

# Patients' rights in cross-border healthcare

2008/0142(COD) - 02/07/2008 - Legislative proposal

**PURPOSE:** the establishment of a Community framework for cross-border healthcare.

**PROPOSED ACT:** Directive of the European Parliament and of the Council.

**BACKGROUND:** uncertainty regarding the general application of the right to reimbursement for healthcare services provided in another EU Member States has created obstacles to the free movement of both patients and health care services. This is best illustrated by the high number of patients who should have been entitled to reimbursement for cross-borders healthcare but who did not claim it.

In June 2006, the Council adopted conclusions on common values and principles in the EU's Health Systems. These conclusions confirmed the need to clarify patients' rights and entitlements in cases where they received health care in a country other than the one in which they reside. The Council's conclusions also confirmed the need to enshrine these principles into a dedicated legal framework.

Similarly, the European Parliament has contributed extensively to discussions on cross-border healthcare. In April 2005, Parliament adopted a report on patient mobility and healthcare developments in the European Union, in March 2007 a Resolution on Community action on the provision of cross-border healthcare and in May 2007 a Report on the impact and consequences of the exclusion of health services from the Directive on services in the internal market.

**CONTENT:** based on the concerns outlined above as well as ECJ jurisprudence the purpose of this Regulation is to establish a clear Community framework to facilitate cross-border healthcare. The proposed Directive will apply to all healthcare provisions, regardless of how it is organised, delivered or financed.

To realise the stated objectives three main themes are being proposed:

## **1) A specific legal framework regarding reimbursement of cross-border healthcare**

The proposed Directive will provide sufficient clarity about the rules to be applied for the reimbursement of healthcare provided in other Member States and how the rights of the patients will be implemented in practice in line with the case law of the Court of Justice. It will be based on the following principles:

- Any non-hospital care to which citizens are entitled in their own Member State, they may also seek in any other Member State without prior authorisation, and be reimbursed up to the level of reimbursement provided by their own system.
- Any hospital care to which they are entitled in their own Member State they may also seek in any other Member State. The directive allows Member States to provide for a system of prior authorisation for reimbursement of costs for hospital care provided in another Member State, if Member States can provide evidence that the outflow of patients resulting from implementation of this Directive has such an impact that it seriously undermines or is likely to seriously undermine the planning and rationalisation carried out in the hospital sector. The costs of such hospital care provided in another Member State should also be reimbursed by the Member State of affiliation at least up to the level of costs that would have been assumed had the same or similar healthcare been provided in the Member State of affiliation.

The Member States of the patient may impose the same conditions that apply domestically, such as the requirement to consult a general practitioner before consulting a specialist or before receiving hospital care. This does not change the right of 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 proposed Directive will not create any new entitlement for patients to have such treatment abroad and be reimbursed. In addition, the proposal does not prevent the Member States from extending their benefits in kind schemes to healthcare provided in other Member States a possibility already implemented by several Member States.

The proposed Directive will also clarify some relevant terms as well as the criteria for the procedures to be followed for cross-border care to ensure that these are objectively justified, necessary and proportionate. It will also require appropriate mechanisms to be put in place to provide information and assistance to patients through national contact points.

## **2) Guaranteeing quality and safety for cross-border healthcare**

The proposed Directive will set out what the common principles in all EU health systems are, taking as a basis the June 2006 Council conclusions on "Common values and principles in European Union Health Systems" and the principle that it should be for the authorities of the Member State on whose territory the healthcare is provided to ensure compliance with such common principles. The Directive would make clear that the Member States' authorities would be responsible for ensuring that healthcare is provided according to clear standards of quality and safety as defined by the Member State in advance; that healthcare providers will make all relevant information available to patients; that patients have the right of redress if they suffer harm from the healthcare they receive; and finally that access to, and the privacy of, medical records is guaranteed. Member States will retain responsibility for setting the standards that apply to healthcare provided in their country. By clarifying which Member State is responsible in any given situation, the Directive, once approved, will guarantee a high level of both quality and safety throughout the Union's health care sector.

## **Future practical European cooperation on healthcare**

The proposed Directive also sets out provision for enhanced European cooperation given the scale of cross-border health care provision. The framework established by the Directive will help to realise the potential of this European added-value. It makes provision for developing future practical cooperation at European level by establishing European reference networks; assessing innovative health technology; and promoting e-Health.