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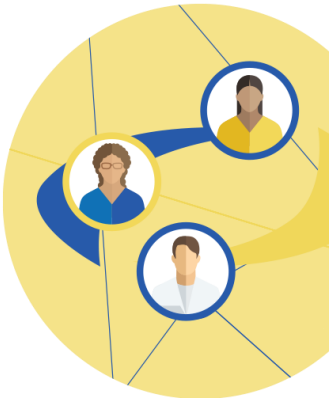

Right to Choose: LMC Guidance for Practices

At recent LMC meetings the issue of Right to Choose, especially with regard to diagnosis and treatment of neurodiversity, has been raised repeatedly. To help support practices to understand the current legislation and guidance, and deal with common issues related to requests for referrals, we have produced a series of documents and templates.

It is fair to say that this area is complex, time consuming and lacks transparency. It is also an area which is fast growing and likely to see many changes in the future. Therefore, please be mindful when using or adapting these resources for your own purposes, that they may be updated in the future.

Please find enclosed

- LMC Guide to Right to Choose (pages 2 to 5 of this PDF)
- Template Patient Information Pre ADHD/ASD RTC Referral (appendix 1 – separate Word document)
- Template RTC Provider Referral Letter for ADHD/ASD (appendix 2 – separate Word document)
- Template ADHD Patient Questionnaire for Referral (appendix 3 – separate Word document)

Hopefully you will find what we have produced helpful. We have adapted the referral documents and patient advice leaflet from work originally developed by Sheffield LMC and are grateful for their support in sharing this work.

The template patient information sheet, referral letter and patient questionnaire are shared as Word documents to allow practices to adapt them as they wish.

Right to Choose: LMC Guidance for Practices

Patient Choice vs Right to Choose

"Patient choice" refers to the ability for a patient to select their preferred healthcare options within the limitations of available services. "Right to choose" implies a legal entitlement for a patient to make decisions about their care, often including the ability to select a specific provider or treatment method, depending on the healthcare system and specific circumstances. "Right to choose" elevates "patient choice" to a legal right in many cases.

Who can apply right to choose for their patients?

Only GPs, dentists, optometrists, and services providing referral management on behalf of GPs, dentists or optometrists, can apply right to choose for their patients (see below for more on referral management services).

How do referral management services fit in?

The NHS Guidance states that where interface services such as Clinical Assessment Services (CAS), Single Point of Access (SPAs) and Referral Management Centres (RMCs) are put in place, these should not obstruct the patient's legal rights to choose.

In these circumstances, when the legal right to choose applies at point of referral, choice should be offered at the most appropriate point in the pathway prior to the first outpatient appointment and subsequent treatment.

This means that where a commissioner has implemented a referral management service (such as services for MSK or mental health), the service should offer the patient the right to choose, rather than the patient returning back to the GP in order to exercise their right to choose.

How does this impact how I refer a patient?

Part of the patient choice guidance covers choosing where a patient can go for their first appointment as an outpatient, which covers both physical and mental health.

This only applies once you as the GP have made a decision to refer the patient. The patient does not have the right to a referral under right to choose.

The referrer is not required to make a referral to a provider or team if they do not believe this would be clinically appropriate.

When does right to choose <u>not</u> apply?

This is a legal right the patient has, unless the patient meets specific criteria. A full list is included in Appendix B at the end of this document, but the three which will most commonly apply to referrals are that the patient is:

- already receiving care and treatment for the condition for which you're being asked to refer, and this is an onward referral
- needing urgent, emergency or crisis services
- using maternity services

- **What qualifies a provider as a right to choose provider?**

  A "Right to Choose" provider is any provider that holds an NHS contract to provide the services the patient needs for a given cohort. For example, a provider that holds an NHS contract to provide ADHD for one ICB in England, can accept referrals from any GP in the country under right to choose, so long as they have capacity to do so. However, a provider that is commissioned to provide ADHD services for adults only could not accept referrals for children under right to choose.

  As holding a contract with any ICB in England qualifies an organisation to be a right to choose provider, the list of available providers is constantly changing as existing contracts finish and new providers are awarded contracts. Because of this, local ICBs have no way of assessing the service specifications or governance arrangements of providers outside their geography.

- **Do all right to choose providers work to the same specification?**

  No. Different providers will have been commissioned to provide different services by their local ICB. For example, a service accepting ADHD referrals under right to choose may only offer diagnosis of ADHD, others will do diagnosis and recommendation of treatment (but not initiation of treatment), while others will offer diagnosis, initiate treatment and engage in shared care with the GP practice.

  Patients need to understand the implications of choosing a provider who does not offer the full range of services they require.

- **Is there a disadvantage to choosing a provider located outside of the local ICB?**

  All ICBs will have commissioned a full pathway from assessment to treatment in their geography, this may be from a single provider delivering the entire pathway, or from multiple providers delivering specific elements. Therefore, if a patient chooses the locally commissioned service, they should be guaranteed the full pathway of care. However, if they select an out of area provider, they may only receive the element of the pathway that the provider is able to deliver under right to choose.

  As above, it is important that patients understand the implications of choosing a provider located outside of their ICB area.

- **Does the patient need to be offered five options to choose from?**

  No. NHSE patient choice guidance says *"We're asking all referrers to ensure they shortlist on average 5 choices from which the patient may choose, where this is practicable, clinically appropriate and preferred by the patient."*

  There isn't a legal right under right to choose that says you have to provide five options, just this "ask" from the NHS under the patient choice framework. It is likely that in many cases this will not be practical.

- **What if a patient wants to be referred to a provider that I believe is not in their best interests?**

  The guidance states that the referrer is not required to make a referral to a provider or team if they do not believe this would be clinically appropriate.

Do I have to use the chosen providers referral form?

No. Whilst most secondary providers would like practices to complete their specific referral proforma as it makes their lives easier, there is no obligation for a GP to do so. Like any referral, the providers should accept a clinical letter written by a GP with all of the clinical information the GP views as relevant included.

To avoid referrals being rejected, they should contain the following:

i. A short covering letter stating you (the GP or Advanced Nurse Practitioner) wish to refer the patient for an assessment under the Right to Choose legislation. The letter should be addressed to the provider and have your name at the bottom, and contain the patients telephone number and e-mail address (where possible) as these are the primary methods of contact.
ii. A brief explanation for the referral with the relevant medical information summarised.

We have created a template referral letter for patients being referred for ADHD/ASD in appendix 2.

The GPC/BMA have produced some very clear guidance on this, including a statement which can be added to the end of referrals to highlight contractual and GMC guidance to support acceptance. There is also an appendix containing a standard letter back to the specialist if a referral is rejected. Use of these should make it clear that your letter is moving responsibility for your patient to secondary care. BMA guidance on Proformas and Referral Forms

Appendix

Appendix A: Sources used in this document

https://www.nhs.uk/using-the-nhs/about-the-nhs/your-choices-in-the-nhs/

https://www.england.nhs.uk/long-read/patient-choice-guidance/

NHS e-Referral service.

Appendix B: Full list of when right to choose does not apply

This is a legal right the patient has, unless the patient is:

- already receiving care and treatment for the condition for which you're being asked to refer and this is an onward referral
- needing urgent, emergency or crisis services
- in need of emergency or urgent treatment, such as cancer services where they have received an urgent referral for suspected cancer or for breast symptoms (where cancer is not suspected)
- a prisoner, on temporary release from prison, or detained in 'other prescribed accommodation' (such as a court, secure children's home, secure training centre, an immigration removal centre or a young offender's institution)
- someone who is held in a hospital setting under the Mental Health Act 1983
- a serving member of the armed forces
- using maternity services