European and External Affairs Committee

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WELSH ASSEMBLY INQUIRY INTO PATIENTS' RIGHTS IN CROSS-BORDER HEALTHCARE

CONTRIBUTION OF THE WELSH NHS CONFEDERATION

Introduction

1. The Welsh NHS Confederation brings together the full range of organisations that make up the modern NHS in Wales. Our aim is to reflect the different perspectives as well as the common views of the organisations we represent.

2. We are a membership organisation and act as an independent voice in the drive for better health and healthcare through our policy and influencing work and by supporting members with events, information and training. All Local Health Boards and NHS Trusts in Wales are included in our membership.

3. This contribution has been prepared in collaboration with the NHS European Office, which is part of the NHS Confederation, and which has carried out a consultation exercise on the EU proposals.

4. The terms of reference highlight a number of areas that the inquiry will look at, this paper comments on a number of these issues.

The impact of the Directive on NHS Wales

5. Although there may be some patients who will wish to take advantage of EU cross-border healthcare, for example patients with family connections in another EU country, overall, we know that most patients prefer to receive close to home and, therefore, we do not expect to see a large increase in the number of patients seeking healthcare in another EU country.

6. Neither are we aware of any indication that significant numbers of patients from other EU countries would be interested in coming to Wales for the purpose of receiving healthcare. Given that we do not expect to see a significant increase in EU cross-border patients flows either into or out of Wales, we believe the practical impact of these proposals on the day-to-day provision of healthcare in Wales is likely to be small.

7. However, Local Health Boards will need to be able to respond appropriately to queries from patients who are interested in cross-border healthcare options and advise them on matters such as eligibility requirements, level of reimbursements and processes for obtaining prior authorisation, so there may be a need for knowledge and capacity building in this area. More generally, awareness-raising about patients' rights to access EU cross-border healthcare, particularly among health professionals, may be needed.

Consideration of the issues which could arise from the proposed Directive including authorisation, inequities and redress

8. We think it is essential that patients who seek treatment abroad understand the conditions that will apply, and are aware that some aspects may differ significantly from NHS arrangements. Such differences may include different approaches to quality and safety; differences in clinical practices and treatments; different approaches to after-care and rehabilitation; and different arrangements with regard to liability and redress when things go wrong.

9. Patients also need a clear understanding of what treatment they are eligible for under the NHS, and, hence, what treatments they will and will not be able to claim reimbursements for if obtained abroad and the level of reimbursement available.

10. In view of this, we strongly support the use of prior authorisation systems as a mechanism for ensuring that patients receive the information they need to support an informed choice about EU cross-border healthcare. We are disappointed that the draft directive treats prior authorisation systems only as a 'barrier' to cross-border healthcare and not as an essential safeguard for patients.

11. Concerns have been raised about the draft directive's potential impact on inequalities, in particular, in terms of financial barriers to access to EU cross-border healthcare. We think that there should be flexibility for the NHS to make special arrangements on an individual basis to cover costs of treatment abroad upfront and/or pay additional costs if care was more expensive, where there is a particular need. The existing 'E112 referral' mechanism could be useful in such circumstances.

12. However, we also think it is important to remember that a range of factors will affect an individual's ability to access EU cross-border healthcare. For example, geographical location, unfamiliarity or lack of links with another EU country, the inability to speak another language, and a patient's overall fitness may all place limitations on a patient's ability to travel. It is not, therefore, easy to assess the potential impact of the draft directive on inequalities at this stage.

13. Turning to redress, the draft directive states that it is the legal framework and systems of quality and safety that apply in the member state where treatment takes place that apply regardless of whether a patient has come from another EU country. We think this principle is right as the NHS cannot accept liability for treatment that it has no mechanisms to influence. However, as we note above, it is important that patients are aware of this before they make a decision to seek treatment abroad.

What impact potential increases in patient outflow and inflow might have on NHS Wales' resources including provision of information and longer waiting lists

14. Finding the right balance in terms of providing appropriate information and support to patients interested in EU cross-border healthcare without diverting excessive resources from patient care in Wales may pose a considerable challenge.

15. The draft directive includes proposals for a network of national contact points on cross-border healthcare, which, it is envisaged, would be responsible for collating and exchanging information about cross-border healthcare in each EU member state. We think this may be a useful mechanism for exchanging general information about rights to cross-border healthcare and how other member states' systems function. We understand from the discussions ongoing at European level that it would be possible to have contact points at sub-national levels where this is appropriate, so for example, there could be a contact point for NHS Wales.

16. However, we think patients will, in addition, need access to personalised advice on their healthcare options and their rights to reimbursement, and that this information will need to be provided by their local NHS. Our impression is that awareness of rights to EU cross-border healthcare and the rules related to these rights is low in the majority of local NHS organisations and it is likely that some capacity building and support will be needed as part of implementation of the directive, if adopted.

17. Having said this, we also think it is also important to be realistic about the level of information health professionals and staff in local NHS organisations will be able to provide on EU cross-border healthcare options. It would be neither proportionate nor equitable for the NHS to devote unlimited resources trying to provide the same level of information about EU cross-border healthcare options as about options within the NHS.

18. We consider that, where the NHS can provide treatment in a timely manner in the UK and patients are deciding for personal reasons to seek treatment in another EU country, in choosing to obtain care outside the NHS, patients take on an additional degree of personal responsibility for their choices. We think, for example, that patients should be responsible for finding and choosing their own healthcare provider.

19. However, as we explain above, we think that prior authorisation systems offer an opportunity to make patients aware of important factors to be considered in a decision to seek cross-border healthcare, for example, the fact that standards of quality and safety and clinical practices may be different in other member states.

20. As we set out above, we have no reason to expect large inflows of EU patients seeking healthcare in Wales and therefore do not expect a significant impact on waiting lists.

Consideration of views regarding proposed payment mechanisms

21. EU cross-border healthcare presents challenges in terms of making it necessary to calculate the 'NHS cost' of individuals' healthcare in Wales. This relates not only to incoming patients, but also to outgoing patients, as this will determine the maximum possible reimbursement they would be eligible for.

22. In terms of payment mechanisms, the draft directive is based on the assumption that patients would meet the costs of healthcare abroad upfront themselves and then obtain a reimbursement of these costs from their home health service up to the level that the same treatment would have cost at home.

23. We are aware that some stakeholders have argued that payments should be made directly from the home health service to the healthcare provider in another EU country. We would not support this as a general approach as we think it would be less transparent for patients, as they would in many cases, still be required to pay some element of co-payment and/or additional costs of care; would not adequately address financial barriers for those in the greatest need, as they would still need to cover travel, accommodation and other additional expenses; and would be excessively bureaucratic for health systems to administer.

24. It is important to bear in mind that the draft directive would normally apply to a situation where a patient has the option of receiving healthcare within their home system, but is deciding for personal reasons to access treatment in another EU country. Whilst we agree that patients should be free to exercise this right, we also think it is right to recognise that, in such circumstances, the patient is making a choice to step outside the NHS and that, therefore, treatment is not delivered on the same basis or according to the same conditions as within the NHS.

25. The existing E112 referral system already provides a mechanism under which patients can access healthcare in another EU country at the expense of their home system. This is often used for NHS patients whose treatment cannot be provided in the UK, although NHS patients can also apply for an E112 referral in other circumstances. In particular, if a patient is experiencing 'undue delay' in receiving healthcare under the NHS and they wish to be treated abroad an E112 referral cannot be refused.

How Wales might meet the benefits/challenges of enhanced co-operation in the areas highlighted in the directive including e-health, patient care standards and quality.

26. The Commission's proposals also include a number of provisions designed to promote cooperation between EU member states, in areas such as the establishment of European reference networks (ERNs) of healthcare providers, e-health and the management of new health technologies.

27. There is some concern across the NHS about proposed provisions on mutual recognition of prescriptions, e-health and health

technology assessment, which are seen by some as too far-reaching and risk cutting across existing national or local decisions or ongoing work in these areas.

27. In Wales we will need to watch closely how this debate develops between the UK and the Commission.

MTJP

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