

NON-CONTRACT ACTIVITY POLICY

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CONTENTS

Section Number and Subcategory	PAGE
Introduction	
Section:	
1) Scope and Purpose.....	3
2) Equality Statement.....	4
3) Mental Health Choice.....	4
4) Non-Contract Activity.....	5
5) Cross Border Referrals.....	6
6) UK Cross Border Emergency Treatments.....	7
7) Submission Of Invoices And Validation.....	7
8) Patient Transport	8
9) Patients Changing Responsible Commissioner.....	8
10) Private Patients.....	9
11) Contacts For Management Of Emergency Cases.....	10
12) Croydon CCG Contacts For Prior Approval.....	11
13) Appendix 1 - Process Map For Authorisation process	12

Introduction

The Croydon Health Economy

NHS Croydon Clinical Commissioning Group (NHS Croydon) commissions healthcare on behalf of the local population in the Borough of Croydon. The funding to commission healthcare services comes from a fixed allocation which the CCG has the responsibility mandated by NHS England and law to keep within.

Unfortunately, this means that some healthcare which patients might wish to receive and which healthcare professionals may wish to offer cannot be funded as demand for healthcare exceeds that which can be funded from the CCGs fixed allocation.

Prioritising local needs is therefore a key priority for Croydon CCG. It is therefore important that we prioritise what we spend on contracted services and manage non-contract activity, so that the available funds are maximised for the provision of local services for Croydon residents.

This assessment of need is made across the whole population and based on the best evidence of clinical effectiveness. We also aim to do this in a way that is fair and equitable, so that people with different needs have equitable access to services.

1. Scope & Purpose

1.1 This policy relates to non-contract activity for NHS MH Trust Community & Secondary Mental Health Care. Excluded from scope are:

- Patient placements
- Registered nursing care
- Looked after children

1.2 This policy applies to any patient in circumstances where NHS Croydon 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 Croydon is the responsible commissioner for the provision of that medical treatment. The purpose of this policy is to ensure that NHS Croydon (the Commissioner) 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.

1.3 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](#)

<https://www.england.nhs.uk/wp-content/uploads/2014/05/who-pays.pdf>

2. Equality Statement

2.1 NHS Croydon 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 Croydon 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 Croydon 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

2.2 The following teams have been consulted within the CCG in developing this policy:

- Clinical Reference Group
- Commissioning Directorate;
- Finance and contracting
- Primary Care Team
- Croydon CCG Joint Impact Assessment Panel

3. Mental Health Choice

3.1 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.

3.2 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 Croydon routinely commissions particular mental health services, eligible patients may choose any provider, in line with the description above, to access those services.

3.3 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 Croydon will continue to fund the episode of care.

3.4 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.

3.5 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.

4. Non-Contract Activity

4.1 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.

4.2 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 Croydon; or
- Usually resident in the area covered by NHS Croydon and not provided with primary medical services by a member of any CCG.

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

<https://www.england.nhs.uk/wp-content/uploads/2014/05/who-pays.pdf>

4.4 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.

4.5 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.
- 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 referral is required in such cases; however, providers should notify NHS Croydon of referrals received, who will issue a Prior Notification reference; the purpose of this is to allow NHS Croydon 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 Croydon. NHS Croydon 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 Croydon 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 Croydon is under no obligation to pay for activity which is carried out by providers on a non-contract basis.

4.6 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 Croydon will not fund costs associated with delivery of NHS England specialised commissioning funded spells.

5. UK Cross Border Referrals

5.1 The same arrangements apply for NHS Croydon approval processes in respect of UK cross-border non-contract activity, except that for all elective referrals, prior approval from NHS Croydon 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 Croydon 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.

6. UK Cross Border Emergency Treatments

6.1 NHS Croydon 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.

7. Submission Of Invoices And Validation

7.1 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);

7.2 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 Croydon 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 Croydon **will not pay** for activity where activity datasets and invoices are not submitted in line with these requirements;
- Invoices must continue to be raised and sent to the appropriate recipients addressed to Shared Business Services (see page 12 - SBS invoice address). However, before raising invoices, prior approval shall be sought (via the Mental Health Commissioning Team – see page 12) and the provider must be in receipt of a valid authorisation code, ensuring this accompanies the invoice and backing data to trigger payment and avoid delay. Invoices in absence of authorisation codes will be automatically rejected.
- For invoices with multiple claims, for which there is a partial dispute, NHS Croydon 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 before the end of the 60 days, the full invoice will be removed from payment systems after 60 days.

Invoice Validation

NHS Croydon CCG NCA team 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 Croydon.

- Where a patient is not registered with a GP practice with NHS Croydon, a check on place of 'usual residence' will be evidenced by the provider prior to submitting an invoice.

8. Patient transport

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

8.2 NHS Croydon has a contract for patient transport services that includes repatriation of NHS Croydon patients from anywhere in the UK. Where patient transport is required for an NHS Croydon patient, providers must contact NHS Croydon 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 Croydon who will provide a prior approval reference. Invoice submitted without a prior approval reference will not be authorised for payment.

9. Patients changing responsible commissioner

9.1 Where responsibility for providing NHS services to the patient has been transferred to NHS Croydon, NHS Croydon 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 Croydon will and will not honour existing funding commitments.

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

9.3 Patients who become the responsibility of NHS Croydon, 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.

9.4 Where the rights under this policy apply, NHS Croydon 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.

9.5 Where the provider is aware of the patient changing responsible commissioner as identified above, the provider shall contact NHS Croydon to seek CCG agreement to honour existing funding commitments. Where agreement has not been obtained NHS Croydon withholds the right to refuse payment or part payment for treatment. Agreement will not be made retrospectively.

9.6 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.

10. Private patients

10.1 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.

10.2 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.
- 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.

10.3 In line with national guidance (DH Mar 2009) NHS Croydon 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. 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 Croydon will not routinely fund procedures which have been commenced privately and patients will be advised to contact their private provider for aftercare. NHS Croydon will follow NHS guidance on NHS Patients who wish to pay for additional private care. NHS Croydon will not accept invoices for funding private practice.

11. Contacts For Management Of Emergency Cases

In the spirit of putting patient care first, Croydon CCG agree that cases where the delay of treatment will likely result in harm, should not experience any delay and authorise immediate treatment. While this is taking place, the expectation is that Croydon CCG and Local Trust will be contacted and informed of the treatment **within 48hrs**. In doing so, this will ensure that no payment challenge will be made for any for emergency treatment to Croydon registered patients whilst in the care of non- Croydon commissioned services.

COMMUNITY & INPATIENTS:

In cases of emergency Inpatient admissions, Croydon's local inpatient services shall be contacted for the arrangement of suitable repatriation.

Croydon Assessment and Liaison Team

Email: CroydonMapAssessmentandLiaisonTeam@slam.nhs.uk

Tel: 020 3228 0365

(Health professionals requiring mental health advice out of hours, should contact South London and Maudsley NHS Foundation Trust's **Acute Referral Centre** on 0203 228 627)

CHILDRENS SERVICES:

Croydon CCG wish to manage the referral of Children's cases within Croydon's locally commissioned services. Any cases received in an emergency should make immediate contact with Croydon's local Children's services.

Child and Adolescent Services

Tel: 020 3228 0000 or 020 3228 0002

Or via appropriate service online via:

<https://www.national.slam.nhs.uk/services/camhs/>

COMMUNITY LEARNING DISABILITY TEAMS:

The CCG would not normally expect the acceptance of LD referrals into services out of area. In rare cases where this occurs and repatriation of the case falls in-line with Croydon's commissioning Intention; please refer cases to:

Joint Community Learning Disability team

Tel: Adult Social Care – 0208 8726 6500

Email: referral.team2@croydon.gov.uk

12. Croydon CCG Contacts For Prior Approval

From the commencement date from which this policy is effective, all NCA activity must be notified to the responsible commissioner and authorisation by way of Authorisation number will be allocated to each spell of treatment.

Authorisation for activity and authorisations codes should be sought from:

Mental Health Commissioning Team:
croccg.mh@nhs.net

Invoices should be addressed to:

SBS Shared Business Services

NHS Croydon CCG
07V Payables K685
Phoenix House
Topcliffe Lane
Wakefield
WF3 1WE

APPENDIX 1.

Process Map For Authorisation Process

