Transcranial Magnetic Stimulation (TMS): Private provision

Principles

- NHS must not subsidise private care with public money.
- Private patient services must not interfere with the Trust's performance of its obligations under its NHS contract or any obligations required of the Trust by an order/ direction of the Secretary of State for Health & Social Care.
- Any additional private care must be delivered separately from NHS care, so must be able to demonstrate that NHS and private provision are separate activities and the private business is self-sufficient. There is guidance on the arrangements for separation
- Income from private patient services must not exceed the amount that Trusts are permitted to earn privately (e.g. 49% of total Trust income).
- The private healthcare cannot be delivered below cost.
- Sensitive to staff's concerns and moral principles in discussions and decisions around private provision.
- If something went wrong and attracted media attention, could the Trust justify what their decisions and actions.

Market analysis

- If one of the bases of your business case for the funding of a TMS service is that the income generated would support the service, then consider seeking a market analysis to identify the scope and nature of the market in your region and potential income projection. Your finance team or the Health Innovation Network may be able to undertake the market analysis. Check whether the analysis will include:
    - demand (from which income projections could be drawn and included in the business case).
    - what fee the market might sustain for the private provision.
    - an analysis of competitors.
- Consider the unique selling points of your service to make it attractive to potential private patients.

Sources of support in developing private provision

- Join the Private Providers Forum. The forum is co-ordinated by Anne Bishop: annebishop1@nhs.net.
- Liaise with your Finance department and find out what experience/ knowledge they have in supporting the financial administration of private provision.
- Link in with a local NHS Trust that in addition to its NHS physical health care services has a private provision limb and learn from their experiences of providing private health care, including their policies and procedures and business infrastructure. Check if they will support/mentor you in developing the necessary infrastructure for your private provision.

Some key points when considering establishing TMS private provision

Nursing and administrative staff renumeration

- How the service is structured, and the preference of the staff determines the payment rates.
- If staff are willing to cover the private patient clinics within their existing contracts, then they will be paid in accordance with Agenda for Change rules, i.e. if they are part-time and they work additional hours those hours will be paid at the standard rate, if they are full-time the additional hours are paid at standard overtime rates.
- The other option is to roster the private patients into the department staffing. This way you wouldn't necessarily need to pay overtime as the hours would simply be part of their contracted hours. This only works if you have the demand to fill regular private patients' sessions.
- Involve HR in this contractual decision making- process.

Clinical Negligence Scheme for Trusts: NHS Resolution

- Nursing and administrative staff are covered by NHS Resolution as long as they are paid by the Trust to do the same role that they would do under their NHS contract for the private patients.

Consultants and indemnity insurance

- Consultants would need to ensure they have indemnity insurance (Medical Defence Union (MDU)) to cover their private work. Consultants already have professional indemnity insurance so there may not be an increase in the cost to the consultant, but they must inform their indemnity provider that they will be undertaking private work.
- If in business **Model 1** below, the consultant choses to waive their fees:
    - the consultant would still need indemnity insurance:
    - the insurance usually permits a small volume of private work to be undertaken which will be covered by the insurance.
    - the consultant would need to check with the MDU what the allowance of private work is covered by the indemnity insurance and whether the insurance will cover the proposed private work. It's within the discretion of the MDU to decline to accept that the insurance is activated in any negligence claim relating to the private work; they are much more likely to do this if they are not informed in full of the proposed private work.
    - the Trust cannot pay the cost of the private indemnity insurance.

Private Privileges Agreement

- Consultants who practise privately within NHS facilities must comply with the responsible NHS organisation's policies and procedures for private practice.
- Typically, it is best practice for Trusts to require consultants undertaking private work within an NHS Trust to Private Privileges Agreement with the Trust:
    - As long as the consultant is employed by the Trust and the private patient work is the same as their NHS work (in terms of treatments/services) then practicing privileges can be automatically granted.
    - Where a Private Patients' Policy governs this area, the consultants are also bound to follow it, so the private patients' agreement is only needed if there are additional requirements that the Trust wants documented with the consultant.

Consultants and their responsibilities to the Competition Market Authority

- There is a requirement on consultant's undertaking private work to comply with CMA's rules and regulations governing the publication of certain information about services

provided to referring private patients and other data. The data is principally details of their charges/ fees. This is the case even if the consultant donates their fees to the Trust.

- There are fines payable if the information is not provided as required.
- See: Private Healthcare Market Investigation Order 2014 Private Healthcare Market Investigation Order 2014 - GOV.UK.

Private Healthcare Information Network (PHIN)

- There is no requirement to provide the Private Healthcare Information Network with private provision data as it is currently only required for private patient admissions and private day case patients.
- The provision of data to PHIN incurs a charge to the Trust.

Care Quality Commission (CQC)

- There is no requirement to register the private TMS service provision with CQC if income from private provision is returned to NHS service. CQC Inspection process follows its usual terms.

Insurance companies

- The agreement for the provision of TMS treatment is between the private patient and the NHS Trust. An insurance company that is paying some or all of the treatment cost is a third party to the agreement.
- This means that the private patient is responsible for the whole amount of the cost of the TMS treatment even where it is being met in part or full by an authorised payment from an insurance company. For this reason, all Trusts require their private patients to sign an 'Undertaking to pay'.
- The private patient who has health insurance is responsible for seeking authorisation from the insurance company for the TMS treatment. As a matter of good practice you should check with the insurance company the details of the authorisation and the amount authorised.
- There are 5 main healthcare insurers, (Axa, Aviva, Vitality, WPA Health Insurance, Bupa). Historically, insurance companies have not covered mental health care in their policies. This is changing, possibly under the pressure of corporate groups, to reflect the

increasing prevalence of mental health problems and its impact on employment. It might be helpful to check with the 5 main insurance companies whether their typical health care policy would cover mental health problems.

- An out of Network Insurance Assessor may contact you on behalf of the insurance company to see if the treatment is clinically necessary. They are typically clinicians and will have an understanding of the treatment being sought. Explain the clinical reasons for the treatment and why your Trusts should provide it. If the out of Network team do not contact you, it may be worthwhile contacting them to support a patient in getting authorisation.
- There seem to be two approaches to working with them in relation to a specialist service such as TMS treatment:
    1. A contract arrangement for the provision of all TMS treatments authorised by the insurance company. This seems to be the preferred approach by insurance companies as they can exercise their commercial power to secure a price favourable to their interests. Insurance companies apparently say that you must contract with them to cover the current and future treatment provision. This is not the case.
    2. Develop a working relationship with each insurance company's account manager. Ask them to contact you if they would like to refer a private patient. If they do, negotiate a good price for the TMS treatment on a case-by-case basis from the account manager for your region. If a local acute Trust is providing private health care treatment contact them and ask them for details of the account managers in your region.
- TMS provision is a specialist service and if there are no other private providers of TMS treatment in your area this will give you leverage in setting a good price.

Trust's Council of Governors

- Your Trust may require any increase in private patient income by 5% is approved by the Trust's Council of Governors. Whether the income generated by the private provision of TMS breaches this threshold will depend on the level of private patient income generated by the Trust.

Choice between different business models for TMS private provision

Model 1: Consultant waives their fees, donating them to NHS Trust

- All staff must voluntarily agree to undertake the private work.
- Consultant agrees to waive their fees for their work, donating their fee to the Trust. Trust can invoice the private patient on behalf of the consultant.
- Nursing and Administration staff pay determined by how the service is structured and the staff preferences.
- Private patients seen outside core NHS hours.

Advantages	Disadvantages
• All profits generated will be available for consolidating and enhancing the NHS service, with the potential for moving to cost neutral or at least generating an income for the TMS service. Seek commitment from Trust that the profits will be hypothecated to the TMS service. Continuity of the service facilitates future applications of TMS for patients.	• Trust may not agree to hypothecating or, if it does, may be forced by financial pressures my withdraw from their commitment. • If Trust does not agree, staff may reject Model 1 or feel resentful that their agreement has been secured on a false basis.
• Probably morally more aligned with staff views, even though private patients would have access to early treatment, (a key 'selling point).	• If in the development stage one staff member (Consultant/ nursing/manager/ admin) objects to the model, then it would not be appropriate. • Model is vulnerable to a future member of staff being ambivalent to the model rejecting it or a change in position.
• Consultant has choice: waive fees and donate to Trust or receive renumeration for their private work.	• If Consultant choses to waive their fees, they are still charged but donated back to the Trust. Trust can bill the private patient

	on behalf of the consultant and finance team sets up a separate code for this income.

Model 2: Consultant renumerated for their private work

- Consultant, on a private basis, undertakes the assessment, prescription and any necessary follow-up review
- Business infrastructure developed to support invoicing and collection of payment
- Nursing and Administration staff pay determined by how the service is structured and the staff preferences.
- Private patients seen outside core NHS hours

Advantages	Disadvantages
• Clear demarcation from NHS provision. Model typically applied across NHS Trusts providing private health.	• May not be acceptable to staff or Trust or Unions.
• Consultant is renumerated for their private work. One option: treatment package to include the consultant's fee for reviews during and post-treatment and build into the package price. Initial consultation would be charged by the Consultant.	• Must recruit a consultant to undertake the assessment and prescription work. • Formal arrangements must be developed to rent out consultant room facilities.

Commonalities between the two models

Advantages	Disadvantages
	• Long lead-in time for stimulating the market and generating referrals. Will need

	a strategy and staff capacity to develop this.
• Income generated would be available for investment into the NHS TMS service to support its maintenance and enhancement.	• Trust may not agree to hypothecating or, if it does, may renege on its agreement.
• Private TMS policy necessary. Existing governance framework will apply.	• Would require new processes and procedures eg assurance procedures: Clinical Directors should have transparent arrangements in place to assure themselves that Consultants are fully delivering their NHS commitments • Time Owing procedures: to ensure that time owed to the NHS is fulfilled • Business/ finance infrastructure would need to be developed to support engagement with Insurance companies, as well as invoicing, receiving and chasing payments.
• Because the service is being delivered within NHS provision, the existing legislation, policy and procedures apply.	• Additional lead in time need to establish governance framework, business infrastructure, negotiating with staff/ Unions and securing their agreement. One estimate is that it may take up to a year to archive.
• A risk assessment would identify risks of private provision and options for how they could be mitigated.	• Requires development of a risk assessment for the business change.
• NHS Resolutions would apply to nursing and administrative staff, (not consultant) if they are paid by the Trust to do the same role that they	• Consultant would require their own indemnity insurance/ certificate that would need to be registered with the Trust.

would do under their NHS contract for the private patients.	
• Same renumeration arrangements can be developed for nursing and administrative staff.	• Negotiation process may be problematic.
• Treating up to 2 x private patients per calendar month would be 'doable'.	• Lead-in time to recruit and train new staff.
• Development of new expertise in business/ private provision and market development skills. Transferable to other business models in mental health services.	• Likely to add capacity demands on current staff eg Comms when marketing private provision using social media/ website.
• Referring Consultant would be responsible for ongoing care and would ordinarily link in with the patient's GP to keep them informed.	• Under Model 1, Consultant would carry additional responsibility with no renumeration.
• Evolutionary development of Trust culture in MH services to one more aligned with likely future provision (mixed).	• This development may attract negativity for the Trust.

Governance frameworks

Item	Activity	Notes/ questions
1	TMS Private Patient Policy	New policy dedicated to private provision. Should address, amongst other things: • principles of conduct governing the use of Health Service facilities for private patients • reference relevant DHSC codes/ guidance

		• reference Standards of Business Conduct protocol • department with responsibility for ensuring that private provision work is recovered • staff role responsible for negotiating and agreeing contracts with major private medical insurers • reference the Trust's Standard Financial Instructions policy • roles and responsibilities of different Teams, Directorate managers and heads of departments, Finance leads, all staff • non-consultant staff's work in private provision - its inclusion within their standard contractual duties • administrative support for the attendance of private patients to its facilities • consultants – private practice undertaken independently of their NHS contracts, including indemnity insurance requirements, job planning and timetabling, responsibilities as self-employed, private practice privileges arrangements, role of Clinical Directors and Directorate managers responsibility to assure themselves that consultants are meeting their NHS commitments • responsibility for patient's care lies with consultant • limited access to discussion at MDT meetings • Compliance with Competition Markets Authority Order

		• Room facility hire • Financial decisions to be made by the Trust in relation to TMS services and processes and procedures for payments (and payment methods) • Undertaking to pay • Information provision • Patients transferring between private and NHS care, joining the Trust waiting list • Complaints • Equality and diversity • Monitoring compliance
2	Information Governance	Check activity covered by existing DPIA. Information Governance may want to assure themselves about the information governance implications of any software billing system eg Health Code.
3.	Clinical Records Management policy	Check private patient activity is covered by your electronic clinical records management system. Private patients could include: self-funders, patients with insurance cover, non-chargeable NHS patients.
4.	Confidentiality Policy	Applies.
5.	Duties and responsibilities of staff	Involve HR in developing contractual arrangements for nursing and administrative staff undertaking private provision (including enhance ed pay rates).

6.	Quality assurance and clinical governance monitoring system for private provision	Ensure private provision TMS policy, covers Quality assurance and monitoring system for NHS patients.
7.	Financial controls system	New TMS policy to address financial controls, role, responsibilities and procedures for Finance to ensure income from private patient provision is invoiced, collected and applied to enhance existing TMS service.
8	NHS Resolutions	NHS Resolutions would apply to nursing and administrative staff, (not consultant) if they are paid by the Trust to do the same role that they would do under their NHS contract for the private patients.

Example of private practice guidelines

- University Hospitals of Leicester 2016: Developing and Approving Clinical and Non Clinical Policies and Guidance Documents (Policy for Policies)
- Royal Devon and Exeter NHS Foundation Trust, Private Patient Policy (currently under review).

Private%20Patient%20Policy%202021%2

Codes and other guidance relevant to private provision by NHS Trusts

Author	Title	Staff focus
Department of Health	Code of Conduct for Private Practice 2004. Recommended Standards of Practice for NHS Consultants.	NHS Consultants

	78153-DoH-Code of Conduct Cov	
Competition Markets Authority	Private Healthcare Market Investigation Order 2014 Private Healthcare Market Investigation (Variation and Commencement) Order 2017 Private healthcare market investigation - GOV.UK	Private healthcare consultants and private hospitals
Department of Health	Terms and Conditions of the Consultant Contract 2003. **Terms and conditions - consultants (England) 2003 (version 15, August 2024).** **(PDF)**	NHS Trusts, Consultants
Department of Health	NHS patients who wish to pay for additional private care. NHS patients who wish to pay for additional private care - GOV.UK	NHS Trust, Clinicians, Patients
NHS	FAQs and help: branding, logos and communication materials compliance NHS Identity Guidelines | FAQs and help	NHS Trusts
Department of Health & Social Security	Management of private practice in health service hospital in England and Wales 1986 (known as the Green Book)  green book.PDF	NHS