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HOT TOPICS

Referrers guide to Right to Choose – What you need to know

Introduction

The NHS is committed to giving patients greater choice and control over how they receive their healthcare. The Health and Care Act 2022 (the 2022 Act) amended the National Health Service Act 2006 (the 2006 Act) putting in place legislative changes that support patient choice.[1] The NHS Constitution for England sets out the principles and values of the NHS in England and describes in further detail the rights in relation to informed patient choice. The Department of Health and Social Care's NHS Choice Framework explains the nationally determined choices (including legal rights) patients have on how and where they receive health and care services in the NHS in England.[1,2] NHS England (NHSE) have also produced guidance to support commissioners, referrers, and providers in meeting their obligations in relation to patients' right to choose.

Patient rights

At present healthcare in the United Kingdom can be via either NHS funded care or privately funded care, where treatment is funded directly by the patient or through private medical insurance. NHS care can now be provided by either NHS Trusts or by independent sector healthcare providers, which includes private providers who have been awarded an NHS standard contract for the specified services, by an ICB in England.[3]

Under the new Patient Choice legislation or legal rights to choice, patients can request to be referred to a Provider of their choice.[1,2]

However, the legal rights to choice of provider and team only apply when the:

- Patient has an elective referral for a first outpatient appointment
- Patient is referred by an NHS GP, Dentist or Optometrist
- Referral is clinically appropriate (as determined by the referrer)
- Provider service and team are led by a consultant (physical and mental health) or a mental healthcare professional (mental health only)
- Provider has a commissioning contract with any ICB or NHS England for the required service.[1,2]

The legal rights to choice do not apply if the patient:

- Is already receiving care following an elective referral for the same condition
- Has been referred to a service that is commissioned by a local authority (not part of joint commissioning arrangement) or delivered through primary care
- Is accessing urgent or emergency (crisis) care
- Is serving as a member of the armed forces
- Is a prisoner; on temporary release from prison; detained in hospital under Mental Health Act 1983 or another secure service.[2]

NHS patients are entitled to choose any provider including private or independent providers who have been awarded an NHS standard contract for the required elective services by any ICB in England. Unlike full private care, where patients can refer themselves, patients cannot self-refer directly to the provider under the NHS legal right to choose.[4]

Patients are able to access information about possible services and providers via the "My Planned Care" website, which enables patients to compare different providers, including NHS, private or independent providers and the expected waiting times at each, for the service they need.

Things to consider for referrers

GP practices and other primary care providers should consider how they can support commissioner obligations to publicise and promote choice, by helping their patients to find out more about the choices available to them.[1] Referrers may also help to promote choice by:

- Ensuring patients know about their legal rights to choice prior to or during their appointment
- Providing information for linking to national resources on patient choice on their website
- Signposting to areas of the NHS website and other tools (e.g. My Planned Care) that provide information for patients on services including information about the quality of care, waiting times, parking, and travel
- Understanding what options are available can help patients to make decisions about where the right place is for them to receive the care and treatment they need.[1]

Referrers are responsible for determining the clinical appropriateness of a referral. Determining clinical appropriateness involves a clinical judgement about what is in the best clinical interests of the patient, working within the published National Institute for Health and Care Excellence (NICE) guidelines and other relevant guidelines and specifications.[1] Referrers may seek support from other clinicians and intelligence from commissioners when deciding on the clinical appropriateness of a referral.[1]

Prior to making a referral, referrers should consider whether any ongoing care may be required following the elective referral and explain how this will affect the patient, (e.g. how a service interacts with local pathways and whether there are any formal shared care arrangements for certain prescribed medications in place).

NHSE guidance recommends that all referrers should shortlist on average five choices from which their patient may choose, where this is practicable, clinically appropriate, and preferred by the patient. The provider choices available will usually be agreed via local pathways, although occasionally patients may ask for a specific service and the prescriber or refer needs to make sure this is appropriate before making the referral.

Patients can be referred to services outside of their local ICB geography when exercising their legal right to choice of provider and team if the service meets the criteria to be a choice for patients. Contracts for most services to which the legal right to choice of provider and team apply will specify specific location/s at which services must be delivered. Some services which are delivered remotely, e.g. ASD and ADHD assessments, may also be accessed by patients under the legal right to choose provisions, as well as elective services delivered in the community.[1] The commissioner's prior approval for the referral is not required where a patient has exercised their legal right to choice.

NHSE recommend that during an appointment, referrers should discuss all the options available to the patient including deciding on whether a referral would be clinically appropriate, and offering a choice of provider and team to the patient where legal rights apply or when legal rights do not apply explaining what choices are offered locally including:[1]

- Discussing the patient's rights to choose the provider and team and when this applies.
- Working with the published NICE guidelines.

- Discussing the patient's personal circumstances.
- Discussing the patient's continuity of care and how care already being received for co-morbidities may impact a new referral where this is relevant.
- Assessing whether providers offer evidence-based care which meets the patient's clinical needs and discussing this with the patient (including quality indicators and user feedback where this is available).
- Discussing any travel or accessibility considerations, including those which relate to online providers.
- Considering ongoing care which may be required following an elective referral prior to making this and explaining how this will affect the patient, e.g. requests to GPs to enter Shared Care Agreements for certain prescribed medications and how these will be handled.[1]

If a patient is ready to decide where they want to go for an outpatient referral during their GP appointment, referrers should facilitate this through the NHS e-Referral System (e-RS) where possible. Where they have access to appropriate technology, patients should be encouraged to use Manage Your Referral within e-RS or the NHS App to choose their provider.[1] It may be that a patient needs more time to decide where they want to attend an outpatient appointment and wants to discuss the options with friends and family. The patient should be allowed the time they need to decide their choice of provider before a referral is made.

National digital IT solutions supporting Choice

NHS e-Referral service (e-RS)

The NHS e-Referral Service (e-RS) provides a straightforward way for patients to choose their first hospital or clinic appointment with a specialist. Bookings can be made online, using the telephone, or directly in the GP surgery at the time of referral.[5,6] The NHS standard contract expects providers to list all their NHS services onto the eRS to facilitate the shortlisting and consideration of appropriate NHS services by GPs and their patients.[7] Therefore, if a provider has been awarded an NHS standard contract, it should appear within the e-RS system automatically and NHSE envisages that, eventually, all healthcare referrals, whether to or from a hospital or community setting, will be made via the NHS e-RS.[5,6]

NHS Digital issued best practice guidance regarding the use of the eRS which highlights a number of referrer responsibilities. The guidance can be accessed here.[8]

Referrers should review the service details for the relevant service(s) to ensure that all necessary information is included and that, where indicated, referral proformas are completed and attached and ensuring these are completed within recommended timescales.[8]

At present some providers are unable to comply with these requirements and some referrals may still need to be managed outside the e-RS system, by writing directly to the chosen provider. In this instance, where the chosen provider is not listed on the e-RS, referrers should take reasonable additional steps to ensure the clinical appropriateness and suitability of the patients chosen provider and if necessary contact their local ICB for advice.[5,6]

PIDMAS – Patient Initiated Digital Mutual Aid System

In October 2023, following the introduction of the Digital Mutual Aid System (DMAS) and as part of the post pandemic recovery to support patients on long waiting lists, NHSE introduced the Patient Initiated Digital Mutual Aid System (PIDMAS)

PIDMAS allows patients who have waited longer than 40 weeks without having their first outpatient appointment to request to move to another provider. Under this scheme patients can either register an interest to be moved to another provider's waiting list or can be proactively contacted by the existing provider to move to another provider if it is clinically appropriate to do so. If the patient opts to move then their entire pathway of care will be moved, including all appointments, any required treatment/

surgery and any follow up care. Once the original provider has received the request, the clinical suitability for that patient to transfer to an alternative provider is considered and agreed with the relevant teams.[9,10,11]

Transfer of care

It will usually be the case that the same provider and team will treat the patient for their entire episode of care, prior to discharge back to the GP, unless the patient's diagnosis changes significantly or there are other clinical reasons to change an alternative provider and team.[1]

The NHS standard contract sets out specific requirements for providers in relation to the supply of medicines and to transfer of care and discharge of the patient or service user from the service. The provider must liaise as appropriate with any relevant third-party health or social care provider and with the patient and any legal guardian and or carer to prepare and agree a care transfer plan. The provider must implement the care transfer plan when delivering any further agreed service or transferring and/or discharging the patient unless (in exceptional circumstances) to do so would not be in accordance with good practice. A commissioner may agree a shared care protocol in respect of any clinical pathway with the provider and representatives of local primary care and other providers. Where there is a proposed "Transfer of Care Plan" and an applicable shared care protocol/agreement, the provider must, where the patient's GP has confirmed willingness to accept the transfer of care, initiate and comply with the agreed local shared care protocol.[7]

Referrers retain the right to decline requests for continuation of care, including prescribing, on clinical or capacity grounds in line with their professional guidance. However prior to any referral being made, the referrer should consider whether they are prepared to accept responsibility for ongoing care and recommendations from the chosen provider.[1] If not, the referrer should consider if alternative arrangements can be made in the event that the patient requires ongoing primary care services and if the referral remains clinically appropriate.

Prescribing responsibility

Clinical responsibility for prescribing should be undertaken by those professionals who are in the best position and appropriately skilled to deliver the care which meets the needs of the patient.[12] Care should be provided by the service that is best placed to provide this care safely, which may be in either primary or specialist settings.[13] Decisions about who should take clinical responsibility for continuing care or treatment after initial diagnosis or assessment should be based on the patient's best interests, rather than on convenience or the cost of the medicine and associated follow up.[12] In many cases it will be the GP who is the most appropriate clinician to provide the ongoing and continuing care.[14]

When decisions are made to transfer clinical and prescribing responsibility for a patient between care settings, it is essential that the GP feels clinically competent and able to prescribe the necessary medicines.[14] If the GP is uncertain, they should ask for further information or advice from the clinician who is transferring or sharing the care responsibilities, or from another colleague if appropriate. The specialist should provide full information to the primary care clinician in order to support the transfer of care. If the patient's GP is still not certain that ongoing care can be provided safely in a shared care arrangement, then they should explain this to the other clinician and to the patient and make appropriate arrangements for their continuing care.[12]

Shared care

Sharing of care requires the agreement of all parties including the patient and it is essential that all parties communicate effectively and work together.[12] Prior to sharing care, agreement about the patient's ongoing care must be reached under the shared care agreement, which should be sent to the primary care GP or other relevant health care professional with the request to prescribe. Any transfer of prescribing responsibility under shared care arrangements should only happen following a successful initiation and stabilisation period and with the agreement and understanding of the patient/carer. It should be noted that shared care for a medicine does not see the patient discharged from the care of

their specialist but rather that the care of the patient is shared between the patient/carer, primary and secondary/specialist care within a clearly defined, easily understood, and locally approved shared care protocol or agreement.[13]

The national guidance regarding shared care and example agreement templates are available on the NHSE website here.[15]

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