

Cross-Border Healthcare Directive 2008/0142 (COD)

This policy brief provides a short summary of the EU Cross Border Healthcare Directive. It highlights key aspects of the directive and identifies some potential implications.

1. Introduction

The number of patients who choose to seek medical care in another EU Member State other than their own is relatively low but not negligible. Generally, people prefer to receive medical care from their nearest medical service. However, the European Commission (EC) estimates that around 1% of public healthcare budgets are spent on cross-border healthcare, equating to around €10 billion for the EU as a whole (1).

Patients may wish to seek healthcare in another Member State from a number of reasons: healthcare may be better provided in another country or offer specialized treatment that is unavailable in their country or in border regions, where the nearest appropriate facility may be situated in another country.

After a series of judgements by the European Court of Justice (ECJ) on cases relating to access to cross-border healthcare, the EC initiated a proposal with the aim to give clarity and legal certainty to patients on what rights they have should they seek medical care in another EU Member State. The proposal aims to facilitate access for patients to safe and high-quality cross-border healthcare while ensuring they will be reimbursed for it.

2. Background

The cross-border healthcare directive has been controversial as it affects the Treaty rights of Member States to organise health care services delivery. The European Commission presented its initial proposal in 2008 and it has taken two years of tough negotiation between Health Ministers in the Council of the European Union and the European Parliament to reach a suitable compromise. Initially, a group of Member States including Spain, Portugal, Poland and Romania formed a blocking majority, arguing that the directive would place additional burdens on health systems, citing problems foreseen in recouping medical costs and that it would give rise to an increase in “medical tourism”¹ in the EU. However, a successful agreement was finally brokered and the directive has been formally adopted from February 2011.

3. Main aspects of the directive

The agreement still reflects the underlying principle of the original EC proposal, i.e. all citizens of the EU are able to access planned healthcare in other EU states that they would be entitled to in

¹ Patients who take advantage of cheaper healthcare treatments in other member states in order to save on medical costs.

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their own country and are able to be reimbursed for that in their own member state. In addition, the agreement clarifies some of the more controversial issues related to:

- ✓ **Level of reimbursement:** Member States are only required to fund treatments that the patient would have been entitled to had they received that treatment in their home health system, and only up to the amount it would have cost the patient in their home health system (2). Payment of treatment accessed abroad is generally made by the patient upfront, which is then reimbursed by their home state. However, the directive also foresees that Member States can choose to confirm the amount of reimbursement in writing upfront, on the basis of an estimate presented by the patient (3).
- ✓ **Prior authorization:** Generally, patients should not need prior approval from their home state to be entitled to reimbursement for care accessed in another member state. However, in order not to undermine the financing of national social security systems and hospital capacity, for certain types of care patients would need authorization from their home health care providing system before seeking treatment abroad. These include, for example, treatments that require overnight hospital accommodation, highly specialised and cost-intensive medical infrastructure or treatments which would raise concerns with regard to the quality or safety of the care. The directive also highlights the grounds on which prior authorisation can be refused:
 - If the treatment can be provided in the patient's own Member State without undue delay - within a time-limit which is medically justifiable;
 - If the treatment in question, or the healthcare provider in question, could present a risk for the patient;
 - If the patient or general public will be exposed an unacceptable safety risk.

However, should a patient be refused prior authorization, they have the right to request a review of any administrative decision on cross border healthcare for their individual case.

- ✓ **Member States affiliation for pensioners living abroad:** The agreement asserts that the reimbursement of costs for a pensioner, living in the EU but outside their home country and receiving healthcare in a third Member State, lies with the Member State where the pensioner is resident. If a pensioner is treated in their country of origin, this country would have to provide healthcare at its own expenses (3). So for example, should a German pensioner living in Spain receive treatment back in Germany, the healthcare provider in Germany must reimburse. However should the pensioner seek treatment in France, depending on the type of treatment and if prior authorization is received, the Spanish provider must provide reimbursement.

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- ✓ **Cross-border cooperation:** The cooperation between Member States in the field of e-health and health technology assessment (HTA) is strengthened, through the development of a voluntary network connecting national authorities responsible for e-health designated by the Member States. The aim of the network would be to support and facilitate the cooperation and the exchange of information among the Member States (3).
- ✓ **National contact points:** The directive foresees the establishment of a contact point in each Member State to provide information and enable people to find out their rights and make informed choices regarding cross border healthcare. These centres will exchange information between them and will be able to provide practical information to patients on conditions and levels of reimbursement, possible treatments, providers, procedures for redress, etc.
- ✓ **The recognition of prescriptions:** If a patient has a prescription for a certain type of medicine, ideally the patient should be able to get the same product in any other EU Member State with the same prescription.
- ✓ **Organ transplantation falls out of the scope of the Directive.**

4. Implications

The agreement attempts to strike the right balance between ensuring patients rights' to access cross border care while also making sure not to undermine the provision and quality of national health systems. From a health promotion perspective, the directive encourages closer cooperation between Member States health systems and may have a positive effect on improving health outcomes while also reducing health inequalities between countries. However, while the agreement clarifies most of the controversial aspects, there are some ambiguities and potential barriers remaining.

Firstly, ambiguities still remain in parts of the text and this could lead to further delays in the implementation of the directive at national level. The lack of uniform definitions related to what is a "medically justifiable" time frame and "reasonable" time in relation to prior authorization, may lead to differences in interpretation between member states. This ambiguity between Member States could also result in disincentives for people to seek care abroad, or increase inequalities of access.

Secondly, the system of upfront payment for treatment could act as a significant barrier to access for poorer patients. Poorer patients could be discouraged from seeking assistance due to their lack of ability to pay upfront for treatment, therefore leading to inequity of access for

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poorer patients and contributing to widening existing health inequalities. In addition, despite the more focus on inequalities at EU levels recently, the directive may offer insufficient attention to the needs of people from vulnerable and disabled groups. If the directive fails to accurately address this, it will undermine the key aim of the directive – “***that all citizens*** of the EU should be able to access planned healthcare in other EU states that they would be entitled to in their own country and are able to be reimbursed for that in their own member state”.

Finally, there is still some ambiguity regarding the role of rare diseases in the directive. While the directive supports the development of European reference networks to improve access to diagnosis and treatment for people with rare diseases, there is still some vagueness around the reimbursement of treatments that are not available in the country of origin (i.e. treatments for rare diseases). Again, this lack of clarity could act as a barrier for patients considering seeking care abroad and more importantly, negatively affect health outcomes.

5. Next Steps

National governments have 30 months to integrate these measures into national legislation. Member States must establish at least one national contact point that provides all relevant information to patients. Moreover, at national level, Member States need to ensure that administrative procedures on the use of cross-border healthcare and on reimbursement of costs are in place, including complaint procedures as well as mechanisms to calculate costs.

EuroHealthNet, via the Equity Channel, will keep its members updated on the progress of the directive.

6. Additional information

- Directorate General for Health and Consumers - Cross-border care: http://ec.europa.eu/health/cross_border_care/policy/index_en.htm
- European Commission, Q&A: Patients' Rights in Cross-Border Healthcare, MEMO/11/32, 19th January 2011: <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/11/32&format=HTML&aged=0&language=en&guiLanguage=en>

7. Notes

- (1) Community framework on the application of patients' rights in cross-border healthcare – COM (2008) 415 final.
- (2) 'Proposal for a Directive of the European Parliament and of the Council on the application of patients' rights in cross-border healthcare': Interinstitutional File: 2008/0142 (COD)
- (3) European Commission, Q&A: Patients' Rights in Cross-Border Healthcare, MEMO/11/32, 19th January 2011.