



Protocol for Cross-Border Healthcare Services

April 2013

**Department for Health and Social Services of the Welsh Government
and the NHS Commissioning Board**

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Introduction

1. This protocol sets out the arrangements agreed between the Chief Executive of the NHS in Wales and the Chief Executive of the NHS Commissioning Board (NHS CB) in England to help ensure smooth and efficient interaction between the NHS on either side of the England-Wales border to support better patient outcomes and avoid the fragmentation of care.
2. This protocol covers arrangements to:
 - allow patients to acquire a GP over the border and secure services in a fair and predictable way; and
 - ensure that there is clarity about the standards of services to be secured across the border.
3. Section 130(1) of the National Health Service Act 2006 (as amended by section 23 of the Health and Social Care Act 2012) places a duty on the NHS CB, in making commissioning decisions, to have regard to the likely impact of these decisions on the provision of health services to persons who reside in an area of Wales that is close to the border with England. Despite the absence of a similar provision on the Welsh side at present, the NHS in Wales will be expected to operate on the same basis in relation to actions affecting persons who reside in an area of England that is close to the border with Wales, until there is an opportunity to legislate to introduce the same provision in Wales.

Applicability

4. In general, this protocol applies to all residents of England and Wales.
5. However, the section of this protocol on acquiring a GP and securing services across the border, applies only to people resident in the following areas along the England and Wales border:

Areas of Wales bordering England	Clinical Commissioning Groups bordering Wales
Flintshire Wrexham Powys Monmouthshire Denbighshire	NHS South Cheshire NHS West Cheshire NHS Wirral NHS Herefordshire NHS Shropshire NHS Telford and Wrekin NHS Gloucestershire NHS South Gloucestershire

6. For patients resident elsewhere in England or Wales who are registered with a GP on the other side of the border, responsibility for commissioning or for planning and securing their healthcare will remain with the Clinical Commissioning Group (CCG) or Local Health Board (LHB) where the patient defines his or her usual place of residence.
7. Cross-border NHS-funded nursing care in care homes in Wales and England is based on the care homes' location. CCGs should refer to the responsible commissioner guidance, '*Who Pays? Determining Responsibility for Payment to Providers*'¹, and NHS bodies within Wales to the definition set out in the *Responsible Body Guidance*².
8. Where a CCG or LHB arranges a package of NHS Continuing Healthcare (CHC), (other than a package that is only NHS funded nursing care), the placing body will remain responsible for that person's CHC until that episode of care has ended.

Acquiring a GP and securing services over the border

9. In compliance with the LHBs (Directed Functions) (Wales) Regulations 2009 SI 2009/1511 (W147), LHBs retain legal responsibility for their resident population who are registered with a GP in England. However, the CCG that includes their GP practice (and for military, specialised and offender health, the NHS CB) will be responsible, on the LHB's behalf, for the commissioning of healthcare services for those residents.
10. CCGs will retain legal responsibility for their resident population who are registered with a GP in Wales^{3,4}. However, the LHB (and for specialised services, the Welsh Health Specialised Services Committee (WHSSC) acting on behalf of the LHBs) will be responsible for securing healthcare services for those residents.
11. The following table summarises the commissioning and healthcare planning responsibilities and legally responsible bodies.

Residency	GP Location	Commissioning/healthcare planning responsibility	Legally Responsible Body
Wales	Wales	LHB	LHB
England	England	CCG	CCG
Wales	England	CCG	LHB
England	Wales	LHB	CCG

12. LHBs (and WHSSC for specialised services on behalf of LHBs), acting on a CCG's behalf for English residents registered with a Welsh GP, will secure healthcare on the basis of clinical need in line with, as a minimum, the Welsh

¹ ['Who Pays? Determining Responsibility for Payment to Providers'](#)

² [Responsible Body Guidance for the NHS Wales](#)

³ [NHS CB and CCG \(Responsibilities and Standing Rules\) Regulations 2012](#)

⁴ [The National Health Service \(CCGs - Disapplication of Responsibility\) Section 12](#)

Government's standards for access to healthcare irrespective of the location of the provider.

13. These patients will be reported in the English provider data sets but will be separately identified. The Care Quality Commission (CQC) does not currently rate the performance of providers. However, if it were to introduce a performance rating system any breaches of the English maximum waiting times by patients who have been referred by a Welsh GP would not be included in a Trust's performance rating.
14. The principle set out in WHC(2005)12 confirms that Welsh providers are required to work to the standards and targets that are set out by the Welsh Government for all the patients whom they see and treat. This means that patients from GPs in England, who choose assessment/treatment in Wales, will be seen/treated within the maximum waiting time targets of the NHS in Wales.
15. CCGs and the NHS CB, acting on behalf of a LHB/WHSSC for Welsh residents registered with a GP in England, will commission on the basis of clinical need. The services commissioned must meet, as a minimum, the standards for access to healthcare guaranteed by the NHS Constitution when treated in England, and the Welsh Government's standards for access to healthcare when treated in Wales.
16. The following table summarises what patients should be able to expect in terms of standards for access to healthcare depending on residency, GP location and provider. Standards should be taken to include clinical thresholds for treatment and other referral criteria specified by the CCG or LHB :

Residency – as below	GP Location – as below	English Provider to meet:	Welsh Provider to meet:
Wales	Wales	WG standards	WG standards
England	Wales	WG standards	WG standards
England	England	NHS Constitution	WG standards
Wales	England	NHS Constitution	WG standards

Financial consequences of decisions

17. The aim of this protocol is that there will be no financial shortfall on the part of any LHB or CCG to provide healthcare services to the other country's residents. In carrying out this protocol the responsible LHBs and CCG will be appropriately funded to commission healthcare services for the other country's residents. A timely and appropriate adjustment of finances will occur between the Welsh Government and Department of Health, based on the existing methodology of reimbursement on a per capita basis for the net difference in primary care registrations between England and Wales which occurs as a result of arrangements in this protocol. LHBs' allocations will be amended as appropriate by the Welsh Government.

Determining the Responsible Commissioner

18. Where there is any uncertainty about which body is the responsible commissioner or healthcare planner, LHBs (or WHSSC) and CCGs or the NHS CB should work together to reach agreement speedily and fairly. CCGs should refer to the responsible commissioner guidance, '*Who Pays? Determining Responsibility for Payment to Providers*'⁵, and NHS bodies within Wales to the definition set out in the *Responsible Body Guidance*⁶.
19. The patient's safety and well-being must be paramount at all times. No emergency treatment must be refused or delayed due to uncertainty or ambiguity as to which LHB or CCG is responsible for funding healthcare provision.
20. The process by which local commissioners and healthcare planners will reach agreement, and resolve disputes is set out in the Annex to this protocol. It is not intended that this procedure should be used to reach agreement on issues outside the scope of this protocol. However, a similar process may be applied more widely if the parties involved choose to use it.

Cross-Border Collaboration

21. The Welsh Government and the NHS CB will put in place arrangements on each side of the border to ensure that local NHS bodies work together to:
 - a. ensure no treatment is refused or delayed due to uncertainty or ambiguity as to which body is responsible for funding an individual's healthcare provision;
 - b. ensure that the different financial regimes that operate either side of the border do not create inappropriate barriers to patient care;
 - c. ensure that the border is no block to accident and emergency services or to emergency treatment when required;
 - d. allow NHS and other staff safely to cross the border where needed with full indemnity cover;
 - e. facilitate access to redress from patients coming for treatment from across the border;
 - f. create and manage mechanisms for identifying and managing cross border issues;
 - g. ensure arrangements are in place so that bodies engage populations across the border in discussions on quality and changes to services provided;
 - h. ensure that safe, reliable and integrated arrangements, including protocols for communications and dealing with problems, are in place regarding out-of-hours services, night-time hospital discharge, transport, social services and community services for residents dealt with by providers across the border;

⁵ ['Who Pays? Determining Responsibility for Payment to Providers'](#)

⁶ [Responsible Body Guidance for the NHS in Wales](#)

- i. publicise information on the web so that people can easily access what they need to know;
- j. ensure entitlements and ways of accessing services e.g. screening are clear to patients, their own LHB/CCG, GPs and other clinicians;
- k. ensure commissioning for mental health care reflects the needs of the patient and their legal rights in their home country;
- l. NHS bodies maintain good open communications with neighbouring bodies across the border within a locally agreed framework;
- m. ensure there are well-defined and clear protocols for managing changes in where a patient is treated; and
- n. ensure people along the border – GPs, patients, advocate organisations, etc - have easy access to information.

Duration of Protocol

- 22. This protocol takes effect from 1 April 2013 and will be reviewed after three years.
- 23. Any changes required from time to time will be agreed by both the Welsh Government and the NHS CB and communicated to all NHS Bodies.

Dispute Resolution Process

Stage in Process	Maximum timescale:
<p>Stage 1. Local resolution</p> <p>The LHB or Welsh Health Specialised Services Committee and the CCG must try to reach an agreement locally on which is the responsible body using the joint guidance from WG and NHS CB.</p> <p>All reasonable efforts must be made by officers (escalating to chief officers and finally to Chairs if necessary) of the LHB or WHSCC and CCG to reach agreement locally.</p>	Week 4
<p>Stage 2. Resolution at HSSDG Director / NHS CB Area Director Level</p> <p>In exceptional circumstances, the LHB/WHSSC and the CCG Chief Officers may conclude that they cannot reach local agreement and so decide to refer on to the relevant Director of the Department of Health Social Services and Children in the Welsh Government (DHSSC) and the Area Director of the NHS CB.</p> <p>The joint submission should provide the following information:</p> <ul style="list-style-type: none"> • a background summary of the patient's case • confirmation that the patient's care is not at risk • who is currently taking responsibility for the patient • the reason why the commissioner/healthcare planners are in disagreement as to who is responsible for funding the patient's healthcare; and • what has been done to try and resolve matters. <p>Discussion will take place between the DHSSC Director and the NHS CB Area Director to resolve the issue based on the facts and guidance. The decision will be final and binding on both commissioner/health care planner. A joint letter advising of the decision will be issued to both.</p>	Week 12
<p>Stage 3. National Level</p> <p>In the extraordinary event of an agreement not being reached between the DHSSC Director and the NHS CB Area Director by week 12, guidance should be sought from the Chief Executive of the NHS in Wales and the Chief Operating Officer of the NHS CB in England. Both the Chief Executive and Chief Operating Officer will liaise with one another to agree the policy interpretation for the case and provide joint advice to both the DHSSC Director and NHS CB Area Director to ensure a resolution is achieved.</p>	Week 14