

The EU Directive on cross-border healthcare

Key points for commissioners

- NHS patients have the right to seek in another European country any healthcare that they would have received under the NHS and to be reimbursed by their commissioner up to the amount that their treatment would have cost the NHS to provide.
- The patient pays the difference if care abroad is more expensive. The patient would also normally have to cover travel and other costs, unless their commissioner decides to cover these additional costs on an individual basis.
- The Directive does not give NHS patients rights to reimbursement towards the cost of treatment that they would not have received under the NHS.
- Patients seeking treatment abroad can be made subject to the same conditions that apply when accessing treatment under the NHS. For example, a patient who wanted to see a specialist abroad would still need GP referral.
- Prior authorisation systems (where a patient makes a request to be treated abroad before they obtain treatment) may only be introduced for healthcare which is subject to planning requirements and which involves at least one night in hospital, or requires the use of highly specialised and cost-intensive medical equipment.
- Prior authorisation cannot be refused if a patient is experiencing (based on their individual circumstances) 'undue delay' in receiving NHS care.
- Commissioners have a duty to ensure that patients who receive cross-border healthcare can have access to follow-up healthcare if and as required when they travel back to the UK.
- Commissioners may decide to pay directly for healthcare in another European country, if this would benefit the patient.

Analysis of implications for commissioners

Whilst it is impossible to predict how patterns of cross-border healthcare will change in the future, it is broadly recognised that most patients prefer to be treated as close as possible to home and therefore, in principle, we do not anticipate a large expansion in the volume of cross-border healthcare within the framework of the Directive.

Nevertheless, it should be emphasised that one of the main reasons given by patients for seeking cross-border healthcare is the opportunity to receive treatment more quickly. Therefore, in the event that waiting times were to increase for certain treatments under the NHS, we could expect a larger number of patients seeking cross-border healthcare going forward.

As patients may only receive reimbursement for healthcare abroad that they are entitled to receive under the NHS, at a cost which is not higher than the NHS cost, cross-

border healthcare is not expected, in principle, to have major implications for NHS budgets. Nevertheless, as authorisation cannot be refused in cases of 'undue delay', there could be some implications in terms of commissioners' ability to plan and prioritise. This could, in turn, have implications for health inequalities by allowing certain patients to receive treatment more quickly than patients who are in greater medical need.

Another challenge for commissioners relates to determining domestic prices for healthcare, especially for those procedures which are not covered by a tariff and are subject to significant local variations.

On the positive side, the Directive will reduce the uncertainty commissioners currently have on what rights NHS patients have to receive treatment abroad and how to handle requests from patients for cross-border healthcare.

As the NHS is expected to move to a system allowing for greater variation at local level on which treatments patients are entitled to receive, a key issue with the implementation of the EU rules will be to ensure that commissioners have a clear 'list' of which types of healthcare they allow (or do not allow) their patients to receive. This will be crucial to avoid uncertainty for both commissioners and patients, and to reduce the risk of legal challenges from patients trying to access treatments abroad which are not routinely available under the NHS.

At a time when the UK Government has put forward proposals to extend patient choice and to diversify providers in the healthcare market, the Directive will have the effect of extending patient choice beyond national borders. It should be emphasised that patients will have the right to access treatment from any healthcare providers abroad, including private sector providers.