

Kernow Clinical Commissioning Group

NHS Kernow will not normally reimburse a patient's treatment costs as a consequence of completion of a clinical trial or when compassionate funding has been withdrawn, unless prior approval has been obtained from NHS Kernow.

Reimbursement arrangements for the period following completion of a clinical trial must be agreed with the responsible commissioners prior to the trial or treatment commencing.

Where there are agreed policies with the host commissioner, the provider will be expected to provide evidence of the agreement with 20 working days of a request from NHS Kernow. If the evidence is not provided NHS Kernow reserves the right to withhold payment for this element of the provider claim.

National Institute for Health and Clinical Excellence (NICE)

NHS Kernow has a statutory duty to fund NICE TAs within 90 days of their publication, unless otherwise stated on the guidance. NHS Kernow will **only** reimburse/fund excluded drugs that are used in accordance with NICE technological appraisal (TA) recommendations. NHS Kernow reserves the right to review criteria following publication of updated NICE TA recommendations, NICE Clinical Guidance or local Area/District Prescribing Committee decisions. NHS Kernow reserves will only fund new NICE approved recommendations from the 90th day.

During the process of guidance development, NICE's independent advisory bodies often identify NHS clinical practices that they recommend should be discontinued completely or should not be used routinely. Such recommendations may be due to evidence that the practice is not on balance beneficial or a lack of evidence to support its continued use. NICE has collated these recommendations into the 'do not do' recommendations database.

NHS Kernow will not routinely fund interventions identified in the NICE "do not do" recommendations database.

Patient transport

Non-emergency patient transport is defined as non-urgent, planned transportation of patients with a medical need for transport to and from a premises providing NHS healthcare, and/or between NHS healthcare providers.

NHS Kernow has a contract for patient transport services that includes repatriation of NHS Kernow patients from anywhere in the UK. Where patient transport is required for an NHS Kernow patient, providers must contact NHS Kernow who will arrange for the contracted provider to repatriate our patients. In the event that our contracted provider is unable to provide transport approval must be sought from NHS Kernow who will provide a prior approval reference. Invoice submitted without a prior approval reference will not be authorised for payment.

Experimental and unproven treatments

It is standard practice for commissioners not to fund treatments which are still considered experimental, irrespective of the 'potential' health benefit for either individuals or groups of patients. It is difficult to justify funding an experimental treatment with outcomes which are either unproven or unclear when many proven interventions and important elements of healthcare remain either unfunded or are not fully accessed by sections of the population.

Except for those circumstances set out in this policy interventions which are judged to be experimental or not to be of proven effectiveness will **not** routinely be funded.

NHS Kernow seeks provide as comprehensive a healthcare service as possible across all patient groups and across the entire patient pathway, within an overriding legal obligation to stay within the financial budget allocated to it. Given that demand for healthcare will always exceed the resources available to fund treatment, it is justifiable to give the funding of experimental treatments a lower priority than funding the provision of core services and treatments of proven benefit.

Criteria for considering a treatment as experimental include:

- the treatment is still undergoing clinical trials and/or yet to undergo a phase three clinical trial for the indication in question;
- there are no relevant articles published in the peer-reviewed journals available on the treatment for the indication in question;
- the treatment does not have approval from the relevant Government Body;
- the treatment does not conform to usual clinical practice in the view of the majority of medical practitioners in the relevant field;
- the treatment is being used in a way other than that previously studied or that for which it has been granted approval by the relevant government body the treatment is rarely used, novel, or unknown and there is a lack of authoritative evidence of safety and efficacy.

A request to support a single patient to enter a trial will be managed under NHS Kernow's Individual Funding Request (IFR) policy and process where there is evidence of exceptional clinical need. Where funding has not been agreed as an IFR, NHS Kernow **will not be** responsible for the funding of experimental or unproven treatments.

Ongoing access to treatment following the completion of industry sponsored clinical trials or funding

Excess treatment costs (ETCs) for non-commercial research studies arise when the costs of delivering the treatment or intervention in a trial exceed that of standard treatment. Although often relating to cancer related topics for clinical trials, ETCs also apply to other research areas such as mental health, renal, eye disease and long term chronic conditions.

Non-contract activity policy

The need to support high quality, randomised trials to establish and grow a valid evidence base to inform commissioning is considered good practice and therefore funding of ETCs should be considered by CCGs. There is NHS England and Department of Health guidance which promotes and supports participation by NHS organisations and NHS patients in research and which suggests that CCGs should fund ETCs. NHS Kernow supports this principle however, strategic priorities as well as competing demands for resources, including meeting statutory requirements, must be taken into consideration when considering ETC funding requests.

In addition, in line with national policy, on-going funding for treatments, where these were initiated as part of a clinical trial, is not routinely commissioned. When a clinical trial is planned, patient expectations should not be raised that NHS funding will be available to continue the treatment after the trial has ceased. Where post-trial treatment is provided by a pharmaceutical company on a 'compassionate basis', it may not be assumed that NHS Kernow will subsequently fund treatment even if the drug under evaluation subsequently receives a marketing authorisation (licence). NHS Kernow has no liability to pay the provider for clinical trials treatments or unproven treatments under the Standard NHS Contract, 'Who Pays, Establishing the Responsible Commissioner' Guidance, or otherwise, where the patient has been initiated on treatment before funding approval was sought.

The policy of NHS Kernow is not to pick up the funding of a patient's treatment at the end of a clinical trial that has been sponsored by a pharmaceutical or medical devices company, without prior written agreement between NHS Kernow and the sponsoring organisation concerned. NHS Kernow will also not assume funding responsibility in those cases where commissioning responsibility for a patient transfers from another NHS body to NHS Kernow, from the NHS commissioning organisation which was the responsible commissioner for the patient when the trial commenced. Provider trusts seeking funding from NHS Kernow will need to provide clear evidence of any such agreement.

In the event that NHS Kernow makes an exception to the policy, by providing funding to continue a treatment once a patient has left a clinical trial, sponsored by a pharmaceutical or medical devices company, this decision does not represent a policy decision by NHS Kernow to fund that treatment for other patients who were not part of the clinical trial. Any application for a service development to support funding for the treatment in question will be assessed and prioritised under NHS Kernow's service development policy in the normal way.

Nothing in this policy commits NHS Kernow to funding patients who are involved in any other clinical trial.

NHS Kernow has no liability to pay the provider for clinical trials treatments or unproven treatments under the Standard NHS Contract, 'Who Pays, Establishing the Responsible Commissioner' Guidance, or otherwise, where the patient has been initiated on treatment before funding approval was sought.

In the event that the prior approval or pick-up funding is not agreed, responsibility for providing on-going access to a treatment is the responsibility of the provider trust in which treatment was initiated.

Novel treatments not previously studied at all

Primary research into novel treatments will not be funded through this funding source.

Patients changing responsible commissioner

Where responsibility for providing NHS services to the patient has been transferred to NHS Kernow, NHS Kernow will, subject to the terms of this policy, honour existing funding commitments made by the patient's previous commissioner.

The terms of this policy outline the circumstances where NHS Kernow will and will not honour existing funding commitments.

Patients who become the responsibility of NHS Kernow, having formerly been provided with healthcare under the NHS in Wales, Scotland or Northern Ireland, shall also enjoy the rights provided under this policy.

Patients who become the responsibility of NHS Kernow, having been formerly provided with healthcare under private healthcare arrangements or pursuant to a state healthcare system anywhere else in the EU or in a non-EU country, shall not be entitled to take advantage of the rights under the paragraph above.

Where the rights under this policy apply, NHS Kernow reserves the right to seek a formal clinical review of the patient's future healthcare needs and to consider whether the decision to provide the patient with any further courses of treatment of the type previously provided, and of any other nature, is equitable and appropriate. Where the provider is aware of the patient changing responsible commissioner as identified above, the provider shall contact NHS Kernow to seek CCG agreement to honour existing funding commitments. Where agreement has not been obtained NHS Kernow withholds the right to refuse payment or part payment for treatment. Agreement will not be made retrospectively.

The rights above shall not apply if the patient would not, for any reason, have continued to have had the treatment in question commissioned for the patient by the patient's previous responsible commissioning organisation.

Private patients

The link between NHS and private care is increasing with use of private healthcare companies to treat NHS patients, and the subsequent publication of guidance for patients who wish to pay for additional private care.

Department of Health guidance documents confirm that, where a patient opts to pay for private care, their entitlement to NHS services remains and may not be withdrawn:

- No patient should lose his or her entitlement to NHS care on the grounds that they have chosen to purchase additional private care.

Non-contract activity policy

- The NHS should never subsidise private care with public money, which would breach core NHS principles.
- Patients should never be charged for their NHS care, or be allowed to pay towards an NHS service (except where specific regulation is in place to allow this) as this would contravene the founding principles and legislation of the NHS.
- There should be as clear a separation as possible between private and NHS care.

In line with national guidance (DH Mar 2009) NHS Kernow will work closely with referring clinicians where NHS patients wish to pay for additional private care. This is to ensure timely decision making by panels (especially when patients are seeking funding for end of life treatment). Patients who choose to purchase private care will have to pay the full costs of private care and should be informed by the provider of the benefits, risks and side-effects of treatments. NHS Kernow will not routinely fund procedures which have been commenced privately and patients will be advised to contact their private provider for aftercare. NHS Kernow will follow NHS guidance on NHS Patients who wish to pay for additional private care. NHS Kernow will not accept invoices for funding private practice.

Documents which have informed this policy

- Department of Health, The National Health Service Act 2006, The National Health Service (Wales) Act 2006 and The National Health Service (Consequential Provisions) Act 2006.
- Department of Health, The NHS Constitution for England, July 2009,
- Department of Health (2009) Guidance on NHS Patients who wish to pay for additional private care. Gateway Reference 11512, 23 March 2009.
- Department of Health (2004) A code of conduct for private practice: recommended standards of practice for NHS consultants. 31 January 2004.
- Who Pays? Determining responsibility for payments to providers August 2013
- Who Pays? Information Governance Advice for Invoice Validation December 2013
- Choice in Mental Health Care December 2014 Gateway 02699

Appendix A: Glossary

Choice: Choice is a Department of Health and NHS approach to healthcare which aims to give patients greater control over what healthcare they receive, where and when. For some types of surgery, for example, this will mean the freedom to choose the provider and timing of their operation through the e-referral service at the general practitioner level. For those with longer term conditions it means the patient being able to work with the clinical team to develop the package of care which is best suited to the patient's needs and wishes.

Designated provider: Designated provider is the term used by some areas of the NHS for a particular provider of secondary medical care (usually an NHS trust or an NHS Foundation trust) which has agreed with commissioners to provide a particular service and whose services have been assessed by commissioners (or on behalf of commissioners) against known capacity requirements and quality standards.

Evidence based clinical practice: Evidence based clinical practice is an approach by clinicians to decision making in which the clinician uses the best evidence available, in consultation with the patient, to decide upon the option which suits that patient best.

Healthcare intervention: A healthcare intervention means any form of healthcare treatment which is applied to meet a healthcare need.

NHS commissioned care: NHS commissioned care is healthcare which is routinely funded by the patient's responsible NHS commissioner. NHS commissioners have policies which define the elements of healthcare they are, or are not, prepared to commission for defined groups of patients.

Nominated provider: Nominated provider means a provider trust which has been approved by the commissioner to provide a particular service without a formal assessment. This label implies that the service area and/or the provider are still awaiting formal comprehensive assessment.

Service development: A service development is an application to NHS Kernow to amend the commissioning policy of NHS Kernow to provide that a particular healthcare intervention should be routinely funded by the NHS CB for a defined group of patients.

Secondary Uses Service (SUS): The SUS is the single, comprehensive repository for healthcare data in England which enables a range of reporting and analyses to support the NHS in the delivery of healthcare services.

Appendix B: Equality Impact Assessment – initial screening

Section	Finance	Officer responsible for the assessment	Steve Locke		
Name of policy to be assessed	Non-contract activity (NCA) policy	Date of assessment	17/08/2016	Is this a new or existing policy?	New
1. Describe the aims, objectives and purpose of the policy.	To bring together relevant guidance on the management of non-contractual activity and state how NHS Kernow will manage non contracted activity processes.				
2. Are there any associated objectives of the policy? Please explain.	By introducing a formal policy, NHS Kernow will have better control of NCA expenditure.				
3. Who is intended to benefit from this policy, and in what way?	<ul style="list-style-type: none"> NHS Kernow will benefit from improved financial management of NCAs; Providers will benefit from having clear policies and procedures. 				
4. What outcomes are wanted from this policy?	<ul style="list-style-type: none"> Improved financial management of NCAs; Clear policies and guidance for providers. 				
5. What factors/ forces could contribute/ detract from the outcomes?	Introduction of operational processes will contribute to delivering the outcomes.				
6. Who are the main stakeholders in relation to the policy?	NHS Kernow and providers		7. Who implements the policy, and who is responsible for the policy?	The CCG implements the policy. The SRO is NHS Kernow's Chief Finance Officer.	
8. What is the impact on people from Black and Minority Ethnic Groups (BME) (positive or negative)?	The policy is mainly NHS Kernow procedural. The policy has the same impact on all ethnic groups.				
How will any negative impact be mitigated?					
None identified.					

Equality Impact Assessment – initial screening

9. What is the differential impact for male or female people (positive or negative)?	The policy is mainly NHS Kernow procedural. The policy has the same impact on all groups.
How will any negative impact be mitigated? None identified.	
10. What is the differential impact on disabled people, including those with learning disabilities (positive or negative)?	The policy is mainly NHS Kernow procedural. The policy has the same impact on all groups.
How will any negative impact be mitigated? None identified.	
11. What is the differential impact on sexual orientation?	The policy is mainly NHS Kernow procedural. The policy has the same impact on all groups.
How will any negative impact be mitigated? None identified.	
12. What is the differential impact on people of different ages (positive or negative)?	The policy is mainly NHS Kernow procedural. The policy has the same impact on all groups.
How will any negative impact be mitigated? None identified.	
13. What differential impact will there be due religion or belief (positive or negative)?	The policy is mainly NHS Kernow procedural. The policy has the same impact on all groups.
How will any negative impact be mitigated? None identified	

Equality Impact Assessment – initial screening

<p>14. What is the impact on marriage of civil partnership (positive or negative)? Note: this is particularly relevant for employment policies</p>	<p>The policy is mainly NHS Kernow procedural. The policy has the same impact on all groups.</p>
<p>How will any negative be mitigated? None identified.</p>	
<p>15. What is the differential impact who have gone through or are going through gender reassignment, or who identify as transgender?</p>	<p>The policy is mainly NHS Kernow procedural. The policy has the same impact on all groups.</p>
<p>How will any negative impact be mitigated? None identified.</p>	
<p>16. What is the differential impact on people who are pregnant or breast feeding mothers?</p>	<p>The policy is mainly NHS Kernow procedural. The policy has the same impact on all groups</p>
<p>How will any negative impact be mitigated? None identified.</p>	

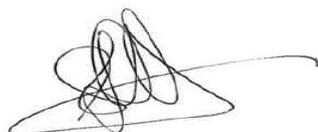
Equality Impact Assessment – initial screening

<p>17. How have the core Human Rights values below been considered in the formulation of this policy/strategy?</p> <ul style="list-style-type: none"> • Fairness; • Respect; • Equality; • Dignity; • Autonomy <p>If they haven't please reconsider the document and amend to incorporate these values.</p>	<p>The policy is mainly NHS Kernow procedural. It follows existing NHS guidance on non-contractual activity which takes into account human rights values:</p> <ul style="list-style-type: none"> • Fairness of decision making and processes; • Respect for patients choice of provider; • Equality in that all people treated equally having policy and process for NHS Kernow and providers; • Dignity in respecting individuals choices of provider; • Autonomy in patients' choices of provider. 		
<p>18. Which of the Human Rights Articles does this document impact?</p>	<p>The right:</p>	<p>Yes</p>	<p>No</p>
	<ul style="list-style-type: none"> • To life 		<p>X</p>
	<ul style="list-style-type: none"> • Not to be tortured or treated in an inhuman or degrading way; 		<p>X</p>
	<ul style="list-style-type: none"> • To be free from slavery or forced labour; 		<p>X</p>
	<ul style="list-style-type: none"> • To liberty and security; 		<p>X</p>
	<ul style="list-style-type: none"> • To a fair trial; 		<p>X</p>
	<ul style="list-style-type: none"> • To no punishment without law; 		<p>X</p>
	<ul style="list-style-type: none"> • To respect for home and family life, and correspondence; 		<p>X</p>
	<ul style="list-style-type: none"> • To freedom of thought, conscience and religion; 		<p>X</p>
	<ul style="list-style-type: none"> • To freedom of expression; 		<p>X</p>
	<ul style="list-style-type: none"> • To freedom of assembly and association; 		<p>X</p>
	<ul style="list-style-type: none"> • To marry and found a family; 		<p>X</p>
	<ul style="list-style-type: none"> • Not to be discriminated against in relation to the enjoyment of any of the rights contained in the European Convention; 		<p>X</p>
	<ul style="list-style-type: none"> • To peaceful enjoyment of possessions and education; 		<p>X</p>
	<ul style="list-style-type: none"> • To free elections 		<p>X</p>

Equality Impact Assessment – initial screening

<p>18a. What existing evidence (either presumed or otherwise) do you have for this?</p>	<p>The policy relates to technical procedures for non-contract activity.</p>
<p>19. How will you ensure that those responsible for implementing the Policy are aware of the Human Rights implications and equipped to deal with them?</p>	<p>The policy will be operated by NHS Kernow staff. There are no additional Human Rights requirements outside of daily tasks.</p>
<p>20. If the negative impacts identified have been unable to be mitigated through amendment to the policy, explain how you will conduct a full EIA.</p>	<p>None identified.</p>
<p>21. If the differential impacts identified are positive, explain how this policy is legitimate positive action and will improve outcomes, services or the working environment for that group of people.</p>	<p>The policy supports the national choice agenda.</p>
<p>22. If you do not need to proceed to a full EIA explain what amendments have been made to the policy as a result of this screening, and when they were made.</p>	<p>None identified.</p>

Equality Impact Assessment – initial screening



Signed (completing officer)

Date 17 August 2016



Signed (Head of Section)

Date 17 August 2016

Please ensure that a signed copy of this form is sent to both the Policies Officer and the Equality and Diversity lead to be placed on the NHS Kernow website.