All prescribers who are approved under the Human Medicines Regulations 2012 can issue a private prescription for a medicine licensed in the UK.¹

### Private Prescriptions for NHS patients

An NHS patient may be provided with a private prescription, rather than an NHS prescription (or FP10), where a drug is:

1. **only** available by private prescription
   
   ! In some circumstances DH policy applicable in England and Wales, or prescribing laws, require a private prescription be issued i.e. some travel vaccines², Malaria prophylaxis, the product is connected with travel for an anticipatory condition, treatment while travelling beyond three months or DH blacklisted drugs (Items included in the drug tariff part XVIIIA), drugs where the indication is outside of those indicated on the selective list scheme (SLS). OR

2. where the **patient requests** both an FP10 and a private prescription

   ! Technically this can be done but caution is advised and the CCG suggests practices should adopt a procedure against this. The GP cannot charge for issuing the private prescription in this instance³. Some medicines may be obtained more cheaply by private prescription but this should not be routinely offered to NHS patients. GPs would have to offer an NHS prescription to comply with their NHS contract as well as the private prescription, therefore the patient would receive two prescriptions which is inadvisable. The General Practice Committee (GPC) at the BMA was recently asked to consider whether a GP can issue a private prescription at the same time as an FP10 in circumstances where this is a cheaper option for the patient than paying the NHS prescription charges, and whether this could be either a breach of the regulations or collusion to defraud the NHS, who would otherwise recoup the prescription charge. Legal advice was sort and it is clear that in cases of treatment under the primary care contract, GPs may not issue private prescriptions alongside and as an alternative to FP10s. In any case where a GP is obliged to issue an FP10, the concurrent issue of a private prescription will be a breach of obligation. In any case where a GP is obliged or entitled to issue an FP10 the concurrent issue of a private prescription will be conduct calculated to deprive the NHS of a small amount of money and will on that account also be wrongful. The **advice from the GPC is therefore that GPs do not issue private prescriptions under these circumstances**⁴.

GPs can only charge for a private prescription in the following circumstances:

- For drugs which are being issued solely in anticipation of the onset of an ailment whilst outside the UK, but for which the patient does not require treatment when the medicine is prescribed.
- For drugs issued for the prevention of malaria³.
NHS Prescriptions for private patients

Private patients are individuals who fund their healthcare either on a pay-as-you-go basis or via medical insurance and they must fund prescription charges in the same way. Practices should consider explaining this to patients when they are referred for private treatment; there is an information sheet for patients considering private consultations as an appendix in the Lancashire Guidelines for Good Prescribing in Primary Care, which can be found here: http://www.lancsmmg.nhs.uk/prescribing-guidance/guidelines/

Under current guidance, patients who are eligible for NHS care, but who have opted to pay privately for services that could have been provided by the NHS, can at any stage request a transfer to the NHS and will be afforded the same treatment as they would have received had they opted for NHS treatment all along.²

Alternatively, following a private consultation, with or without the issue of the initial prescription privately, the consultant may make a written recommendation for medication to an NHS practitioner whereupon the NHS practitioner can accept this advice and issue an FP10. There is no obligation on behalf of the GP to prescribe the recommended treatment if it is contrary to their normal clinical practice; if the private recommendation does not follow national or local guidelines/policies, the GP can substitute the drug with a clinically appropriate alternative. The NHS practitioner cannot charge for issuing the FP10. Importantly, they acquire liability for both prescribing and monitoring. If the GP does not feel able to accept clinical responsibility for the medication, the GP should consider whether to offer a referral to an NHS consultant for consideration as part of NHS funded treatment. See figure 1 below.

Figure 1: NHS prescriptions for private patients

Patient has opted to pay for private services. Following a private consultation the consultant makes a written recommendation for medication to an NHS practitioner

- NHS practitioner accepts clinical responsibility and recommendation. Patient transfers to NHS services
- NHS practitioner accepts clinical responsibility but wishes to prescribe substitute medicines on an FP10. Patient transfers to NHS services
- NHS practitioner does not feel able to accept clinical responsibility

- NHS practitioner issues an FP10 and acquires liability for both prescribing and monitoring
- NHS practitioner issues an FP10 for alternative medicines and acquires liability for both prescribing and monitoring
- NHS practitioner refers patient to an NHS consultant for consideration for NHS funding and recommendation. Patient transfers to NHS services.
- NHS practitioner accepts recommendation from an NHS consultant
Legal Issues

The Human Medicines Regulations 2012, in conjunction with the Medicines Act 1968 and Misuse of Drugs Regulations, as well as many other pieces of legislation, common law, and guidance, all govern the act of private prescribing.

The laws governing private prescribing also vary based on whether the patient is a private or an NHS patient at the time of prescribing. Private patients enter into a contractual relationship by paying for services, and therefore, unlike NHS patients whose relationship with their provider is a statutory one, have recourse to both contract and tort with regard to failures or harms. The DH and NHS guidance is that NHS resources should never be used to subsidise private care, thus private treatment must be distinct from NHS treatment.

References