

Health and Social Care Committee

HSC(4)-08-12 paper 9

EU Directive on patients' rights to cross-border healthcare

At the Committee's meeting on 25 January Mick Antoniw AM asked for further information on the EU Directive on the application of patients' rights to cross-border healthcare, which was adopted in April 2011.

As noted in the background briefing for the Committee's meeting of 8 December the European and External Affairs Committee during the 3rd Assembly undertook an [inquiry](#) at the beginning of 2009, taking evidence from Welsh stakeholders. No work has subsequently been taken on this dossier by any of the Assembly's Committees.

NHS European Office briefing

The NHS European Office, which is a part of the NHS Confederation, prepared a detailed briefing on the new Directive in May 2011¹, running through the main points of relevance to the NHS in England (in particular). Members have been provided with a copy of this briefing note and are referred to this for the detailed overview of the directive and potential implications to the NHS.

The rest of this note provides a quick overview of some of the main elements of the new Directive.

Background context

The right of patients to receive healthcare in another European Union (EU) member state, and to be reimbursed by their own healthcare system, has been established by several decisions of the European Court of Justice.

The new Directive is intended to clarify how this right is implemented in practice. This legislation applies to those who choose to seek treatment abroad; the European Health Insurance Card (EHIC) scheme will continue to apply for people who require urgent treatment when visiting another EU country.

Main elements

Under the Directive:

- patients can only receive healthcare abroad that they would be entitled to receive under the NHS;
- patients will be reimbursed for the cost of this healthcare up to the amount that their treatment would have cost the NHS to provide. There is no requirement for the NHS to pay travel or accommodation costs;
- the NHS will have the option of introducing a system of prior authorisation for patients seeking planned treatment abroad, but may only refuse this authorisation in a limited set of circumstances.

¹ NHS Confederation (European Office), [Patient choice beyond borders – Implications of the EU Directive on cross-border healthcare for NHS commissioners and providers](#), [accessed 13 February 2012]

Regarding prior authorisation, the NHS Confederation's European Office have highlighted the following:

...It is important to emphasise that authorisation cannot be refused where a patient is experiencing 'undue delay' in receiving treatment under the NHS. While there is no formal definition of 'undue delay', the European Court has stressed that judgments must be based on a clinical assessment of what is a medically acceptable period for the individual clinical circumstances of the patient, and that this assessment needs to be kept under review while the patient is waiting for treatment. Significantly, the European Court has said that offering treatment within a national waiting time target does not necessarily avoid 'undue delay'.

Transposition

The Directive must be implemented in the UK by October 2013. Until the Directive is implemented, existing rules on cross-border healthcare remain in force:

...The *National Health Service (Reimbursement of the Cost of EEA Treatment) (Wales) Directions 2010*² provides for a legal framework relating to prior authorisation for, and reimbursement of, costs of a patient's healthcare in a Member State of the European Economic Area (EEA) other than the United Kingdom. These regulations, which apply in England and Wales, follow on from guidance³ issued by the Welsh Government to the NHS in Wales in 2007 (in tandem with Department of Health guidance to the NHS in England) to assist NHS bodies in handling requests for patient mobility.

Actions within Wales

To date the Welsh Government has made no statements on the new Directive and how it will be transposed in Wales.

² *National Health Service (Reimbursement of the Cost of EEA Treatment) (Wales) Directions 2010*, 2010/915 [accessed 13 February 2012]

³ Welsh Health Circular, WHC (2007) 044, *Advice to Local Healthcare Commissioners on Handling Requests for Hospital Care in other European Countries following the ECJ's Judgment in the Watts case*, 24 May 2007 [accessed 13 February 2012]