

Cross-Border Healthcare Directive - 2008/0142 (COD)

This policy brief provides a short summary on the issue of cross border healthcare and the rationale behind the directive. It highlights some of the key aspects of the directive and also identifies some of the potential implications.

1. Introduction

Today, the number of patients who choose to seek medical treatment in another EU Member State is relatively low but not negligible. The European Commission estimates that around 1% of public healthcare budgets is spent on cross-border healthcare, equating to around €10 billion for the Community as a whole (1). Patients may wish to seek treatment in another Member State because the health care provided is better than in their own country or because they reside in border regions, with the nearest appropriate facility situated in another country.

After a series of judgements by the European Court of Justice (ECJ) on issues pertaining to cross-border healthcare, the EC put forward a proposal with the aim to give clarity and legal certainty to patients on what rights they have, should they seek medical treatment in another EU Member State. The proposal aims to facilitate access for patients to safe and high-quality cross-border healthcare while also promoting cooperation between Member States on health issues.

2. Background

The cross-border Healthcare directive is taking some time to develop. The European Commission presented its initial proposal in 2008 and it was endorsed by the European Parliament in 2009. However, the draft directive has proved particularly divisive with Health Ministers in the Council of the European Union as previous attempts to reach agreement on the directive were rejected, most notably during the Swedish Presidency in December 2009. A group of Member States including Spain, Portugal, Poland and Romania formed a blocking majority citing problems relating to the applicability of the directive to both public and private providers as well as to the cross-border healthcare costs of pensioners living outside their home country. However, an agreement was finally brokered by the Spanish Presidency in the Employment, Social Policy, Health and Consumer Affairs (ESPCO) Council on the 8th June after they submitted a compromised version of the directive that was acceptable to all Member States including on the above key issues.

3. Main aspects

The compromise reached by Member States reflects the Council's intention to fully respect the previous decisions by the European Court of Justice on patients' rights in cross-border healthcare while preserving Member States' rights to organise their own healthcare systems. Therefore, the directive is based on a double legal basis – Article 114 on Health Services and Article 168 on Public Health (2). More specifically, the agreement still reflects the underlying principle of the original EC proposal, i.e. patients have the right to

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receive treatment in another Member State and be reimbursed by their healthcare provider. Moreover, the agreement clarifies some of the more controversial issues related to:

- ✓ Limitation of the 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 the home public system, and only up to the amount it would have cost the Member State in their system (2).
- ✓ Prior authorization: in order not to undermine the financing of national social security systems and hospital capacity, for certain types of healthcare, 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 revised directive also highlights the grounds on which prior authorisation can be refused:
 - If the patient is not entitled to the treatment;
 - 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 patient will be exposed to a patient safety risk, as stated by a clinical evaluation;
 - The general public, with reasonable certainty, may be exposed to a substantial hazard;
 - If the healthcare provider raises serious and concrete concerns regarding the standards of quality of care (2).
- ✓ 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.
- ✓ Cross-border cooperation: the cooperation between Member States in the field of healthcare is strengthened, for example in the field of e-health and through the development of European reference networks which will bring together, on a voluntary basis, specialised centres in different Member States (3).
- ✓ The recognition of prescriptions: as a general rule, if a product is authorised to be marketed on its territory, a Member State must ensure that prescriptions issued for such a product in another Member State can be dispensed in its territory in compliance with its national legislation (3). For example, if a

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patient has a prescription for a certain type of medicine from Slovenia, ideally the patient should be able to get the same product in any other EU Member State with the same prescription.

4- Implications

The agreement reached by Health Ministers gives real momentum towards the directive being fully adopted and implemented. However, there are additional barriers for the directive to overcome before it can be successfully transposed to the national level.

Firstly, ambiguities still remain in parts of the text and this could lead to further delays in the implementation of the directive. Secondly, MEPs have already reached an agreement on the original text presented back in 2008 and they called for more progressive steps to be taken in terms of reducing the barriers to access to cross-border healthcare. Therefore, the gate keeping provisions – prior authorization - outlined in the current agreement may be a source of tension for future negotiations between the European Parliament and the Council of Ministers. Finally, the directive could potentially favour wealthier citizens if patients have to pay for their treatment before they travel abroad. This could act as a significant barrier to access for poorer patients, who could be unable to pay upfront for treatment. Again, this could give rise to problems concerning inequity of access.

5- Next Steps

The agreement by Health Ministers in the Council is an important step for the future of the directive. The draft text will now be sent to the European Parliament for a second reading by MEPs where the Belgian Presidency is expected to begin negotiation, with a view to wrapping up a final agreement before Belgium hands over the rotating EU presidency to Hungary in 2011. EuroHealthNet, via the **Equity Channel**, will keep its members updated on the progress of the directive.

6- Additional information

- The full text agreed by Member States at the EPSCO Council is available [here](#).
- The Employment, Social Policy, Health and Consumer Affairs Council press release on a draft directive concerning the application of patients' rights in cross-border healthcare is available [here](#).
- Questions and answers on the 2008 version of the draft Directive on the application of patients' rights in cross-border healthcare is available [here](#).

7- Notes

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- (1) A 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) Press Release 167, 'Council agrees on new rules for patients' rights in cross-border healthcare', Council of the European Union. 8 June 2010.