

Questions and Answers on Health Services in the EU

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Why is it important to address health services from a European perspective?

Health systems and health policies across the EU are becoming more interconnected than ever in the past. This is due to many factors, including increased movement of patients and professionals around the EU (facilitated by rulings of the European Court of Justice), common public expectations across Europe, dissemination of new medical technologies and techniques through information technology, and the enlargement of the Union. This increased interconnection raises many health policy issues, including quality and access in cross-border care; information requirements for patients, health professionals and policy-makers; scope for cooperation on health matters; and how to reconcile national policies with the obligations of the EU's internal market.

Why a specific initiative on health services?

In 2003 health ministers and other stakeholders invited the Commission to explore how legal certainty could be improved following the Court of Justice jurisprudence concerning the right of patients to benefit from medical treatment in another Member State. The Commission's proposal for a Directive on services in the internal market¹ at the start of 2004 therefore included provisions codifying the rulings of the Court of Justice in applying free movement principles to health services. This approach, however, was not accepted by the European Parliament and Council. It was felt that specificities of health services were not sufficiently taken into account, in particular their technical complexities, sensitivity for public opinion and major support from public funds. The Commission therefore undertook to explore how best to develop a policy initiative specifically targeting healthcare services as a separate issue.

What is the overall Commission objective in this area?

The basic strategy is to provide two things: legal certainty and support for cooperation between national health systems.

The Commission's overall objective is to provide a clear framework addressing the issues raised by the Court of Justice rulings enabling patients and those who pay for, provide and regulate health services to have clear and usable options to take advantage of cross-border health services where appropriate. This reflects the Commission's commitment as part of the Citizens' Agenda to more effective means of ensuring citizens' existing rights of access to health care across Europe. It would also facilitate cooperation between health systems, while respecting the primary responsibilities of the Member States for their healthcare systems and supporting

¹ COM(2004)2, 13.1.2004.

them in working toward the core objectives of accessibility, quality and financial sustainability.

Do EU citizens have a basic right to healthcare?

Having access to high-quality healthcare when and where it is needed is a priority issue for European citizens², and is recognised in the Charter of Fundamental Rights of the EU (see in particular Article 35 on health care). The benefits provided by different EU health systems are determined by Member States, not the Community. However, in accordance with Community free movement rules, care to which citizens are entitled in their own Member State they may also seek in another Member State and be reimbursed, subject to certain conditions.

What is “patient mobility”?

Patients normally wish to benefit from high quality healthcare as close to home and as quickly as possible. Sometimes, however, this can be best achieved through healthcare provided in another Member State. Patients are willing to travel if they can get better, faster or cheaper health services elsewhere.

Accessing healthcare depends on having the right information regarding the quality, availability and appropriateness of different services, and to have clarity over the procedures to be followed. And when patients do seek healthcare in other Member States, it is essential to ensure that the well-being and safety of the patient is properly protected.

What are the existing rules for patient mobility?

Discussions about “patient mobility” at EU level were prompted in 1998 after judgements of the European Court of Justice. Until then, the only EU mechanism enabling patients to receive treatment abroad (other than patients paying for such treatment themselves) was Regulation 1408/71³. This entitles patients whose treatment becomes necessary during a stay in another Member State to the same benefits as patients insured in the host Member State. It also provides for planned treatment in other Member States, subject to prior authorisation.

However, in 1998 the Court established additional principles through its rulings in the cases of Mr Kohll⁴ and Mr Decker⁵. In its rulings, the Court made clear that as health services are provided for remuneration, they must be regarded as services within the meaning of EU Treaty and thus relevant provisions on free movement of services apply. The Court also ruled that measures making reimbursement of costs incurred in another Member State subject to prior authorisation are barriers to freedom to provide services, although such barriers may be justified by overriding reasons of general interest. These include a risk of seriously undermining the financial balance of social security systems; the need to ensure provision of a balanced medical and hospital service accessible to all; or the maintenance of a treatment facility or medical service on national territory which is essential for public health.

² See Eurobarometer 63 at http://ec.europa.eu/public_opinion/archives/eb/eb63/eb63_en.htm.

³ OJ L 149, 5.7.1971, p.2.

⁴ Case C-158/96 Kohll [1998] ECR I-1931.

⁵ Case C-120/95 Decker [1998] ECR I-1831.

On the basis of this and subsequent cases⁶, the Court's rulings have developed the following principles:

- Any non-hospital care to which you are entitled in your own Member State you may also seek in any other Member State without prior authorisation, and be reimbursed up to the level of reimbursement provided by your own system.
- Any hospital care to which you are entitled in your own Member State you may also seek in any other Member State provided you first have the authorisation of your own system. This authorisation must be given if your system cannot provide your care within a medically acceptable time limit considering your condition. Again, you will be reimbursed up to at least the level of reimbursement provided by your own system.

If the European Court of Justice has already addressed this issue, why do we need further EU action?

The Court's rulings leave many areas of uncertainty about how these principles can be applied in practice by patients, health professionals and Member State regulators. These include:

- whether there are common minimum rights or standards shared values and principles for health services on which citizens can rely throughout the EU;
- what practical issues need to be clarified for citizens who wish to seek healthcare in other Member States;
- what flexibility Member States have to regulate and plan their own systems without creating unjustified barriers to free movement;
- how to reconcile greater choice in exercising individual entitlements with financial sustainability of health systems overall;
- how to ensure proper compensation for cross-border healthcare provided 'receiving' countries;
- how patients or professionals can identify, compare or choose between providers in other countries;
- the link between health services and related services such as social services and long-term care;
- and what happens when patients need compensation where the healthcare provided has been harmful, which evidence suggests happens in around 10% of cases.

⁶ For example, Case C-368/98 Vanbraekel [2001] ECR I-5363; Case C-157/99 Smits and Peerbooms [2001] ECR I-5473; Case C-56/01 Inizan [2003] ECR I-12403; Case C-8/02 Leichtle [2004] ECR I-2641; Case C-385/99 Müller-Fauré and Van Riet [2003] ECR I-4503; Case C-372/04 Watts, judgement of 16 May 2006, not yet published.

How can we achieve legal clarity in this area?

The need here is clarity regarding the application of Treaty provisions on free movement to health services following the Court of Justice rulings, including the minimum necessary clarity on medical, regulatory and administrative issues that also need to be addressed in order to promote safe, high-quality and efficient health services, whilst respecting the rights of patients and of Member States as already established by the Court. This could cover issues such as the following:

- The terms and conditions according to which health care in another Member State must be authorised and paid for, and the provision of information to patients about treatments available in other Member States;
- Which health authority is responsible for supervising cross-border health care in different circumstances, and ensuring continuity of care;
- Responsibility for any harm caused in cross-border healthcare and compensation arising from such harm;
- Common elements of patient rights.

How can this initiative contribute to wider healthcare reforms?

European action on health services will necessarily also contribute to the wider challenges facing health systems, beyond the specific case of cross-border healthcare itself. The cost of healthcare systems to public funds has risen significantly faster than inflation in recent years, and is projected to rise by one to two percent of GDP in most Member States between now and 2050 as a direct result of ageing populations. However, these projections of future costs are very sensitive to changes in costs of providing a given package of care. The key to sustainability for healthcare systems is therefore controlling costs and improving efficiency, alongside prevention and health promotion measures to maximise the number of years of life spent in good health (as measured by the Healthy Life Years indicator). If this is not done, then future costs could be significantly higher.

The practicalities of European cooperation have been shown through increasing cross-border cooperation on health services across most of the internal borders of the Union. However, such kinds of cross-border health services have often encountered problems due to incompatible rules between the countries concerned and the lack of a clear legal framework and European structure for cooperation.

How can we support cooperation between health systems?

In the patient mobility reflection process, health ministers and other stakeholders also identified a range of specific areas where the economies of scale of coordinated action between all Member States can bring added value to national health services. Some progress has already been made in taking these forward through the High Level Group on health services and medical care⁷. However, a more formal framework at the EU level could help to ensure that these actions are implemented effectively and on a sustained basis. These include:

- Networks of centres of reference
- Realising the potential of health innovation
- A shared evidence base for policy making
- Health systems impact assessment

⁷ See

http://ec.europa.eu/health/ph_overview/co_operation/mobility/patient_mobility_en.htm.

Do other European institutions support the idea of fostering co-operation in health services?

In its 2005 Report on Patient Mobility and Healthcare Developments in the EU, the Parliament called for the Commission to act on a wide range of issues related to patient mobility and wider cooperation between health systems.

Ministers at the 'Health' Council of 1 June 2006 adopted a "Statement of common values and principles in EU health systems"⁸ which underlined the importance of "*protecting the values and principles that underpin health systems in the EU*" and called in particular for an initiative on health services: "*...ensuring clarity for European citizens about their rights and entitlements when they move from one EU Member State to another and enshrining these values and principles in a legal framework in order to ensure legal certainty*".

Does this mean harmonising health systems at European level?

No. The benefits that different health and social security systems provide and their organisation remain the responsibility of the Member States, in accordance with the principle of subsidiarity.

Would there be any legal basis in the Treaties for Community legislation on health services?

The form and basis of any legislative proposal could only be depends on what it would contain, which will only be decided after this consultation. However, legal certainty could for example be ensured through a regulation or a directive, which could be based on Article 95 EC.

This has been confirmed most recently by the *Watts* judgement of the Court of Justice on 16 May 2006 (Case C-372/04). In that ruling, the Court made clear that the requirement in Article 152, paragraph five of the Treaty to "fully respect the responsibilities of the Member States for the organisation and delivery of health services and medical care" does not exclude the possibility that the Member States may be required under other Treaty provisions, such as Article 49 EC, or Community measures adopted on the basis of other Treaty provisions, such as Article 22 of Regulation (EC) 1408/71, to make adjustments to their national systems of social security.

What are next steps?

Following today's debate in the College of Commissioners, the first step proposed by the Commission is a public consultation on approaches for addressing these issues, based on a Commission Communication. The consultation will seek input from Member States, the European Parliament and other health sector stakeholders, including patients, health professionals, healthcare purchasers (e.g.: social security institutions) and providers, plus regional and national health authorities. The Commission would then bring forward appropriate proposals in 2007.

For further information please visit:

http://ec.europa.eu/health/ph_overview/co_operation/mobility/patient_mobility_en.htm
http://ec.europa.eu/health-eu/care_for_me/mobility_in_europe/index_en.htm

⁸ Council Conclusions on Common values and principles in EU Health Systems, 2733rd Employment, Social Policy, Health and Consumer Affairs Council meeting, Luxembourg, 1-2 June 2006.