

GLOUCESTERSHIRE PRIMARY CARE TRUSTS

PROCEDURE NOTE

APPEALS AGAINST DECISIONS TAKEN UNDER THE INTERVENTIONS NOT NORMALLY FUNDED EXCEPTIONS POLICY

1.0 PURPOSE

To set out the process by which appeals against decisions by Primary Care Trusts (PCTs) not to purchase procedures/treatments contained in the List of Interventions not Normally Funded, under the exceptions policy, are dealt with.

2.0 BACKGROUND

- 2.1 The 1995/96 budget proposals for Gloucestershire Health Authority considered at the April 1995 meeting of the Board, included at Annex 14, a List of Interventions Not Normally Funded (LINNF) by the Health Authority. The Board ratified this list (minute 31.95). Since this time, the List has been reviewed and updated on a regular basis. Since the establishment of new NHS organisations in Gloucestershire in April 2002, the Gloucestershire Primary Care Trusts have agreed to maintain a consistent List, which applies to services provided both within the county, and purchased from other providers outside of the county.
- 2.2 The three Gloucestershire Primary Care Trusts (PCTs), who hold the funding to purchase NHS care for locally registered patients, will not normally purchase any of the procedures/treatments listed in the List of Interventions Not Normally Funded. There may, however, be people whose circumstances warrant an exception being made. For the guidance of prospective patients, their general medical practitioners and specialists, the PCTs have a policy and a process for considering individual circumstances, setting out the factors which the PCT will consider. The PCT will consider exceptions to the purchasing policy if the conditions specified in the exceptions policy are met. Public health and clinical advice is available to the PCTs in considering exceptions to the policy.
- 2.3 Provided that the PCT is satisfied that the referring practitioner and/or the relevant specialist have provided adequate information on all of the issues identified above, it will consider whether the proposed intervention(s) should be funded. It is open to prospective patients who are dissatisfied with the decision of the PCT to appeal against the decision.
- 2.4 The patient should be able to access any information which was used by the PCT to make the decision; this should be given prior to application to the Appeal Panel, with information about the timescale within which an appeal should be made. Disclosure of information should not take place if there is likely to be harm to the patient as a result of the disclosure.

3.0 DISCUSSION

- 3.1 At the time of the PCT providing confirmation of a decision not to fund a procedure/treatment following assessment against the exceptions policy, the patient should be informed of their right of appeal. Patients who want to appeal should be asked to write to the relevant Primary Care Trust to request an appeal within ten working days. The patient should be informed that there is a requirement for a written submission, stating the grounds for the appeal.
- 3.2 If a patient wants to pursue an appeal against the decision, the case should be referred to an Appeal Panel constituted and with terms of reference as described in Annex 1.

TERMS OF REFERENCE FOR APPEAL PANEL

1. Authority

The Panel shall operate in accordance with the Standing Orders of the Gloucestershire PCTs. Powers are delegated by the three Gloucestershire PCTs to the Panel to enable it to undertake any activity falling within its terms of reference.

2. Membership

Membership of the Panel will comprise the Chief Executive (**or their Director-level representative**) of the organisation (PCT) against whom the appeal has been lodged; a Non-Executive Director of one of the other PCTs (as Chair of the panel); and a Professional Executive Committee member (preferably a GP) from **one of the other** PCTs. Professional advice and managerial/administrative and case preparation support will be provided by the PCT against which the appeal has been made.

3. Professional & Administrative Support

The Panel should not include any member who took part in the original decision and the person providing professional help should not have previously been directly involved with the case. If any member of the panel believes from the information provided that they have personal knowledge of the individual they should declare this to the Chief Executive of the PCT against which the appeal is being made who will then seek to replace them on the panel. **Clinical advice will usually be provided by the Director of Public Health of the PCT against which the appeal is being made, or their nominated representative.** The Panel should have the opportunity to commission external expertise if this is relevant, e.g. if proposed treatment is outside of expertise of local clinicians. If there is instrumental dispute of the facts in particular case, the panel should be able to seek the advice of a separate independent 'expert' panel. **The role of advisors, whether from within or outside the health community, is to provide objective clinical advice and information to the panel. They are not full panel members and have no decision rights within the panel.**

4. Quorum

There will be a quorum where two members are present.

5. Frequency of Meetings

The Panel will meet as required.

6. Terms of Reference

6.1 The Panel will consider, and decide upon, appeals against decisions taken under the Primary Care Trusts' Interventions Not Normally Funded Exceptions Policy.

6.1.1 Appeals to the Panel may be made by an individual affected by a decision under the exceptions policy, or by a parent or guardian on behalf of such an individual.

6.1.2 Appeals should be made in writing to the Chief Executive of the relevant Primary Care Trust, stating the grounds for the appeal and should be made within ten working days of being notified of the right to appeal.

6.2 Where a patient is given the opportunity to make representations, this can be done by either oral or written representations.

6.3 The Chief Executive will ensure that such appeals are presented to the Panel and that the Panel considers them as expeditiously as possible.

6.4 The members of the Panel should declare before considering the appeal whether they have any personal interest in the case.

6.5 In hearing the appeal the Panel will consider:

- whether the original decision was valid in terms of process, factors considered, and criteria applied, and/or
- any new relevant information.

6.6 The Panel will consider the appeal within the following framework:

- taking into account all relevant evidence;
- giving proper consideration to the claims of the patient or group of patients under discussion and accord proper weight to their claim(s) against other groups competing for finite resources;
- taking into account only material factors;
- acting in the utmost good faith;
- taking a decision that is in every sense reasonable.

The list is not exhaustive of any other matters including the relevant European Conventional Right and Human Rights Act 1998.

- decisions should be consistent with the principles adopted by the Primary Care Trusts;
- decisions should be consistent with previous similar decisions;
- decisions should be consistent with the PCTs and Local Gloucestershire Health Community's decision making framework;

6.7 The Appeal Panel is the final arbiter of a decision for the Gloucestershire Health Community, but does not negate the patient's right to access the NHS complaints procedure and the ombudsman or to seek legal redress.

6.8 Communication

The Health Community has a statutory obligation to inform the patient, their GP and the relevant provider of a decision not to fund the treatment. Rapid communication of such decisions should be an integral part of the process.

6.9 Confidentiality

It is important that, wherever possible, the individual should remain unidentified and unidentifiable during the process. The individuals involved in making decisions, should only receive information that is relevant and necessary for them to exercise their duties.

6.10 Reporting Procedures

When prepared, the minutes will be circulated to those panel members who were in attendance. An anonymised summary of the decision made by the Panel will be reported to the relevant PCT Board(s).

All minutes of the Panel will be written in such a way as to ensure the confidentiality of any information that could identify any individual in the case considered by the Panel.

6.11 Media

Media contact will be handled within the relevant PCT's communications policy.