



Funding Requests for Medical Treatment

When does a patient have a right to medical treatment?

A CCG has a statutory responsibility to fund treatment for 'qualifying patients' identified in any 'Technology Assessment Guidance', commonly referred to as a 'TAR'. The National Institute for Health and Clinical Excellence ("NICE") publishes this guidance.

'Qualifying patients' means those who satisfy the clinical indicators detailed in the TAR.

There may be occasions when an individual seeks medical treatment that the NHS will not ordinarily fund and provide. An example would be a selective dorsal rhizotomy operation used to improve spasticity in cerebral palsy. In certain circumstances it is possible to challenge a decision made not to provide medical treatment or care.

What is a 'Commissioning Policy'?

A document which details the health treatments a Clinical Commissioning Group ("CCG") has decided to fund for patients for which it bears responsibility. The policy is usually devised based on cost-effectiveness.

What is an Individual Funding Request ("IFR")?

Where an individual falls outside the range of services and treatments that the CCG has agreed to ordinarily commission (i.e. fund), an individual funding request can be made.

Why do CCGs allow IFRs?

The reason that NHS bodies have traditionally allowed IFRs is because within a patient group with the same disease, there may be patients with individual clinical situations, which are so unusual that a decision to deny funding to that patient is unjust.

For example, a rare genetic condition may mean the patient cannot tolerate the treatment offered to the majority. It is therefore justifiable to fund alternative treatment as an exception.

What is an IFR Policy?

Every CCG must have a clear IFR policy which details how a patient can apply for funding from the CCG for a particular treatment which is not ordinarily available.

In what circumstances may an IFR be appropriate?

IFRs generally arise in 3 circumstances:

- 1) A patient has a rare condition and makes a request for funding for the usual way of treating the condition. This type of application is usually dealt with on its individual merits.
- 2) The patient has a more common condition but claims that the usual care pathway does not work for him or her. This is usually only funded in exceptional circumstances.

- 3) The patient was to take advantage of a medical treatment that is novel, developing or unproven, and which is not part of the CCG's existing treatment plans. This is usually only funded in exceptional circumstances.

What criteria will a CCG consider when dealing with an IFR request?

- a) The patient must show that an NHS referring clinician supports the application. If the patient does not have a clinician who is prepared to provide the treatment, then the CCG are not compelled to entertain the application.
- b) The patient, supported by the clinician, can show that the requested treatment is likely to be clinically effective.
- c) The patient, supported by the clinician, can show that the requested treatment is likely to be cost effective.
- d) The circumstances are such that there are not likely to be other patients in a clinically similar situation. If there are other patients then the CCG should respond to the request by devising a separate policy but should not process the request as an IFR unless it is urgent.
- e) If all of the above tests are met, the patient must demonstrate that he or she has exceptional clinical circumstances.

Each CCG will have its own IFR policy and so it is important to check the policy carefully for any additional requirements over and above these general conditions.

What are 'exceptional clinical circumstances'?

Exceptionality is generally answered using the following question: "On what grounds can the CCG justify funding this patient when others from the same patient group are not being funded?"

When should an IFR request be made directly to NHS England?

In respect of all NHS England directly commissioned services. Alternatively, if there is evidence that other patients with the same condition could derive a similar type and degree of benefit from the treatment, and so the request is essentially for a new development in services for that group of patients. NHS England has its own IFR policy which must be consulted to determine when a direct IFR application to NHS England is appropriate.

How can an IFR decision be challenged?

If a CCG has refused an IFR request, it may be possible to challenge the decision by way of a complaint to the CCG, and/or an application for Judicial Review.

What issues commonly arise?

- When a particular treatment is not considered appropriate by a patient's treating clinician, the treatment is particularly expensive, or NICE has not recommended it for use, it is often hard to succeed with an application. Often IFR disputes arise in the context of particularly expensive cancer drugs, gender reassignment surgery or IVF fertility treatments.
- Even when medical treatment has been recommended by NICE, and a patient satisfies the clinical indicators, it can often be a 'postcode lottery' to secure access to NHS funded treatment.
- Each CCG will have its own IFR policy and so the process to be followed for each patient will differ depending on which CCG is responsible for care commissioning.
- The threshold to satisfy the criteria a CCG will consider to determine an IFR application is high. It is often extremely difficult to successfully meet the criteria.

How can Lester Aldridge assist?

At Lester Aldridge we can help individuals and their families resolve issues relating to medical treatment and care. This may include circumstances where the NHS have refused to fund a particular drug or course of medical treatment, alternatively where there is a disagreement about whether a particular course of treatment is appropriate. We can provide:

- An initial, free assessment to determine whether you have a legally enforceable right to medical treatment recommended by NICE. We can also consider the merits of submitting an IFR for treatment not ordinarily available from your CCG, or for challenging a decision by a CCG to refuse to fund medical treatment recommended by NICE, or following an IFR application.
- Advice and representation to put forward a request for medical treatment recommended by NICE, or an IFR request to a CCG. In addition, submit a challenge to the rationality or legality of medical treatment or IFR decision by way of a Complaint and/or Judicial Review proceedings.
- Advocacy at any round-table meetings to discuss a refusal of medical treatment or IFR decision.
- On-going negotiation with a CCG to arrange the provision of treatment once NHS funding has been agreed.
- Challenging by court action decision making of clinicians regarding life sustaining medical treatment. For example, in PVS cases