Royal College of Nursing

RCN INTERNATIONAL DEPARTMENT

RCN International Department

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Proposed EU Legislation on the application of patients' rights in cross-border health care'

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Background

Following a number of judgements in the European Court of Justice relating to the cross-border provision of health care in the late nineties, EU health ministers invited the European Commission in 2003 to clarify the rights of patients to receive medical care in another EU country.

Following a consultation by the Commission in early 2007 on the role of the EU in health services, the Commission has been working on a draft framework and legislation to cover cross-border health services.

The proposal was due to be issued at the end of December 2007, but after a number of different versions were leaked the European Commission withdrew it due to internal differences within the Commission and opposition from some governments. The RCN's main concerns with the early drafts were the need for clarity on prior authorisation, issues of equity and prior payment for hospital services, clear patient information, continuity of care and the need to acknowledge nurse prescribing rights within any system of mutual recognition of prescriptions.

The new proposal on cross border care and patients' rights was issued by the European Commission at the beginning of July 2008 as part of a wider "social package", including education and employment proposals. The emphasis has shifted away from a framework for health services in Europe to a clarification of patients' rights to cross-border care.

The cross-border care initiative does not focus on health workforce issues, such as the mobility of health professionals, or give detailed recommendations on patient safety. These are being covered in separate initiatives later in the year. The proposals are also not directly concerned with the movement of health care providers across Europe.

The full text of the proposal is available at:
http://ec.europa.eu/health/ph_overview/co_operation/healthcare/proposal_directive_en.htm

Existing Rights to Cross-Border Care

Patients already have rights through the European Health Insurance Card (EHIC) to receive emergency care in another EU country and be reimbursed. They also have a right to request planned treatment under EU social security arrangements (E112) which have existed since the 1970s. If permission is given the patient's home system reimburses the country where treatment occurs.

For more detailed guidance on these existing arrangements, visit the Department of Health's website:
http://www.dh.gov.uk/en/healthcare/entitlementsandcharges/index.htm

Key points in the Directive

The proposals aim to clarify more recent case law which has expanded patients' rights and also identify the sending and treating member states' responsibilities in terms of information to patients, means of accessing and gaining reimbursement for care, patient safety and systems of redress.

It covers three main areas:

1. Common principles in all EU health systems
2. A specific framework for cross-border care
3. European co-operation on health services.

1 Principles

In 2006 EU member governments agreed a common set of values (universality, access, quality, equity and solidarity) and principles (quality, safety, care based on evidence and ethics, patient involvement, redress, privacy and confidentiality) for European health systems. The proposals reinforce the values and principles but it is for member states to determine what systems they use to adhere to them.

2 Framework for Cross-Border Care

This aspect of the directive sets out the legal requirements on member states where a patient wishes to seek treatment abroad whether this is hospital or non-hospital care. It contains the following general provisions:

- The member state where the treatment takes place (not the sending country) is responsible for ensuring the quality and safety standards and the other common principles agreed by EU governments are applied
- All patients must be treated equally on the basis of their health care need. Seeking treatment abroad should not be discriminatory either to the person seeking the treatment or to other service users
- The draft directive covers all health care – public and private
- Home health services are not required to reimburse the costs of treatment if that treatment is not available or would not be funded in their home country, for example abortion, plastic surgery.

Authorisation

Prior authorisation for non-hospital care in another EU country is not required.

Member states can, however, introduce a system of prior authorisation for hospital treatment where it can be justified on grounds of service planning and maintenance of balanced services for all.

All countries will need to set up systems that specify the criteria for refusing prior authorisation and the time limits for dealing with requests based on the medical condition, the degree of pain, the nature of the patient's disability and the patient's ability to continue their work.

The proposed legislation would not affect a health system's right to apply conditions for access to health care such as needing to be referred through a general practitioner for specialist treatment.

Hospital care is defined by the proposals as care requiring an overnight stay. In addition the Commission will draw up a list of healthcare that require "highly specialised and cost-intensive medical infrastructure" or involve "treatments presenting a particular risk for the population" which would also be classified in this category.

Payment

Member States will need to have a system for calculating costs to reimburse patients for treatment in another member state. Even where prior

authorisation is required the proposals talk of reimbursement i.e. the patient paying up front.

The health system is only required to reimburse costs at the level that they would have been covered in the home member state and patients cannot make a profit from the reimbursement.

Standards, Patient Information and Redress

One of the key objectives of the proposals is to ensure people have clear information and can make informed choices about their health care. Under the directive the member state where treatment occurs will have the following responsibilities:

- To define clear quality and safety standards and monitoring systems to ensure that health care providers meet these and take action if standards are not met
- To set up a national contact point to ensure that people can access key information on their rights to cross border care and relevant medical, financial and practical information, including availability, prices and outcomes. The Commission may develop a standard format for this information in future
- To have a clear system of redress and compensation
- To have a system of appropriate professional indemnity insurance or similar cover
- To ensure compliance in relation to confidentiality and protection of personal data.

3 European Cooperation in Health care

The directive lays on EU member states a general "duty of cooperation" to facilitate cross border care but it also contains specific areas of cooperation.

Mutual Recognition of Prescriptions

The proposal introduces a requirement for mutual recognition of prescriptions. These would be prescriptions issued by "an authorised person in another member state for a named patient", which in some member states would include nurses.

The proposal includes establishing a Community prescription template and ensuring that medicinal products prescribed in one member state and

dispensed in another are correctly identified and contain understandable patient information.

Other areas of cooperation

These cover European reference networks (centres of excellence in highly specialised care), e-health (general provision for interoperability between any systems introduced by member states for cross-border health services) and a network for collaboration on health technology assessment (NICE and its counterparts). Member states will also be expected to collect data on cross-border care including what care is provided, costs and outcomes. This data is not currently readily available across Europe.

Issues

The most immediate impact of the directive will be to make the system for seeking treatment in another EU member state more transparent with information more widely available about treatment and providers in other member states. The issues still to be debated are:

- If a patient has prior authorisation whether they should still be expected to pay up front and then seek reimbursement or whether this disadvantages certain groups
- Whether patients will make top-up payments in cross-border care, given that the home member state is only required to reimburse the cost in the home country
- What the definition of hospital care will include
- Whether information systems are sufficiently developed to allow for transfer of patient records and other data electronically between countries
- What the longer term impact on the performance of individual health systems will be as a result of closer cooperation on assessment of new treatments, and greater comparability of costs and outcomes between countries
- How the values and principles enshrined in the directive will be used for future EU initiatives on health.

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