

U-Impact

Improving patients' rights in the age of the Cross Border

Healthcare Directive

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Cross Border Healthcare Directive Implementation: an overview

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DIRECTIVE 2011/24/EU

9 MARCH 2011

(GUCE 4.4.2011 L 88):

**PATIENTS' RIGHTS CONCERNING
CROSS-BORDER HEALTH CARE**

STRUCTURE OF THE PRESENTATION

- THE DIRECTIVE'S MAIN CONTENTS AND GOALS (PART I)
- THE IMPLEMENTATION: THE SITUATION AT PRESENT (PART II)
- CONCLUDING REMARKS (AND POSSIBLE REMEDIES) (PART III)

PART I

- **THE DIRECTIVE'S
MAIN CONTENTS
AND GOALS**

LEGAL BASIS

- SECTION 114 TFUE:

THE EU IS ENTITLED TO ADOPT LEGAL MEASURES TO CO-ORDINATE THE FUNCTIONING OF INTERNAL MARKET

- THEREFORE, THE DIRECTIVE IS MAINLY AIMED AT DEVELOPING THE SERVICE MARKET WITHIN THE EU

- HOWEVER, THE PROTECTION OF PATIENTS' OWN HEALTH IS ALSO ADDRESSED

DIRECTIVE'S GOALS:

- TO MAKE THE MOVEMENT OF PATIENTS WITHIN THE EU MORE EFFECTIVE
- TO ENSURE A HIGH LEVEL OF HEALTH PROTECTION

THE KEY PRINCIPLES

- EXPENSES ARE REIMBURSED TO THE SAME EXTENT TO WHICH PATIENTS WOULD BE ENTITLED AT HOME
- TO SET UP NETWORKS OF EXPERTISE AND SPECIALISED CENTRES AMONG THE MEMBER STATES
 - REIMBURSEMENTS MAY BE LIMITED GIVEN CERTAIN REASONS OF GENERAL INTEREST
 - MEMBER STATES ARE LEFT FREE TO INTRODUCE A SYSTEM OF PRIOR AUTHORISATION
- ESTABLISHING OF NATIONAL CONTACT POINTS

HOWEVER

THE REIMBURSEMENT OF
HEALTH CARE EXPENSES IS
LIMITED TO THOSE
TREATMENTS WHICH THE
CITIZEN IS ENTITLED IN HIS/HER
OWN NATIONAL HEALTH
SYSTEM

WHAT KIND OF EXPENSES?

- **ONLY THE MEDICAL AND HEALTH ONES CONNECTED TO THE TREATMENTS SUPPLIED**
- **THE MEMBER STATES ARE FREE TO SET UP HIGHER REIMBURSEMENTS**

PRIOR AUTHORISATION

- **TO BE DEEMED AS A BARRIER AGAINST THE FREEDOM OF PEOPLE TO MOVE CROSS BORDER**
- **IT IS NOT JUSTIFIED WHEN THE TREATMENT ABROAD IS LISTED IN THE NATIONAL HEALTH SYSTEM**

SOME ISSUES AT STAKE

- TO EVALUATE THE CAPS FOR THE REIMBURSEMENT CONCERNING HEALTH INSURANCE POLICIES
- TO SET UP REASONABLE CAPS TO ENSURE THE ECONOMIC AND FINANCIAL BALANCE OF THE AFFILIATION SYSTEM (WHICH IS THE ONE THAT HAS TO REIMBURSE THE EXPENSES)

THE DIRECTIVE THEN....

- **ADDRESSES PATIENTS' RIGHTS**
- **PROVIDES FOR CLEAR RULES TO ACCESS HIGH QUALITY AND SAFE HEALTH CARE SERVICES**
- **ENSURES SINGLE CITIZENS' RIGHT TO MOVE CROSS BORDER TO ACCESS HEALTH CARE PROVISIONS AND SERVICES**

POTENTIALS

- OPPORTUNITY FOR THOSE COUNTRIES WITH THE BEST QUALITY STANDARDS AND CAPACITY OF EFFECTIVE COMMUNICATION
- POSITIVE IMPACT ON TOURIST PROMOTION LINKED TO HEALTHY LIFE STYLES

PART II

- THE IMPLEMENTATION:
THE SITUATION AT
PRESENT
 - WHAT KIND OF
IMPLEMENTATION?

1. EXPERT PANEL ON EFFECTIVE
WAYS OF INVESTING IN HEALTH
(EXPH): CROSS BORDER

COOPERATION – 29th JULY 2015

2. REPORT FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT AND
THE COUNCIL: COMMISSION REPORT
ON THE OPERATION OF DIRECTIVE
2011/24/EU ON THE APPLICATION OF
PATIENTS' RIGHTS IN CROSS-BORDER
HEALTHCARE – BRUSSELS, 4TH
SEPTEMBER 2015 COM(2015) 421 final

- NO ADEQUATE INFORMATION FOR CITIZENS
- NCPs ARE NOT YET IN PLACE. IF SO, INFORMATION ARE UNCLEAR AND NOT USEFUL TO DECIDE
 - PRIOR AUTHORISATION
 - REIMBURSEMENT

FOCUS ON

- PRIOR

AUTHORISATION

- REIMBURSEMENT

PRIOR AUTHORISATION

- RECITAL 43 OF THE DIRECTIVE: THE CRITERIA FOR PRIOR AUTHORIZATION HAVE TO BE DULY JUSTIFIED.
- “EXTENSIVE SYSTEMS OF PRIOR AUTHORIZATION” SHOULD NOT BE ACCEPTED OR JUSTIFIED.
- BURDENSOME PROCEDURES (SEE ITALY)

REIMBURSEMENT

- Article 7(9) permits Member States to limit the application of the rules on reimbursement of cross-border healthcare for overriding reasons of general interest.
- However, Article 7(11) requires that such limitations be necessary and proportionate, and do not constitute a means of arbitrary discrimination or an unjustified obstacle to free movement. Furthermore, Member States are required to notify the Commission of any decision to introduce limitations under 7(9).
- Although the Commission has received no specific notifications, some of the ways in which Member States have transposed the Directive could be considered as limiting reimbursement.
- According to Article 7(4) of the Directive, the reference point for reimbursement for crossborder healthcare should be the amount borne by the system when that particular healthcare is provided by a public or contracted healthcare provider (depending on the way a given health system is organised) in the Member State of affiliation.

PART III

- CONCLUDING
REMARKS (AND
SOME POSSIBLE
REMEDIES)

SOME POSSIBLE REMEDIES

- MSs: FAILURE TO FULFIL THEIR OBLIGATIONS UNDER EITHER ART. 7(4) OR 7(7) OF THE DIRECTIVE: THE COMMISSION MAY THEN START A PROCEDURE UNDER ART. 258 TFEU CALLING ON MSS TO COMPLY WITH EU LAW BY REMOVING ARBITRARY AND DISCRIMINATORY RESTRICTIONS ON CROSS-BORDER CARE.
- IN ADDITION, INDIVIDUALS MAY EVEN CONSIDER A MORE INNOVATIVE APPROACH BY CHALLENGING THE INCORRECT IMPLEMENTATION UNDER THE EU CHARTER OF FUNDAMENTAL RIGHTS (ART. 35, THE RIGHT TO HEALTH CARE) JOINED WITH THE NON DISCRIMINATION PROVISION, BASED ON NATIONALITY (ART. 21(2)) BEFORE THE NATIONAL COURTS

SOME CONCLUDING REMARKS

- Overall, the implementation of Directive 2011/24 should allow the overcoming of a purely economic approach to health services so as to reach out for a new relationship between citizens and welfare state. This relationship is to depict enforceable rights also within the legal framework of patient's mobility: cross-border health care is expected then to strike a balance between the fulfilling of citizens' needs and the obligation of Member States to ensure financial sustainability of the budgets of their national health systems.
- Such a goal cannot be accomplished when Member States build up barriers against the freedom of movement, thus preventing European citizens from migrating out of their health systems. Hence, it is not a question of market freedom versus European social market. It is rather a question of implementing procedures aimed at supporting cross-border health care services, which could actually bring in important changes in the organisation and management of national health systems.