



Royal College
of Nursing

Patient choice and access to cross border healthcare in Europe

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Introduction

UK citizens have the right to seek healthcare in other European countries and be reimbursed as part of the EU's free movement principles. In March 2011 the European Commission adopted a directive to clarify patients' rights to be reimbursed by their home health system if they seek treatment in another EU country. The legislation has implications for patients, funders and providers in terms of quality, safety and continuity of care, the costing of services, the role of providers and funders and for issues of liability and redress.

RCN policy position

The RCN supports the provision of greater choice and control for patients over their treatment and care, with care planned with full patient participation. However, the provision of choice should not be an end in itself but a tool for the delivery of better health outcomes.

The provisions of the European directive need to be applied in such a way that they are equitable and enhance patient care. The RCN believes that:

- Funders in the UK need clear information and processes for patients in their locality so that they know when and how they should seek prior authorisation for EU treatment, the costs covered, and reimbursement mechanisms.
- If patients choose to be treated in another EU member state, they should be encouraged to discuss this with their local commissioners beforehand, even where prior authorisation is not required, in order to support greater continuity of care for any follow up on their return to the UK.
- It is important that patients understand that the responsibility for quality, safety and liability applied to cross border care rests with the country where the treatment occurs not with UK providers or regulators.
- The system should not be based on reimbursement of costs after treatment alone as there are concerns about inequities arising from patients having to pay up front for potentially costly treatment, which could make it very difficult to access cross border care.
- Greater cooperation, rather than harmonisation, is needed between member states on quality and safety issues; health technology assessment; centres of excellence; and e-health. In relation to e-health and information, the focus should be on safe communication to support safe care, rather than prioritising data standards.
- There needs to be a balance between the need to plan for effective health service delivery in the UK and patient choice. Given that the overwhelming majority of UK citizens choose to access healthcare in this country, arrangements to implement the cross border care directive should not undermine domestic planning, provision and financing of health services.

Background

The number of people accessing planned treatment in another EU country is estimated to be very small but reliable and comparable data is notoriously difficult to

find. UK citizens may seek treatment abroad for a number of reasons. They may already be outside the UK (on holiday or in retirement); they may live in a border region; have strong social ties in that country; be sent for specialist treatment by their home health provider; or be seeking to access treatment more quickly.

Aspects of the draft legislation were highly contentious, with disagreements on the use of public funds from one country to pay for care from private providers in another; the definition of services that required patients to seek prior agreement; and proposals to ensure commitments to cooperating and reporting on quality and safety standards. Patients are not entitled to reimbursement for treatments that would not be funded by their home health service and are only reimbursed up to the costs in their own country. This means that commissioners will need to identify the cost to the NHS of a particular treatment in a transparent way whether it is covered by tariff or not.

The final EU directive has clarified previous case law – particularly in relation to patients' individual decisions to access planned care in another country. It confirms that patients should be able to seek treatment in another EU member state, under the same conditions as in their home member state. This includes GP referral to a specialist, where this is required by the home member state.

The directive complements existing EU social security legislation covering emergency treatment, through the European Health Insurance Card (EHIC) arrangements and planned referral of patients directly between member states' health systems.

Patients do not normally need to seek prior authorisation from the NHS for treatment abroad. But systems can be introduced for care that involves an overnight hospital stay; very specialised or cost intensive medical equipment; or that could have a significant impact on healthcare planning. A recent European Court of Justice case relating to the French health system held that French insurers could require prior authorisation for diagnosis and treatment where this could impact on the investment made in France in costly equipment (e.g. MRI scans).

Patients can be refused authorisation for treatment in a limited number of situations, such as if there is a considered to be a high risk to the patient, but commissioners must apply these criteria in a non-discriminatory way. The Watts case confirmed that prior authorisation cannot be refused where there has been "undue delay" i.e. if the requested NHS treatment cannot be provided in an acceptable period of time, based on medical evidence of clinical need.

Member states will be required to provide information about healthcare services in their own country through "national contact points" which are accessible to potential patients in other EU member states. The responsibility for regulating the quality and safety of services will remain with the country where it is provided, not the funder in the home member state. It is unclear whether inflows and outflows of patients between the UK and other EU countries will increase or not. However, to ensure compliance with the European Court rulings the Government issued interim guidance to the NHS in 2010.

Recent work by RCN Policy and International: further reading

RCN has worked actively with MEPs and its European alliances as the draft legislation was being shaped, for example commenting on the initial proposals and producing a policy briefing.

RCN Comments on the EU Proposals on Patients' Rights to Cross-Border Care

http://www.rcn.org.uk/_data/assets/pdf_file/0011/197462/RCNResponseoct08.pdf

Proposed EU Legislation on the application of patients' rights in cross-border health care: EU policy briefing, July 2008

http://www.rcn.org.uk/_data/assets/pdf_file/0010/175708/Policy_Brief_jul08.pdf

External references

EU Directive on the application of patients' rights in cross border health care <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:088:0045:0065:EN:PDF>

Cross-border health care data, Chapter 9, In Wismar M, Palm W et al (ed) *Cross-border health care in the European Union*, World Health Organisation 2011,

Lunt N, Smith R et al, *Medical tourism: treatments, markets and health system implications: a scoping review* Organisation for Economic Cooperation and Development (OECD) 2010

Legido-Quigley H, McKee M, Nolte E, Glinos I, *Assuring quality of health care in the European Union. A case for action*, World Health Organisation on behalf of the European Observatory on Health Systems and Policies, 2008, pp 42-50

Social security Regulation No 883/2004, Official Journal of the European Union L149, 30 April 2004.

European Court of Justice Case C-512/08 European Commission v French Republic, 5 October 2010

DH interim guidance (2010)

http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_115256