

Luisa Simo
Chair Devon LoC

NHS Devon

by email only

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12th February 2024

Dear Luisa

General Ophthalmic Services (GOS) contract management – Optometry provider referral practices

Factual Background

As you are aware from on-going communication, NHS Devon has raised concerns in relation to current referral practices for the provision of ophthalmology services, particularly cataract surgery, being seen from a number of local providers operating under General Ophthalmic Services Contracts.

Recent audit work conducted by Devon Referral Support Services (DRSS) looked at a sample of two months' referral data for cataract surgery, amounting to 2,271 referrals across Devon.

DRSS findings have evidenced that, on average, 41% of all referrals included reference directing the patient to a specific IS provider, and without evidence of patient choice conversations having taken place. Of that 41%, 95% in turn specified either Newmedica or Spa Medica.

Referral practice concerns

As stated above, DRSS audit findings have evidenced systemic behaviour and practice of cataract referral letters directing the patient to a specific provider.

The audit shows that in one month 88 out of 116 practices (76%) included a specific provider in the referral letters.

These findings are exclusive of figures for patients who mention, in the course of DRSS choice conversation, that their optometrist has “*said they should go to a specific provider*”, but where that has not been specifically mentioned in the referral letter. DRSS are now actively logging these examples following (recorded) calls in order to appropriately evidence the behaviour.

DRSS have also seen instances of optometrists altering the referral letter pro forma, in order to have ‘check boxes’ for certain providers at the top of the letter template.

Redacted copies of all letters can be made available and will also be relied upon, in the event further action is deemed necessary.

NHS Devon is also aware of occasions where optometrists have directed patients to specific providers – from whom they receive financial benefit via follow-up services. As an example, one referral letter seen (in which the patient was directed to Spa Medica) stated “...*please don’t offer the Nightingale hospital as they are not on pharmaoutcomes I can’t be paid for the post-op ...*”

Statutory and Regulatory context

NHS Devon has statutory and regulatory duties set out in the NHS Constitution to safeguard patient choice and exercise functions effectively, efficiently and economically, with a view to continuous improvement in the quality of services ¹

As the responsible commissioner, NHS Devon has a positive duty to ensure that persons are offered a choice of health service provider, and to make arrangements to ensure that the availability of choice under the arrangements it makes are publicised and promoted. ²

As you are aware, referrals in Devon are managed by DRSS who, as a function of NHS Devon, are responsible for ensuring:

- referrals comply with applicable commissioning guidance and policies (as set out in the Cataract Surgery Policy);
- patient choice conversations are carried out; and,
- the onward booking of treatment/appointments

The GOS Contracts Regulations

A provider operating under the model GOS contract, in making a decision to refer a patient for other NHS services, must do so without regard to its own financial interest. ³

The above position is underpinned by the General Optical Council Joint Statement on Conflict of Interest, which sets out the Council’s expectation that professionals in sector should avoid, declare and manage actual or potential conflicts of interest across healthcare settings.

¹ Ss 14Z32-14Z44, The National Health Service Act 2006

² Regulations 39, 42 – The National Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012

³ Regulation 16(4), The General Ophthalmic Services Contracts Regulations 2008

Furthermore, you will be aware of provider obligations in the GOS contract to ensure its personnel comply with contractual obligations ⁴ and a specific obligation not to seek to mislead a patient about the availability of services ⁵

Local providers are also expected to comply with all relevant legislation and have regard to all relevant guidance issued by NHSE ⁶.

NHSE has made clear ⁷ that, as part of work to improve patient choice, where a Referral Management Centre is in place (as it is locally - DRSS), that DRSS should be offering patients a minimum of five providers to choose from based on the patient's preferred selection criteria, where practicable and clinically appropriate.

Whilst patient choice conversations are for DRSS to be carrying out, not local providers, to the extent optometrists are engaging in any conversation that could be construed as relating to a choice discussion in the course of the therapeutic relationship, NHS Devon expects to see specific details appropriately documented in patient records, which must then be made available to NHS Devon upon request ⁸

Next steps

NHS Devon expects formal engagement with the LOC and local providers in order to set out:

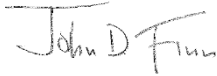
- our expectations on referral processes to be followed. This will build upon discussions with the LoC, further to previous meeting in January, and we expect to subsequently write to all local providers to clarify referral processes and roles and responsibilities.
- indication of what patient records must be kept in respect of any patient choice conversations.
- other issues NHS Devon has identified as part of the audit, and how these should be dealt with in future; and,
- As part of wider engagement, NHS Devon will look to facilitate a webinar in order for providers to have a forum for Q&A

In parallel, and without prejudice to the above, NHS Devon will be formally writing to local providers with whom contractual breaches have been evidenced, with a view to setting out the cessation of behaviours that contravene patient choice and the required outcomes going forward.

This correspondence will also make clear substantive action that may follow in the event of continued non-compliance with contractual obligations, including contract management processes and action against individual optometrists.

Our preference is, of course, to resolve this matter without recourse to any formal action against local providers, and I look forward to hearing from you with your response to include your availability for a meeting to explore resolution.

Yours sincerely



John Finn
Director of Commissioning, Urgent & Elective Care
NHS Devon ICB

4 *Ibid* Ss 2.8-2.10

5 *Ibid* Ss 25-26

6 *Ibid* S 100

7 Publication reference: PRN00507

8 s 52 The General Ophthalmic Services Contracts Regulations 2008

Cc:

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