Background

Background note: Cross Border Health Care

Making it easier for patients to seek healthcare abroad and to be properly reimbursed, better access to information on patients' rights and procedural guarantees where things go wrong; these are some of the aims of a draft directive on patient rights in cross border healthcare, which will be debated and put to a first reading vote in the European Parliament on Thursday 23 April.

The proposed directive aims to ensure that there are no obstacles to patients seeking care in a Member State other than their home one. It also clarifies the right to be reimbursed after a treatment in another Member State. These rights have been confirmed by the European Court of Justice, but are not yet included in EU legislation. At the same time, the directive aims to ensure high-quality, safe and efficient healthcare and to establish health care co-operation mechanisms among Member States.

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Why is EU legislation needed?

The draft directive was proposed by the European Commission in July 2008. Healthcare was excluded from the services directive and Parliament and Council had asked the Commission to address issues relating to cross border healthcare in a separate instrument, in a way adapted to and respecting the unique nature of the healthcare sector.

People in general prefer to receive healthcare close to where they live. Currently, only 1% of healthcare budgets are spent on cross-border healthcare. However, in certain circumstances, it can be beneficial to receive healthcare in another EU country, notably in border regions, where the nearest healthcare facility may be in another country, or when there is more expertise available, or a particular care or treatment can be provided faster.

Court of Justice rulings

Since 1998, the European Court of Justice has ruled in several judgements that patients have the right to be reimbursed for healthcare received in another Member States that they would have received a home. This right derives from the Treaty itself, but uncertainty remains over how to apply the principles of that case law more generally. It therefore needs to be clarified how this right can be exercised.

The proposed directive does not modify the existing framework for co-ordination of social security systems. This regulation provides for persons for whom medical treatment becomes necessary during a stay in the territory of another Member State to the same benefits as patients ensured in the host Member State, using the European Health Insurance Card. The regulation also provides for patients to be able to seek healthcare in another EU country, subject to prior authorisation which has to be given if the care cannot be provided in their home country within a medically justifiable time.

Objectives and content of the draft directive

The proposed directive aims at giving legal and policy certainty on the rights of patients to seek healthcare in another Member State and the level of reimbursement.

In addition it wants to ensure that patients can be confident about the quality and safety of treatment they will receive in another Member State, while respecting that Member States are responsible for healthcare provided on their territory.

Finally it aims at facilitating European cooperation between healthcare systems to achieve better healthcare for all.

Differences for hospital and non-hospital treatments abroad

The draft directive states that patients have the right to seek medical treatment abroad. In this case they will have their costs reimbursed up to the level they would have received in their home country (see below).

For non-hospital care, such as dental care, medical consultations or visits to the optician, patients don't need prior authorisation. The patient would need to pay for the care first and then seek reimbursement from his statutory national system.

For hospital and specialised care, Member States may nonetheless chose to introduce a system in which patients are required to seek prior authorisation before seeking care abroad. Such a system may be introduced under certain conditions, for example if the financial balance of the Member State's health system or the planning capacity could otherwise be seriously undermined. The prior authorisation system will be limited to what is necessary and proportionate to avoid such impacts should not constitute a means of arbitrary discrimination.

Reimbursement of costs

The draft directive sets the general rule that patients are to be reimbursed by their national health insurer or health authority as long as they have the right to the same treatment at home and up to the level of reimbursement for the same or similar treatment in their national health system

The proposal does not change the right of the Member States to define the benefits that they choose to provide. If a Member State does not include a particular treatment as part of the entitlement of their citizens at home, the directive does not create any new entitlement for patients to have such treatment abroad and be reimbursed. Additionally, the proposal does not prevent the Member States from extending their benefits-in-kind schemes to healthcare provided abroad.

Member States who do not have an existing set of defined reimbursement levels for particular types of care (for example, in health systems with integrated public financing and provision), should put in place a mechanism for calculation of costs that are to be assumed by the statutory social security scheme for such cross border health care.

Information to patients

To improve patients' confidence in cross-border health care, they must receive appropriate information on all important aspects of cross border health care, such as the level of reimbursement or the right of redress in the event of harm caused. The draft directive therefore proposes the establishment of national contact points for cross border health care. The number of these and how they would operated are to be decided by Member States and they can also be built in existing information centres.

Procedural guarantees

Member States would have to set up procedures and systems to be used in case of harm caused when healthcare is provided, concerning both treatment received by visitors and by their citizens' in other Member States.

Responsibilities of authorities of the Member State of treatment

The draft directive states that the Member State of treatment shall be responsible for the organisation and delivery of healthcare. They should define clear standards for safety and quality in their respective systems, so patients coming from another Member State can be confident in the quality and safety standards of the treatment they receive abroad.

Improved cooperation between healthcare systems

Since all Member States face the same challenges in relation to their healthcare services, more cooperation would allow them to share experiences. The draft directive proposes for example the development of "European reference networks", to enable expertise and innovation to be shared in highly specialised medical fields. It should also promote the use of information and telecommunication technologies in health. It does not oblige any introduction of e-health services but aims at ensuring interoperability once the choice of introducing such systems is done by Member States. The draft directive aims as well at an easier recognition of prescriptions issued abroad in local pharmacies.

Vote in the Environment and Public Health committee - MEPs views

Directive for patients - national competences and existing rights are respected

In the committee vote, MEPs underlined that the proposal is about patients and their mobility within the EU, not about the free movement of service providers. They also stressed that the directive fully respects the national competences in organising and delivering healthcare and that it does not oblige health care providers in a Member State to provide health care to a person from another Member State. The Committee pointed out that the new directive will not affect current patient rights, which are already codified under another EU regulation, or the regulations on the co-ordination of social security systems.

Prior authorisation for hospital treatments

The committee agreed with the possibility of introducing a system of a prior authorisation for the reimbursement of the costs of hospital care, but wanted Member States to define what hospital care is and not the Commission, as originally proposed. It also underlined that the prior authorisation requirement must not create an obstacle to the freedom of movement of patients.

Reimbursement of costs to be made easier

On the reimbursement of medical costs incurred, MEPs agreed with the general rule that patients are to be reimbursed up to the level they would have received in their home country. They added that Member States may decide to cover other related costs, such as therapeutic treatment and accommodation and travel costs.

Since the proposed rules would in practice mean that patients need to pay beforehand and get reimbursed only later, MEPs added a provision that Member States may offer their patients a system of voluntary prior notification. In return, reimbursement would be made directly by the Member State to the hospital of treatment. MEPs said Member States must ensure that patients having received prior authorization, will only be required to make direct payments, to the extent that this would be required at home. The Commission is to examine whether a clearing house should be established to o facilitate the reimbursement of costs.

Exceptions for patients with rare diseases or disabilities

The committee added special rules for patients with rare diseases and disabilities that might need special treatment. Patients affected by rare diseases should have the right to reimbursement even if the treatment in question is not provided for by the legislation of their Member State. Special costs for persons with disabilities must also be reimbursed under certain conditions. Furthermore, all information must be published in formats accessible to people with disabilities.

Information to patients and their rights to complain at the European Patients Ombudsman

MEPs agreed with the proposal that national contact points shall be established, to increase the information for patients. They also proposed establishing a European Patients Ombudsman, to deal with patients' complaints with regard to prior authorisation, reimbursement of costs or harm once all complaint options within the relevant Member State have been explored.

Long term care and organ transplantation excluded from the directive

According to the committee, the directive should not apply to long-term care and to organ transplantation.

Final vote in Committee

Background

The report by John Bowis (EPP-ED, UK) was adopted with 31 votes for, 3 against and 20 abstentions. Members of the PES group abstained during the final vote, since the Committee did not follow their request to add Article 152 concerning action in the field of public health as a second legal basis for the proposal, which is based on Article 95 (internal market) and since they wanted clearer the rules regarding the prior authorisation.

Further amendments are expected to be tabled for ahead of the plenary vote.